11082

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2014/0264**
Property	:	**Flats 2,3,4,7,9 and 10, 113 Britannia Walk, London N1 7HP**
Applicant	:	**Prof Yulia Kovas and others**
Representative	:	**In person**
Respondents	:	**Family Mosaic (1)** **Aviva Investment Ground Rent GP Ltd (2)**
Representative	:	
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mrs S O'Sullivan** **Mr John Barlow FRICS** **Mrs L Walter**
Date and venue of Hearing	:	**23 and 24 April 2015 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**22 August 2015**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision and as set out in the attached schedule completed by the tribunal.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The tribunal orders that the First Respondent reimburses the Applicants in respect of any application/hearing fees paid.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2013/14 and 2014/15.

2. 113 Britannia Walk is a block of ten flats in a substantial development. The freehold has been owned by Aviva, the Second Respondent, since 2012. The ten flats in the block are held on an intermediate lease by the First Respondent, Family Mosaic. Rendall and Rittner are the managing agents for both Respondents.

3. Directions were first made in this matter on 23 November 2014 which set a hearing date of 23 April 2015. These were varied on 30 December 2014 and 28 January 2015.

4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicants appeared in person with Prof Kovas and Mr Selita of Flat 9 speaking on their behalf. The First Respondent, Family Mosaic, was represented by Mr Cohen of Counsel with Mr Daver and Ms Kyeremarten of Rendall and Rittner, the managing agents, also attending. The Second Respondent, Aviva, was represented by Mr Southam and Mr Dooley of Chainbow.

The background

6. Some photographs of the building were provided to the tribunal. Neither party requested an inspection and the tribunal did not consider

that one was necessary, nor would it have been helpful given the issues in dispute.

7. The Applicants each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

8. A hearing first took place in this matter on 10 November 2014. At this hearing it became apparent that the Applicants were not prepared. Although they had been given an opportunity to consider disclosure it was said to have been provided in a disorganised fashion and no contracts were made available. The hearing was therefore adjourned and further directions made to allow the Applicants a further opportunity to consider disclosure and properly set out their case. Actual accounts were then issued for 2013/14. The reconvened hearing took place on 23 and 24 April 2015. Following this hearing further directions were made for the service of written submissions in relation to further matters arising at the hearing. The tribunal reconvened on 10 June 2015 to consider the further documentation and statements of case without the attendance of the parties to make its decision.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for 2013/14 and 2014/15 as set out in the schedule produced by the parties;

   (ii) Whether there had been a breach of the consultation requirements set out in section 20 of the 1985 Act in relation to the maintenance works to the boiler;

   (iii) Whether there was any issue under section 20B of the 1985 Act; and

   (iv) Whether the tribunal should make an order under section 20C and/or order reimbursement of fees paid.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Lease provisions

11. The parties were asked to consider any issues arising in connection with the lease provisions by way of written submissions after the hearing given the time constraints at the hearing. Both parties did so. In short it is the Applicants' case that the serve charges are not payable as the charges (in particular the estate charges) have not been demanded in accordance with the lease and are therefore not payable.

12. The Applicants say that the landlords have breached the manner in which the service charges are computed. It is said pursuant to clauses 7(3), 7(4) and 7(5) the landlords were under a duty to compute the whole of the service charge before the beginning of the account year. Instead they say the landlords computed the serve charge leaving out the estate charge which comprised the largest portion. This was then included as part of the balancing charge. The annual service charges were therefore said to include false figures The Applicants go on to say that the landlords are also in breach in the manner in which the service charges were demanded, under clauses 2 and 7(2) the tenants are obliged to pay the service charge by equal monthly payments in advance on the first day of each month of the year. However as the estate charge was demanded as a balancing charge this was in breach of the lease provisions.

13. The Applicants also complain that the landlords have acted unreasonably in responding to the tenants' complaints in not explaining how the service charges were calculated. It was not until the tribunal hearing that the position became clear.

14. The Respondents set out the relevant provisions of the headlease and standard form of underlease in their written submissions. In summary under the underleases the leaseholders are obliged to pay by equal monthly instalments (clauses 7(2) and 2) on account and Family Mosaic's proportion of the Specified Proportion in the manner set out in the headlease, i.e. by quarterly instalments under the headlease.

15. In response to the Applicants' submissions the Respondents say that Family Mosaic have not breached any term of the lease by seeking lower sums on account. However in 2014/15 Family Mosaic sought larger sums on account to regularise the position.

16. The Respondents submit that Family Mosaic has the right to have its liability to Aviva under the Headlease indemnified by the Applicants. This is a right and Family Mosaic would not be precluded from seeing those sums should Family Mosaic fail to invoice those sums on the dates on which the sums were demanded of it by Aviva. Family Mosaic's right to recharge the sums sought from it by Aviva engage when the quarterly charges are incurred by Family Mosaic. Thus due to the differing account periods Aviva cannot see a balancing payment during the service charge year and thus those costs (the quarterly costs) remain an incurred cost payable by the Applicants on demand.

Lease provisions – the tribunal's decision

17. Family Mosaic has not demanded service charges in such a way as to render them unrecoverable under the underlease. Clearly problems have arisen given that the headlease and underlease have different accounting periods. Further sums due under the headlease are payable quarterly yet those under the underlease on a monthly basis. Issues have arisen with Family Mosaic having seemingly not taken (or fully taken) into account the estate charges payable to Aviva in the service charge estimates. This has lead to a large balancing charge. It has been recognised that this practice is very much undesirable and Family Mosaic are now demanding a much larger estimated service charge which they hope will be more accurate. We do not agree that the fact that some of Aviva's charges are included as a balancing charge renders them unpayable. We agree that pursuant to the underlease Family Mosaic has the right to be indemnified in respect of those sums.

18. Thus we concluded that the sums demanded by Family Mosaic in respect of both Family Mosaic and Aviva's charges are recoverable in principle.

Service charges 2013/14

Electricity

19. The tribunal heard that the charges for electricity comprised several elements as set out below.

20. Firstly a charge in relation to the block structure of £536 which was heard to consist of lights to the bin store and the fire alarm panel. This charge was opposed by the Applicants on the basis that the lights in the bin store historically did not work. It was heard that sensor lights had now been installed. The Applicants produced no evidence in support of their contention that the lights had not worked and thus we allowed the charge in full.

21. The second element was described as landscape electricity in the sum of £1239. This was described as a charge for lighting in the courtyard area. The Applicants submitted that there were no lights whilst the First Respondent contended they were low level lights. On the second day of the hearing the Applicants produced a photograph taken the previous evening which showed the courtyard in darkness. On that basis the charge was disallowed. The Respondent may wish to make enquiries as to whether these lights exist and if so whether they are in repair.

22. A charge of £1477 was made for communal electricity. This was said to be the cost of electricity to communal lighting. The Applicants raised issues in relation to alleged over heating of bulbs but the tribunal heard that they were being replaced with low energy bulbs and fittings. The charge was allowed in full.

23. The tribunal generally heard evidence from Mr Daver of Rendall & Rittner as to how the electricity charges were apportioned. The First Respondent relied on an installer's schedule which had measured the electricity being used by different areas and created an apportionment. The copy of the schedule produced was illegible in parts. We accept that it is often not practicable and may be expensive to install more than one meter to deal with several different items. However given that this apportionment was carried out at the commencement of the development we consider it may be advisable to revisit the schedule to see if the apportionment may need amendment.

Gas

24. A charge of £36,661 was made for this year which included the cost of gas to individual flats. The Applicants suggested a charge of £28,000 based on an average of previous year's charges. They also relied on a report from Village Heating dated 11 February 2015 which concluded that the gas was wasted in several ways.

25. We considered that we could give very little weight to the report from Village Heating. It was not in the form of an experts report and no-one attended from that firm to give evidence to the tribunal. We also considered that the increase in gas prices may well be down to the increase in gas charges over recent years. We looked carefully at the charges. The average cost per unit was £447 per annum or £8.60 per week. We considered that this charge fell within a reasonable range for gas charges for dwellings of this type and we therefore allowed the charges in full.

Water charges £28,048

26. These charges related to the water consumption of the units and maintenance of the boiler and plant. The Applicants did not dispute the water provider but rather the main concern related to wastage as they considered the charges had gone up significantly. No evidence was produced however of any wastage or excessive use.

27. The First Respondent submitted that an accrual in the accounts may account for the charges appearing higher in this year. The Respondent relied on the Thames Water Guidance which showed the average water consumption based on two occupants was £311 per annum. The charges for Flat 9 were in excess of this amount at £440 per annum but

this was the largest flat. All the other Applicants' charges fell below this level of charge.

28. We noted that in 2012/13 the charges had been said to be £15,200 whereas it was confirmed at the hearing that they were in fact £26,057. This may have contributed to the Applicants' belief that the charges were increasing without any reason. We had regard to the guidance produced by Thames Water which indicated that the charges for all of the flats save Flat 9 fell within normal parameters. We noted that Flat 9 is the largest flat. In the absence of any evidence from the Applicants as to excessive use or waste we allowed the charges in full.

Water charges estate £122

29. We heard that these charges related to water used in the cleaning out of bin stores and so on. The Applicants said that it was unreasonable to have two different elements for water contained in the service charge.

30. This was a notional charge and small in amount which we allowed in full. The main issue appeared to be that the Applicants did not understand the two separate elements.

Boiler maintenance £51,097

31. This sum was made up of charges for a routine maintenance contract in the sum of £2895 plus Vat and reactive maintenance charges. The tribunal heard that the routine maintenance contract had been tendered three times. The First Respondent accepted that there had been and remained continuing problems with the boiler. We heard that two different consultants had been retained to look at the problem and that although maintenance charges would remain for the foreseeable future they would be lower. It appeared that in 2010 there were issues with sediment entering the system.

32. It was also confirmed that there had been some interest charges for late payments to contractors but that credits had been applied.

33. The Applicants relied on a quotation from British Gas which they said covered both routine and call out maintenance charges. However this was in the form of a quotation, British Gas had not visited the property and we considered may not be fully aware of the system at the property and the fact that it covered individual boilers within the Applicants' flats. The quotation was very basic, by way of example it did not identify the system. We therefore considered we could place little reliance on this report.

34. We considered the invoices in relation to the reactive maintenance. We disallowed the invoice in the sum of £720 at page 5 of tab 8 as this

appeared to be a duplication of the work carried out at page 6 and no explanation was provided.

35. We had very poor evidence from both parties in relation to the issue of the maintenance costs. We were of the view that there was much duplication of visits without any apparent economy of scale. By way of example on 13 March 2013 there were 12 separate call outs and on 24 March 2013 there were 19. We were also cognisant that the problems with the boiler and plant had been ongoing for some considerable time.

36. The Applicants' evidence suggested an appropriate maintenance cost would be £9,000. However the engineers had not inspected and were not present to be cross examined on that quotation. The quotation from Village Heating also seemed to be confined to the maintenance of the plant room itself rather than the system as a whole. The Applicants had not raised a challenge in relation to specific invoices but had rather challenged the global cost of the maintenance as too high despite the directions having clearly provided that each and every item challenged must be specified.

37. We considered the costs to contain much duplication and no economies of scale appear to have taken place. On that basis we allowed a total cost of £40,000.

38. At the hearing after listening to the Applicants' concerns Mr Daver undertook to retender the maintenance contract and to include British Gas and any other contractors nominated by the Applicants. In addition he agreed to instruct a specialist consultant to advise on the costs of replacement or repair. The parties agreed a timescale which we noted but of course we have no power to enforce such an agreement.

39. Until such time as a new maintenance contract is entered into we considered that the landlord may wish to consider negotiating rates for multiple visits so as to reduce charges.

Mechanical and Electrical Plant £348

40. It was noted these charges were agreed,

Mechanical and Electrical (heating/hot water) £5121

41. The Applicants accepted the cost of the maintenance contract but disputed the additional charges. The First Respondent explained that the contracts covered servicing only and that it was not commonplace for call outs to be included. The additional charges were in the sum of £492.60 and £223.30. The Applicants produced no evidence in support of their challenge and the amounts were allowed.

42. Mechanical and electrical £2129

43. This was heard to comprise 2 elements in respect of annual inspections by Colt and Eurosafe and were allowed in the absence of any real challenge.

Landscape maintenance £3845

44. This was heard to be in respect of regular maintenance of 24 visits per year at a cost of £120 per visit making a total of £3456 including Vat. The additional sum was heard to be additional visits to cover for a period when no visits were scheduled. The regular contract cost of £3456 was allowed. The additional costs were disallowed on the basis that the contract provided for regular visits and no explanation was given for the need for additional visits.

General repairs £7977

45. The Applicants disputed the sum of £3858 which was the cost of the removal of dumped items. Mr Daver explained that when items were left on the estate these would not be collected by the Local Authority with their free service unlike when individual residents requested a collection. In such circumstances a private removal service had to be used. It was agreed that the managing agents would send a letter to all residents reminding them of the procedure for the disposal of items and potential costs where items were dumped. The costs were allowed in full.

General repairs/maintenance £3493

46. The Applicants confirmed that they did not dispute the cost of pest control, decoration and camera instalment. Their only issue was in relation to the cost of the bulbs but no evidence was produced to show that this was high. The landlord confirmed that the units were being replaced on a rolling basis and that costs would be lower in the future. The costs were allowed in full.

Door entry maintenance £1186

47. This comprised an annual contract in relation to the automatic doors the cost of which to the block was £70 plus Vat together with the cost of key fobs. There were also 2 invoices in relation to door repairs, one was on 14/10/13 to investigate faults in the sum of £195 plus Vat and on 21/10/13 to reinstall a lock in the sum of £234 plus Vat. The Applicants' complaint was that these visits were close together. The landlord maintained they were completely different repairs. The invoices supported the landlord's explanation.

48. The costs were allowed in full.

Lift maintenance/repairs £1687

49. These costs were agreed.

Fire and Smoke

50. We heard there were 2 contracts with Colt and Protech which totalled £3586.61 inclusive of vat. The remainder of this entry was heard to be an accrual in the accounts due to a misallocation of costs. The amount was allowed in full.

Insurance £46,914

51. The Applicants challenged this amount although they had produced no comparable evidence in support. The landlord relied on a letter from the broker which confirmed that the market was tested but this was said to be insufficient evidence by the Applicants. The landlord produced a copy of the policy.

52. We saw no reason why we should not place reliance on the letter from Arthur J Gallagher confirming that four alternative insurers had been approached on renewal. In the absence of any evidence to suggest the amount was unreasonable and having regard to our own experience we allowed the sum in full as reasonable.

Lift insurance

53. We noted this was agreed.

Audit fee

54. The audit fee was apportioned across the different service charge categories in the sums of £766, £204, £204 and £420 respectively. The Applicants challenged the amount on the basis of the errors in accounting we had seen. We noted that this was a full landlord and tenant audit and accepted that given the scale of the accounts the discrepancies we had seen were minor. Accordingly we allowed the fee in full.

Cleaning £952

55. This was an estate cost which covered external sweeping and cleaning of the bin stores by the caretaker. The Applicants challenged this amount on the basis that the caretaker "did nothing" but produced no evidence in support. We allowed the sum in full.

Windows and facade £2808

56. This covered the cost of cleaning the exterior of the windows. The Applicants challenged this amount on the basis the windows were never cleaned but again produced no evidence in support such as photographs of the windows. Mr Daver explained that it was their practice to write to the leaseholders to let them know when windows were to be cleaned so that they could inform the agents if the work was no carried out.

57. In the absence of any evidence that this work had not been carried out we allowed the cost in full.

Reserve fund

58. After Mr Daver explained how the reserve fund operated the challenge was withdrawn.

TV maintenance £599

59. This was not disputed.

Health & Safety

60. This was not disputed.

Budget 2014/15

61. The budget was approved by the tribunal as follows;

- Electricity £600
- Water £1200
- Caretaking/cleaning £1000
- Cleaning windows etc £10,000
- Drainage £4000
- Gen repairs £6000
- Mechanical elec £2000
- Buildings insurance £49000
- Engineering insurance £500
- Audit fees £804
- Health & safety £200
- Management fees £5778
- Reserve fund £8000
- Landscape electricity nil

- Landscape maintenance £4400
- Audit fee £214
- Electricity (heating and hot water)£3500
- Gas £31900
- Water £25000
- Boiler maintenance £30000
- Mechanical engineering insurance £1500
- Mechanical engineering £200
- Audit £214
- Reserve fund £5000

Block costs

- Electricity £3000
- Cleaning £3000
- Door maintenance £400
- Gen repairs £3500
- Lift insurance £500
- Lift telephones£260
- Lift maintenance £1650
- M & E £400
- Bin hire £350
- TV £800
- Maintenance audit fee £630
- H & S £200
- Management fee per unit £270
- Reserve fund £1000

Management fees

62. The management fees claimed are as follows;

2013

Rendall & Rittner for Aviva £54 plus Vat

Rendall & Rittner for Family Mosaic £225 plus Vat (conceded)

2014/15

Rendall & Rittner for Aviva £54 plus Vat

Rendall & Rittner for Family Mosaic £225 plus vat claimed £175 plus vat allowed.

63. Rendall & Rittner's fees were allowed for Aviva for both service charge years in the sum of £54 plus Vat. Family Mosaic conceded their management fee for 2013. We reduced the management fees for Rendall & Rittners acting for Family Mosaic for 2014 as we considered there had been a lack of transparency in relation to charging and a failure to deal properly with the issue of boiler maintenance.

Consultation

64. In their statement of case the Applicants had questioned whether the First Respondent had properly consulted them under section 20 of the 1985 Act in relation to insurance, maintenance works to the boiler and the managing agent's fees. At the hearing it was confirmed that the only matter remaining in issue was that of the boiler maintenance works and managing agent's fees.

65. The issue of consultation was addressed by the parties in the written submissions directed by the tribunal.

66. The First Respondent's position was simply that there was no requirement to consult in relation to the maintenance works. In fact it was said that there were no qualifying works or long term agreements within the parameters of section 20 for the service charge years 2013/14 and 2014/15.

67. In relation to the managing agent's fees the First Respondent submitted that the management contract in relation to the headlease has rolled over since 2008. However the sums sought are less than £100 per leaseholder with the effect that the provisions of section 20 are not engaged. As far as the underlease is concerned the management fee for 2013/14 has been waived. A new contract was entered into on January 2014 and thus again the provisions of section 20 are not engaged.

Consultation - the tribunal's decision

68. Under section 20ZA(2) of the 1985 Act "qualifying works" means works on a building or any other premises and "qualifying long term agreement" means (subject to various specific exceptions none of which are relevant here) an agreement entered into, by or on behalf of the landlord or superior landlord for a term of more than 12 months.

69. Further the tribunal noted the First Respondent's reliance on the decision in Paddington Walk Management Ltd v Peabody trust L & TR 6 in which HHJ Marshall QC concluded that "qualifying works" is to be construed as encompassing only what would naturally be called "building works".

70. We considered that the maintenance works to the boiler were clearly not building works and thus required no consultation under section 20.

71. As far as the managing agent's fees were concerned we noted that the contract in relation to the headlease has rolled over since 2008. However the sums sought are less than £100 per leaseholder with the effect that the provisions of section 20 are not engaged. As far as the underlease is concerned the management fee for 2013/14 has been waived. A new contract was entered into on January 2014 and thus again the provisions of section 20 are not engaged.

72. We therefore concluded that as the provisions of section 20 have not been engaged there has been no breach of the consultation requirements set out in section 20 of the 1985 Act.

Section 20B

73. The issue of section 20B was listed in the directions as a possible issue. Although the Applicants did make reference to section 20B in their statement of case they did not plead a specific case in relation to any particular invoices. At the end of the second day of the hearing the Applicants sought to produce a large number of invoices which they suggested fell foul of section 20B.

74. After having considered the invoices briefly it appeared that the Applicants' contention was that the balancing charge was only sought on 30 September 2014 and thus pursuant to section 20B any costs incurred prior to 1 April 2013 were irrecoverable.

75. We declined to consider the invoices as this was raised so late in the day. Consideration of the invoices would have involved recalling witnesses and another adjournment of the hearing. We considered the Applicants had been given ample opportunity to set out their case in full.

76. Nevertheless after having briefly considered the invoices it was clear to the tribunal that the balancing payment sought on 30 September 2014 related to the actual cost of providing the services and the demands for services on account. Thus all costs comprised in the balancing payment were incurred within 18 months of the service of the demand.

77. In any event we accept the First Respondent's submission that in Holding & Management (Solitaire) Ltd v Sherwin [2010] UKUT 412 (LC) that for the purposes of a balancing payment it is necessary to establish the point at which the advance payment of demand was exhausted, only at that point is it that costs underlying the balancing payment begin to be incurred. Simply stated, time only starts running when the advance payments are exhausted.

21B – valid summary of tenant's rights and obligations

78. The Applicants raised an issue as to whether they had been served with a valid summary of tenant's rights and obligations very late in the day. This was not raised as an issue at the hearing on 10 November 2014 when the tribunal spent some time clarifying the issues. Likewise it was not raised in the response to the Respondent's statement of case or in the witness statements. There was therefore no evidence from the Applicants on this point.

79. The First Respondent submitted that the tribunal should decline to deal with this new point given the late stage at which it was raised and the lack of any evidence before the tribunal.

80. The tribunal noted that the bundle contained a summary of tenant's rights and obligations served with the demands in exhibit EK2. From the limited evidence before us we considered that it was likely that the demands had been accompanied by a valid summary. However in any event we would point out that a failure to serve the required summary is not fatal to the recovery of service charges but rather suspends the liability to pay until such time as a valid demand is served.

Conclusion

81. The tribunal has found the service charges for the most part reasonable. However they are produced in a confusing manner and the First respondent could do more to present them in a more leaseholder friendly manner. This could usefully include an explanation of the various heads of service charge. Communication with leaseholders could likewise be much improved. We would also suggest that the leaseholders are provided with an explanation of how the reserve fund is calculated and how it is anticipated it is likely to be utilised in the foreseeable future.

82. It appears to us that there is much distrust on the part of the Applicants as to the charges and the accruals. We would remind them however that the accounts are independently audited and would hope that this process has at the very least improved understanding of how the service charges are made up.

Application under s.20C and refund of fees

83. The Applicants made an application for a refund of the fees that they had paid in respect of the application/ hearing[1]. The landlord has been overwhelmingly successful. However there has been a clear lack of

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

transparency in the method of charging and some of the figures in the accounts were either wrong or misleading which has lead in part to this application. We therefore consider it appropriate to order the First Respondent to refund any fees paid by the Applicants.

84. The Applicants also applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal declines to make such an order.

Name: Sonya O'Sullivan **Date:** 22 August 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

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

Section 20C

(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, residential property tribunal or the Upper 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 which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(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 the proceedings.

(3) The amount which a party to 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.

SCHEDULE

DISPUTED SERVICE CHARGES S/C YEAR ENDED 2013/14 and 2014/15

Case Reference:	LON/OOAM/LSC/2014/0264	Premises: Flats 2, 3, 4, 7, 9 and 10, 113 Britannia Walk, London, N1 7HP	

Item	Cost £	Tenant's Comments	Landlord's Comments	Tribunal's decision
		*The following statement relates to many of the items below and will be indicated by an *: *It was established during the hearing that Rs had not included estate services in the SC estimates but have charged them in the middle of the following financial year, which is in breach of the lease. The practice of 'underestimating' the amounts of SC paid in monthly instalments by the tenants has been used by FM and their MA for several years. The gross 'underestimations' failed to take into account previous years' actual expenditure and complaints by the tenants. Moreover, annual estimates did not include the actual bills submitted by R&R to FM prior to setting of the following year's	It is denied that the Respondents have acted in breach of the lease. It is accepted that the charges on account have been limited to only those costs estimated to be incurred pursuant to FM's obligations in the Underleases. This, until the 2014/15 demand on account, has meant the Applicants' obligations to pay FM a fair proportion of FM's service charge liability to Aviva under the Headlease has tended to be sought by way of a balancing charge at the end of the year. FM have sought to change this structure to ensure that a fair estimate of the Applicants' liabilities under both the Underleases and the Headlease are included in the estimated amount sought on account before the start of the Account year. It goes without saying that the Applicants assertion that FM have sought, in	See decision

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		budget. We can only conclude that this was a deliberate practice in order to be able to misrepresent the Service Charge to potential buyers or other similarly dishonest reasons. We received NO alternative explanation to this negligent OR perhaps criminal practice from the Rs.	previous years, only an amount on account in respect of their obligations in the Underleases because they wished to: (i) misrepresent the service charge to potential buyer; or, (ii) other similarly dishonest reasons is denied. Likewise it is denied that in acting as it has FM have acted 'negligently' or 'criminally'.	
Electricity				
Electricity includes: - block structure electricity, -landscape electricity, -heating and water electricity and -electricity (communal part)	5,729	1. This fee is chargeable under the lease 2. The payments were incorrectly demanded because they are demanded in breach of the lease and are therefore not payable. * 3. It is unreasonable in amount and standard The electricity provider (EDF) is not disputed as they provide competitive prices. We agree with a charge of Electricity (Communal part). However, on examination of the common areas from Health Electrical Services (www.healthelectricalservices.co.uk) we were informed that we use fluorescent bulbs which are about 40 watts and last 2,500 hours work.	Lease provisions: Headlease: Schedule 2 clause 2.2; Schedule 8, Part 2, paragraph 23; Schedule 8, Part 3, paragraph 9; and Schedule 8, Part 4, paragraph 10 Underleases: Clause 3 (2) (b) The figure shown is a combination of the electricity allocation to all heads of expenditure to which the Applicant's contribute. This therefore includes the Estate, Courtyard Landscaping, Boiler and associated communal plant and the 113 Britannia Walk internal Block cost, and is comprised as follows (all year end December 2013 unless stated): Estate – £536 Landscape – £1,239 Heating & Hot Water – £2,477 113 Britannia Internal block - £1,477 (year	Amounts allowed as follows; Block structure £536 Landscape electricity nil Heating and hot water electricity £2477 Electricity (communal) £1477 See decision for comments

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		Instead we should be using energy efficient bulbs of 5 watts and 20,000 hours of work. This way we would save: -a great deal of energy and money on electricity bills -money on engineer hours for changing the bulbs (currently around (3,000) since they'd need changing much rarer. Therefore, the cost of the electricity should be no more of the charged amount (1,477/2) = 738.50. It is impossible to find out where the charged total comes from because of numerous meters and complicated invoices. In addition, in our calculation, amounts don't add up. We dispute the rest of the electricity charges as follows: The price we are charged for is not consistent with the competitive prices of the provider. Based on electricity bills for each flat that include oven, washing machine, all lights, etc. (for example E20 per month for a three bedroom flat 9), all the flats collectively pay 3 times less on electricity per year than what is charged to us (£5,729) for a few sensor lights in the communal areas and other electrical expenditure which we cannot	end 31 March 2014). The electricity costs are based on contracted bulk procured supplies and on actual consumption. The Applicants have not provided any comparable supply costs and indeed the Tenant's comments confirm that they accept that competitive prices are in place. The landlord is not under any obligation to change the lighting system to LED lighting within the common parts and indeed to do so would incur considerable expense which would be a service charge / reserve item, which would therefore be met by the leaseholders. It is agreed that some of the metering arrangements are complex, however this in fact applies only to one meter and a system is in place to equitably apportion costs based on what each meter serves and the cost is allocated to the appropriate service charge schedule. In total there are 6 meters that Aviva Investors Ground Rent GP Ltd are billed for. 4 serve individual private entrances and therefore do not form part of the electricity cost charged to the Applicants. 1 serves the car park only (and again is	

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		explain. For example, electricity charge under Landscape costs section is £1,239 when actually there is no light in the courtyard/no visible landscaping lighting. We do not know what the Block structure electricity cost (536) is associated with. We do not know what Heating and water electricity cost (2,477) covers. **Agreed: 738.50** **Disputed: 4,990.50** **For 2014/15 we are willing to pay around 738.50 - half of the current electricity bill for the reasons outlined above in section 3.**	not charged to the Applicants) and the 6th serves various components throughout the development. This meter has a load report to ensure that correct schedules are charged the correct consumption and that the apportionment of costs is equitable (See Appendix 1). Electricity is apportioned to reflect the items served within each head of service charge. An example for the Estate charge is the fire and smoke system which is powered by electricity and therefore the associated cost sits in the Estate Charge. Similarly for the Heating and Hot Water schedule, although the boilers themselves are fuelled by gas, there are a number of associated items of plant – pumps, lighting, control panels etc., that need an electricity supply and therefore consume electricity. This consumption is therefore applied to the Heating and Hot Water service charge schedule. When broken down into the component elements as detailed above, the charges can be seen to be reasonable both in terms of costs and allocation.	
Gas	36,661.00	1. This fee is chargeable under the lease We do not dispute the gas provider.	Lease provisions: Headlease: Schedule 2 clause 2.2; Schedule 8, Part 2, paragraph 23;	£36,661 allowed in full

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		2. This payment was incorrectly demanded and is therefore not payable. 3. It is unreasonable in amount and standard Based on the results of the independently commissioned inspection (VHL Heating), gas is being wasted in several ways. For example, the system is set in such a way that constantly burns gas unnecessarily; moreover, failure to insulate pipes properly leads to further unnecessary expenditure (and causes extreme heat on landings, e.g. current (January, 2015) temperature on our landing is 27 degrees Celsius). Based on comparisons and several energy provision reports (Attached), the cost of gas should be no more than 28,000. This is based on an average annual gas expenditure of up to £357.00 per year per flat on average. **Agreed: 0** **Disputed: 36,661** **For 2014/15 we are willing to pay**	Schedule 8, Part 3, clause 9; and Schedule 8, Part 4, paragraph 10 Underleases: Clause 3 (2) (b) The initial service charge estimates allowed for a gas standby provision only, on the basis that heating and hot water consumption would be billed to residents separately, based on individual metering. However, following difficulties in establishing a robust metering arrangement and after a legal review of the lease, all gas consumption charges were placed through the service charge, in accordance with Schedule 8, Part 3 Clause 9 of the headlease, hence the substantial difference between the early budgeted costs and the actual expenditure as per the audited accounts and the current service charge estimate. The accounts for year end December 2013 show expenditure of £36,661 which is reasonably consistent with 2012 at £33,969. The 2013 figure equates to an average annual charge for the provision of both heating and hot water of £447 per apartment or £8.60 per week. It must however be noted that residents have not been charged any separate metered consumption costs and	The tribunal does expect the landlord to investigate the matters raised in the Village Heating report to satisfy itself that there is no excessive usage of boilers and thus electricity consumption.

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		around 28,000 for the reasons outlined above in section 3.	therefore whilst the service charge has increased, another element of charge has fallen away. As with electricity, Rendall and Rittner procure gas through an external broker to ensure that competitive rates are achieved. Appendix 2 shows a summary of the tenders at the renewal which took place in June 2013, being during the year under dispute, resulting in a rate per kwh being achieved of 3.22p. It is worth noting that further savings were achieved for the 1 July 2014 renewal with a rate of 2.81p per kwh being contracted. It is noted that the Applicants have not offered any comparable evidence as to the gas rate per kwh, that they consider to be reasonable. Please see comments and appendix under boiler maintenance section in relation to the alleged disrepair resulting in additional consumption.	
Water Charges Estate	28,048.00	1. This fee is chargeable under the lease We do not dispute the provider. 2. This payment was incorrectly	Lease provisions: Headlease: Schedule 8, Part 2, paragraphs 3 and 23. Underleases: Clause 3 (2) (b)	£28,048 allowed in full. We accepted the evidence relied on by the landlord from Thames Water which suggested that the charges fall within normal parameters. See

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		demanded and is therefore not payable. 3. It is unreasonable in amount and standard The number of tenants has not changed. None of us Tenants have increased the water consumption. Water prices have increased by around 5% from previous years. However the price has been increased by **85%** - from £15,200 to £28,048. The landlord must explain whether: a) the consumption has almost doubled, or b) water is being wasted, or c) mistakes are being made with the accounts as on many previous occasions. **Agreed: 0** **Disputed: 28,048** **For 2014/15 we are willing to pay up to 18,000 for the reasons outlined above in section 3.**	It is evident from the service charge estimates that the estimated provision for water has increased. This however reflects actual metered consumption as billed by Thames Water and costs therefore are reasonable, especially as Thames Water costs are set and not open to competitive tender. The figures shown in the service charge accounts for 2013 (£28,048) are consistent with those for 2012 (£26,057), and at an average of circa £340 per flat per annum or £6.54 per week, are not considered unreasonable. By comparison, Thames Water published 2014 guidance on metered water charges shows average consumption based on 2 occupants at £311 per annum and 3 occupants at £382 per annum. In the case of Pegaso / Britannia Walk, the figure in the audited accounts includes not only apartment consumption, but also consumption relating to the maintenance of the boiler and associated plant. The Applicants will be aware from the previous Scott schedule that they are comparing an inaccurate early budgetary provision with an actual cost which has been at a consistent level in the audited accounts. It is not a case that prices or	decision for full details.

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			consumption have risen by the extent claimed by the Applicants, but simply that initial estimates were low compared to the reality of actual consumption and therefore actual cost.	
Water Charges Estate	1,122.00	It is not reasonable that there are two SC elements for water charges for the estate This payment was incorrectly demanded and is not payable. **Agreed: 0** **Disputed: 1,122**	It is completely reasonable to allocate some of the water consumption to the Estate as there is usage for cleaning of external areas and particularly the bins and bin stores. This allocation is in accordance with the Headlease which provides for the costs of cold water as an Estate Service, at Schedule 8, Part 2, Paragraph 3. There is therefore no duplication of cost.	£1,122 allowed.
Maintenance				
Boiler maintenance	51,097.00	1.This fee is chargeable under the lease 2. This payment was incorrectly demanded and is therefore not payable. 3. It is unreasonable in amount and standard a) There have been around 170 engineer callouts regarding the boilers in 2013 alone amounting, according to Rendall and Rittner, to £51,497.	Lease provisions: Headlease: Schedule 8, Part 3, paragraphs 1 and 10. Underleases: Clause 3 (2) (b) Maintenance contract costs are low but there is a sizeable uplift in expenditure in relation to ongoing repairs and maintenance and particularly those relating to the Heat Interface Units (HIUs) within the flats. The maintenance contract is regularly	The sum of £40,000 is allowed. The tribunal considered the costs of the maintenance contracts to be reasonable. It noted that the late payment fees had been credited. It was concerned that there was a great deal of duplication in the reactive maintenance costs. On several occasions multiple visits took place on the same day or within close proximity. Much duplication seems to have occurred and no economy of scale appears to have

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		b) Most of the repairs have been done by MMI Building services and KWB Building services so between the two they received almost £50,000 in one year for repairs. c) According to our check, neither company is registered with Gas Safe. d) Amongst unreasonable charges are: -multiple engineer call-outs on the same day -late invoice payment charges -charges incurred through inadequate repairs and maintenance e) Moreover, according to a report from VHL, the standard of the maintenance is unacceptable according to gas safe and health and safety standards. f) British gas estimate for annual maintenance of our boiler system is £1,498.24. That includes unlimited call outs, labour, parts, system coverage, gas safe. g) VHL Heating qualified engineer quoted 9,000 annual maintenance in the current state of the system. This can further be confirmed the expert witness.	tendered and indeed, this was undertaken during the year ended 31 December 2013, at which point the contract was awarded to Henshall and Sheehy at an annual cost of £2,895 + Vat. A copy of the contract was provided to the Applicants in the invoice files. This cost is of course substantially below the maintenance quote provided by the Applicants, from Village Heating Ltd, of £9,000. Problems have been experienced with water contamination and sediment within the system and during 2013 a consultant was appointed to investigate the problems. In June 2013, Cook & Associates were instructed to review a problem of sediment in the heating water system which was causing the HIU filters to block causing residents to be without hot water. Cook & Associates attended the site with a water treatment expert and concentrated on the issues surrounding water quality. A number of water samples and a sediment sample were drawn and a chemical analysis showed that there had been corrosion of the boilers aluminium heat exchangers and of other metals in the system, however, this was largely	been taken into account. The tribunal was also concerned that the landlord had not taken sufficient steps to deal with the problems. Evidence before the tribunal was poor. Doing the best we could we made a reduction for the apparent duplication of charges and allowed £40,000 in full.

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		h) VHL also confirmed that they cannot understand how £51,097 is spend because to build a completely new system would be less than 40,000. **Agreed: 0** **Disputed: 51,097** **For 2014/15 we are willing to pay around 9,000 for annual maintenance for the reasons outlined above in section 3.**	under control. A copy of Cook & Associates letter dated 24 February 2015 is attached at Appendix 3. This resulted in works being undertaken to flush the system and install a 'side stream' filter. As a result of the issues with the main system, the problems manifested themselves in the form of frequent blockages of the HIU filters and strainers within individual apartments. This in turn, in some cases caused problems with other components, most notably, thermostats. As these blockages were due to the main system, instructions were given to the contractors to attend and clear blocked filters and strainers (and repair associated plant) at a service charge cost. This meant multiple visits and on occasions visits to different apartments on the same day on the basis that residents could not be left without heating during winter months. Provision for such repairs is contained within the headlease under Schedule 8, Part 3, Paragraph 1 and Paragraph 10. Further, as the cleaning of the HIUs was fundamental to removing contamination and sediment from the system, the landlord is entitled to undertake works	

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			within the premises under Schedule 1, Part 3 Paragraph 11. Whilst there are a large number of small value invoices relating to the HIU maintenance issues, the invoices provided to the Applicants also detailed invoices for larger repair items and consultant's fees, none of which have been individually disputed by the Applicants. These repairs, on boiler plant, which at the time would have been over 5 years old, were, as examples, as follows: Replacement Shunt pump - £1,999.20 Replacement fan assembly - £1,740.00 Failure to boiler electrical circuit - £849.60 Replacement bellows - £818.40 & £720.48 Replacement pump - £1,494.00 Repairs to BMS system - £548.40 Replacement pump seals - £1,964.40 Cleaning of Buffer Vessel - £592.80 Consultants fees - £1,401.60 & £2,976.00 & £2,202.00 Therefore, these major items of repair and renewal costs together with consultant's fees for dealing with the wider communal system issues equate to some £17,000. Given the age of the system at this point it is not unreasonable to expect to have to repair and replace	

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			some components of the type detailed above. The works to the HIU units undertaken by MMI and KWB, did not require the use of a Gas Safe registered contractor as no gas work was involved. MMI did hold the maintenance contract for the boiler plant and other mechanical and electrical equipment, however the works which required working with gas, were undertaken under sub contract to a Gas Safe registered company (SAUK Technical Services). It is not uncommon to use a main contractor who sub contracts specialist works. Due to the overspend on this service charge schedule, there were insufficient funds to make immediate payment to the contractor and in addition some invoices were queried including queries relating to VAT treatment – this shows the level of scrutiny applied to invoices before authorisation. This did incur interest charges as shown in the invoice files. However, the majority of such charges were credited as part of an overall settlement when MMI's contract ceased and credit notes were received against some of the queried invoices. Credit notes were provided in the invoice files but examples are attached at Appendix 4 in confirmation.	

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			With regard to the current condition of the boiler plant and the report submitted by Village Heating Ltd, the report has been provided to the current maintenance contractor, Cleanheat, and a copy of their letter in response is attached (Appendix 5) . It will be noted that they dispute some items and provide explanations for other matters identified by Village Heating. It will also be noted that where an item of repair (controls panel) was identified by Village Heating, that the matter was already in hand with a quotation provided, accepted and works pending. It should be noted that the Applicants were asked to arrange access to the boiler room and plant via Rendall & Rittner. This was for two reasons – firstly on health and safety grounds and secondly because Rendall and Rittner wanted to have the maintenance contractor present to facilitate a discussion with the Applicant's appointed expert and explain the position in relation to any ongoing works. We believe this would have aided understanding by Village Heating in conjunction with the contractor to give more clarity on what has occurred	
Mechanical and Electrical Plant	348.00	**Agreed: 348**	The Landlord notes this item is agreed.	Agreed

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
maintenance (Block Services)				
Mechanical and Electrical Plant maintenance (Heating and water)	5,121.00	1. This fee is chargeable under the lease 2. This payment was incorrectly demanded and is therefore not payable. 3. It is unreasonable in amount and standard a) There are two contracts for this element of the 5C for £521 + VAT (625.76) and £1,477=2,102.76 which seem reasonable in price b) However, we dispute charges in addition to the annual contract such as for example: -2 urgent call-outs to WILD limited to investigate loud the noise of pumps less than one month apart (12 April and 7 May) and by the same company who is supposed to provide general maintenance. We dispute £492.6 + 222.3 - Charge of £205.2 for an aborted visit (no work done). -Charge of £1,680 for microbiological and chemical testing that are supposed -+to be provided by TES according to	Lease provisions: Headlease: Schedule 8, Part 3, paragraphs 1 and 10. Underleases: Clause 3 (2) (b) We note that the Applicant's state that the contract values are reasonable in price, although this is confused by the fact that they state that none of the costs are accepted. The contracts are for servicing only and do not include call outs or repairs. It is therefore reasonable for additional costs to be incurred. Attached at Appendix 6 are copies of the two worksheets that supported the April and May visits. It will be noted that the first visit identified a fault with a 'transducer' (pressure sensor) which was replaced. The second visit identified a fault with the pressure vessel valve. These were therefore separate items and both chargeable call outs / repairs. The aborted visit arose because works were identified that required the water supply to the building to be turned off.	£5121 allowed See decision

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		the contract. c) The contracts acquired by R&R cannot be considered efficient. £3,019 is spent on callouts when the annual contacts are for a total of 2,102.76. d) An unusual unexpected repair can be allowed, even though most work should be covered by the annual contacts. **Agreed: 0** **Disputed: 5,121** **For 2014/15, for the reasons outlined above in section 3, we are willing to pay no more than £2,500, which is over the current annual contract price allowing for unforeseen expense**	Unless an emergency, this would not be permitted without giving residents due notice and therefore the work did not proceed, hence the 'aborted visit' description on the invoice. The invoice from Guardian Water for £1,680 incl. Vat related to ongoing tests and analysis of the treated water in the boiler system and included an analysis of the boiler deposits – this was recommended by the Boiler consultants and was detailed as a note in the invoice files provided to the Applicants (Appendix 7). These costs are entirely separate from those relating to Thompson Environmental Services which relate to a regime of annual, six monthly and monthly inspections and testing of the cold water tanks and the hot water cylinders primarily for the purposes of Legionella testing and control.	
Mechanical and Electrical Plant maintenance	2,129	1. This fee may be chargeable under the lease 2. This payment was incorrectly	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 4.	£2129 agreed

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(Block structure)		demanded and is therefore not payable. 3. It is unreasonable in amount and standard a) The contract is with Eurosafe solutions for £360 + VAT = £432 b) Another company, Colt Services Ltd is called to do the work. In addition there is no description of the work. c) One large invoice for £789.001 merely states `service' - nothing else. This is unacceptable and charging tenants for such an invoice cannot be in accordance with the law. **Agreed: 0** **Disputed: 2,129** **For 2014/15, for the reasons outlined above in section 3, we are willing to pay no more than the contract price of £360 + VAT = £432**	Underleases: Clause 3 (2) (b) The contracts from Eurosafe and Colt are for entirely separate items and copy contracts were provided to the Applicants in the invoice files provided to them. The Eurosafe contract is for the annual inspection and testing of the roof fall protection system. The Colt contract is for the smoke extract element of the fire system. Although the Applicants state that there is no description of the work the Colt invoice clearly states 'To carry out service to fire safety system in accordance with our service agreement'. The invoice for £789.60 was annotated 'repair' and not 'service' and therefore related to a repair which fell outside of the contract terms. Attached at Appendix 8 is a copy of the quotation which supports this invoice in the sum of £658 + Vat relating to a replacement relay component.	
Landscape maintenance	3,845.00	1. This fee is chargeable under the lease 2. This payment was incorrectly demanded and is therefore not	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 4; Schedule 8, Part 4, paragraph 2.	The sum of £3456 was allowed in respect of the visits scheduled under the contract at a cost of £120 per visit making a total of £2880 plus Vat. Additional visits were

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		payable.* 3. It is unreasonable in amount and standard a) We do not dispute the agreement with Urban Eden to maintain the courtyard with two monthly visits at £288 per month. b) However, we do dispute the additional visits in May and October amounting to £288. **Agreed: 0** **Disputed: 3,845** **4. For 2014/15, for the reasons outlined above in section 3, we are willing to pay no more than the contract price of £288 per month.**	Underleases: Clause 3 (2) (b) It is noted that the Applicants do not dispute the contract with Urban Eden or the cost per visit. The contract refers to both fortnightly visits in one section and 24 visits per annum in another. In practice a visit every 2 weeks was agreed and as this equates to 26 visits per annum the 'additional' visits are undertaken in May and October on the advice of the contractor due to increased seasonal work at these times of year. The landlord does not consider it unreasonable for fortnightly visits to be undertaken on a development of this nature and therefore the associated costs are therefore considered to be reasonable. In the case of the Applicants the cost per visit equates to a range from £1.56 (Flat 4) to £2.84 (Flat 9).	disallowed as there was no evidence as to why these were required.
General repairs & maintenance - external	7,977.00	1. This fee may be chargeable under the lease 2. This payment was incorrectly demanded and is therefore not payable.* 3. It is unreasonable in amount and standard	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 1; Schedule 8, Part 4, paragraph 5. Underleases: Clause 3 (2) (b) Although the Applicants have disputed	£7977 allowed in full. See decision.

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		a) There is no contract - just call-outs b) Call-outs have charged at different amounts - it is not dear why. c) It includes invoices that should be covered by other categories for example £152.75 charged for fault to main entrance to 22 Westland place. This item should be under Door maintenance category and should not be change on us. d) A number invoices are for waste removal of non-household refuse, and mainly for Westland place. e) We pay high council tax rates and we do not have any waste not covered by the council In any event, we dispute £3,858 spent on removal of items as this can be done for free. **Agreed: 0** **Disputed: 7,977** **4. For 2014/15 we disagree with any expense associated with non-household collection because it is done for free by our council, Hackney.**	the full value of the expenditure shown in the accounts, it is noted that the items detailed only relate to non domestic waste collection costs and a door entry repair. With regard to the door entry repair for 22 Westland Place it is agreed that this should not be an estate cost but should be charged to the internal schedule for the private flats. However, the invoice schedule which accompanied the copy invoices supplied to the Applicants in the copy invoice files confirms that this sum was an accrual provision in the 2013 accounts and therefore this scheduling error will be addressed in the December 2014 accounts which are currently being prepared. The applicants are correct that the London Borough of Hackney provide a free of charge domestic bulky waste service (within certain criteria on usage and number of items). However, this only applies where a resident books directly and makes arrangements for collection. Hackney do not extend this service to bulky waste collected from a central point where it is not directly associated with an individual resident. Instead, they treat such waste a commercial waste and a charge is applied for collection and in most cases a private collection is more	

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			economical. This was confirmed in a telephone conversation between Rendall and Rittner's Property Manager and Hackney's Commercial Waste Team, who advised that a Sales Officer would need to attend and quote based on the actual items to be removed, but their charges start at £72.50 + vat for a single item. Unfortunately the Pegaso / Britannia walk development has suffered from fly tipping, often, it is understood, by residents themselves, which has resulted in costs being incurred to arrange private collections, with multiple items being removed.	
General repairs & maintenance - internal	3,493.00	1. This fee is chargeable under the lease We do not dispute the pest control part of £318, which has an annual contract. We do not dispute the £666.00 spent on decoration and camera instalment, even though no decoration has been noticed in our building 2. This payment was correctly demanded 3. It is unreasonable in amount and standard	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 1. Underleases: Clause 3 (2) (b) It is noted that the pest control contract, decoration and CCTV costs are not disputed. The lighting repair costs are considered to be reasonable both in terms of materials and labour charges, the latter being charged at £78 + Vat for a call out with an	£3493 allowed in full

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		a) There are expensive call-outs of between £126.00 and £603.00 - mostly all dealing with faulty bulbs including the same ones in the period of 10 months. On one occasion there is a charge of £389.76 that included time that electricians spent on removing homeless person - this is not an engineer's task. b) this is a very inefficient way of maintaining the lighting system. -Maintenance charge to carry out inspection every two months is £80 per annum. 2 full test and reports will be issued at a charge of £100 each. The cost of any additional remedial works can be done for a charge £40 per visit, -It is difficult to precisely compare because the invoices do not include time spent on jobs but it is clear that is can be done for much cheaper. For example invoice dated 12 October 2012 -the job involved repairing 3 faulty lights and the total sum was £460.80 (£174 on materials). According to the estimates obtained this job would cost £254 including £174 quoted materials. £286.80 is spent on labour when a	hourly rate charged at £28.50 thereafter. This rate is pre-agreed with Rendall and Rittner as part of their procurement initiative. In fact the electricians have proactively managed the position where defective fittings have been converted to 2d 28 watt fittings and bulbs. This takes longer to install than a straight replacement but benefits both future repair frequency and future running costs. It is correct that one invoice references having to remove a homeless person (and his large dog) from a bin store before being able to effect a repair. Whilst it is agreed that this should not be a task for the electrical engineer, the contractor should be commended for proceeding in this manner and getting the work completed. The contractor would have been within their rights to abort the visit and charge for both their attendance that day and their subsequent re-attendance and therefore far from being criticised by the Applicants, the contractor's approach and resultant overall cost saving should be recognised. The Applicants refer to an invoice for £460.80 and challenge the costs incurred and the breakdown of labour and materials. However, the invoice summary	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		maximum £80 would have covered it. So over £206.00 would have been saved on one call-out alone. c) In addition, on examination of the common areas from Health Electrical Services (www.healthelectricalservices.co.uk) we were informed that we use fluorescent bulbs which are about 40 watts and last 2,500 hours work. -Instead we should be using energy efficient bulbs of 5 watts and 20,000 hours of work. -Therefore, if we used these lights, in addition to saving on electricity bills (over 40 bulbs in common areas) we would be paying 8 times less on engineer hours for changing the bulbs (currently at over 3,000) since they'd need changing much rarer. d) 3 invoices of £312.00 are over 18 months old and therefore not payable **Agreed: 2,396** **We dispute £1,097**	and copy invoices provided to the Applicants show this invoice as having been treated as a credit in the accounts – twice, once as a recharge to the main Pegaso account and once as a write off of a prior year accrual. Therefore the challenged costs are not charged in the accounts relating to the Applicants. As detailed in the Landlord's comments in relation to electricity charges, there is no obligation on the landlord to replace the lighting system with LED fittings and the Applicants do not recognise the cost in doing so which would be service charge recoverable and they do not recognise the likely pay-back period. There are two invoices (not three as claimed by the Applicants) that date from 2011 and total £312 incl. Vat. These invoices were disputed and therefore accrued for and therefore are not time barred. However, on review Rendall and Rittner do not consider either invoice to be a service charge recoverable item and therefore if these were due for payment then they should have been recharged to Family Mosaic for onward recharge to their shared ownership lessee, one of whom is an Applicant in this matter. However, Rendall and Rittner also believe that the contractor acted inappropriately in leaving the queries unaddressed for	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
			over two years and then seeking payment following a change of Property Manager. In the circumstances the contractor has been asked to refund the invoice values and such refund will be reflected in the year end March 2015 accounts.	
Door entry system maintenance	1,186.00	1. This fee is chargeable under the lease 2. It was correctly demanded 3. It is unreasonable in amount and standard a) there is an unclear unsigned contract which does not even state the call-out rates b) the amount of charged maintenance seems excessive c) it is not clear from the contract whether the sum of £290 is an annual fee or a 6 monthly fee. In any case, the invoices include additional maintenance invoices which we dispute. We read the contract requesting an annual fee of £290 and we do not object that. This was also the actual spent in 2011.	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 7. Underleases: Clause 3 (2) (b) There are two elements which make up the charges under this heading – the first is the door entry system and the second is the automatic door serving the main entrance to the building. The door entry contract is for £240 + Vat however only £70 + Vat (£84) applies to 113 Britannia Walk – the balance relates to other entrances in the Pegaso development. The automatic door contract is for £290 + Vat (£348) and is a per annum cost. These are both basic service agreements and therefore do not include any call outs, repairs or provision of fobs. The applicants refer to a 'large sum' spent	£1186 allowed. See decision

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		We dispute the £348.00 - the additional maintenance charge and we demand a clearer contract. A large sum is spend on making/programming fobs. This should be included in the annual contract and so we dispute that. We also dispute the two invoices of £84 (total £168) for maintenance because maintenance is part of the contract **Agreed: The contract price of £290** **Disputed: £896**	on programming fobs. There is an invoice in the file for £391.80 from AST (London) Ltd. which is for the provision of spare fobs for the entire development. The invoice is annotated with a charge for 5 fobs to 113 Britannia Walk at a cost of £54.60 (incl. Vat) which equates to £9.10 + vat per fob and is not unreasonable. The service charge is credited whenever a fob is sold to a lessee.	
Lift maintenance and repairs	1,687.00	**Agreed**	The Landlord notes this item is agreed.	Agreed
Fire and smoke system maintenance	6,875.00	1. This fee is chargeable under the lease We agree with the annual contract price of 2,158.00 and small additional spending similar to the previous year where the total spend was £2,602. 2. This payment was incorrectly demanded and is therefore not payable.* 3. It is unreasonable in amount and standard a) It is 3 times over the annual contract price	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 6. Underleases: Clause 3 (2) (b) It is noted that the contract price is agreed however the figure detailed by the Applicants only relates to the Colt contract for the smoke extract system. This head of expenditure also includes the costs associated with the Protec contract for the fire alarm system which is in the sum of £830.84 + vat.	£6875 allowed in full

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		b) Work should mainly be covered by the contract with minor additional unexpected expense **Agreed: 0** **Disputed: 6,875.00** **4. For 2014/15, for the reasons outlined above in section 3, we are willing to pay no more than £2,602**	Therefore total contracted costs are therefore £3,586.61 incl. Vat. An analysis of the Colt contract expenditure has shown that there was a misallocation of cost between the 2012 and 2013 accounts. An under accrual in 2012 resulted in greater cost being reflected in the 2013 accounts and a lower cost (£2,602) in 2012. Across both years the contract costs are stable and this is supported by the expenditure shown in the 2011 accounts of £3,505 which is in line with the contracted costs shown above. Both contracts are for servicing only and do not include call outs and repairs and it is noted that the applicants have not provided any support for disputing any of the individual repair invoices.	
Insurance				
Buildings insurance	46,914.00	1. This fee may be chargeable under the lease It is not possible for us to get an insurance quote as many details are required 2. This payment was incorrectly demanded and is therefore not payable.*	Lease provisions: Headlease: Schedule 6, paragraph 2. Underleases: Clause 8 Gallagher Heath are insurance brokers for the second respondent and arrange a block policies for the extensive ground rent portfolio that they own. At Appendix	Allowed in full see decision

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		3. It is unreasonable in amount and standard a) As shown by the amount it takes to maintain, the boiler system is beyond repair, and the building insurance should cover its replacement. b) Since it does not cover it, it seems an excessively expensive insurance c) In addition, no price comparison evidence has been provided to us and there are conflict of interests because insurance is provided by the freeholder, Aviva. d) The insurance largely protects the freeholder's interest at the Tenants' expense **Agreed: 0** **Disputed: 46,914** **4. For 2014/15 we request that 3 insurance quotes with no conflicts of interest are obtained in the market. If this is not done then Tenants are not protected, as the Parliament intended (see legal statement) from Landlords passing on the costs to Tenants as to their wishes**	9 is email and claim history from Gallagher Heath explaining the situation with the insurance premium and the situation. It is not possible under the terms of the insurance to make a claim for the repairs that have been carried out on the boiler nor for a replacement. No building insurance policy would cover items on this basis. The second respondent is an extremely large corporation with many and varied interests. Gallagher Heath are instructed to obtain the best terms in the market place. The fact the policy is with Aviva presents no conflict, rather it is purely because they have offered the most competitive terms to Gallagher Heath.	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
Engineering insurance	563.00	1. This fee may be chargeable under the lease 2. This payment was incorrectly demanded and is therefore not payable.* 3. It is unreasonable in amount and standard and we claim it back because: a) there is no policy attached b) we do not know what it covers. Moreover the price is double from that of 2010 and it is not clear what possibly could lead to such increase. **Agreed: 0** **Disputed: 563**	Lease provisions: Headlease: Schedule 8, Part 3, paragraph 10. Underleases: Clause 3 (2) (b) The engineering policy relates to the boiler and associated plant including pumping equipment. This cost should be split between the Estate and Heating and Hot Water schedules (as was the case in 2010 and 2011), but there is no detriment to the Applicants by it being shown as an estate item, as they pay a marginally lower proportion towards the Estate. A copy of the policy schedule was provided to the applicants within the invoice files and a copy is attached at Appendix 10. A review of these policy schedules will show that at the July 2013 renewal, cost in fact reduced as a result of an improved bulk purchasing arrangement via the brokers.	Not disputed
Lift insurance	£315.00	**Agreed**	The Landlord notes this item is agreed.	Agreed
Audit				
Audit fee	766.00	1. This fee is chargeable under the lease	Lease provisions:	All audit fees allowed in full. See decison

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
Estate		The cost of audits in themselves are not disputed. The payment in themselves under the circumstances is. 2. This payment was incorrectly demanded and is therefore not payable.* 3. It is unreasonable in amount and standard In the light of serious and persistent errors in the accounts, complicated accounts system and violations of the lease provisions in terms of SC demands, we are surprised that Audits were successful - We disagree with paying for multiple audits that fail to detect such gross accounting problems - Therefore the audit fees are not payable and we claim it back **Agreed: 0** **Disputed: 766**	Headlease: Schedule 8, Part 2, paragraph 21. Underleases: Clause 3 (2) (b) The landlord does not agree with the Applicant's comments regarding the accounts, but acknowledges that there have been a small number of minor errors, however it is thought unlikely that these would be highlighted during the audit process. The accounts have undergone an independent audit by a leading London accounting practice (UHY Hacker Young). The 'Independent Auditor's Report' which is included in each set of accounts details the basis for the audit and the detail and accuracy of the process. The Applicants state that the audit costs are not disputed but then say they are 'unreasonable in amount'. The audit fees are a result of a Rendall and Rittner's bulk procurement exercise, whereby they use a panel of auditors at pre agreed prices, and costs are therefore considered to be reasonable. The fact that the audit fees are spread across multiple schedules reflects the transparent manner in which costs are allocated and therefore it is reasonable	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
			for audit costs to be apportioned across the schedules being audited. Indeed the Independent auditors have signed off this approach as being correct. For the reasons detailed above, there is no duplication of audit fees, but simply an allocation to reflect the multiple schedule service charge which applies to the Pegaso / Britannia Walk development.	
Audit fee Estate	204.00	**Agreed: 0** **Disputed: 204** **See the section above for explanation.**	Lease provisions: Headlease: Schedule 8, Part 4, paragraph 8. Underleases: Clause 3 (2) (b) See above – although the figure quoted relates to the landscaping schedule and not the estate as detailed by the Applicants.	
Audit fee Estate	204.00	**Agreed: 0** **Disputed: 204** **Same as above.**	Lease provisions: Headlease: Schedule 8, Part 3, paragraph 7. Underleases: Clause 3 (2) (b) See above – although the figure quoted relates to the heating and hot water schedule and not the estate as detailed by the Applicants.	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
Audit fee Block	420.00	1. This fee is chargeable under the lease The cost of audits in themselves are not disputed. The payment in themselves under the circumstances is. 2. It is correctly demanded 3. It is unreasonable in amount and standard because: In the light of serious and persistent errors in the accounts, complicated accounts system and violations of the lease provisions in terms of SC demands, we are surprised that Audits were successful - We disagree with paying for multiple audits that fail to detect such gross accounting problems - Therefore the audit fees are not payable and we claim them back **Agreed: 0** **Disputed: 420**	See landlord's response under the Estate section above.	
Cleaning				
Caretaking and cleaning Estate	952.00	1. This fee is chargeable under the lease The cost of cleaning in themselves are not disputed. The payment in themselves under the circumstances is.	Lease provisions: Headlease: Schedule 8, Part 2, paragraphs 2 and 15.	£952 allowed in full

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		2. It is unreasonable in amount and standard because: a) we do not see any cleaning taking place b) this is supposed to include changing of light bulbs, but we pay large sums separately for that under other elements of the SC c) the caretaker's duties are not clear because for instance the lock of the bin stores for which we paid around £400.00 has been out of use for a long time and the doors of the bin stores have generally been open even when the lock was working In addition: 3. This payment is demanded in breach of the lease, and is therefore not payable* **Agreed: 0** **Disputed: 950**	Underleases: Clause 3 (2) (b) The £952 detailed in the accounts relates to the element of the overall contract which is allocated to the Estate – the bulk of the contract being for the internal common parts serving the private units to which the Applicants do not contribute. A charge of £952 per annum equates to £15.25 + Vat per week (or £3.05 per day) which covers the cost of external sweeping and cleaning, primarily in relation to the cleaning of the bins and bin stores. This sum also includes a small proportion of the caretaker's site associated mobile phone costs. Contrary to the Applicants contention, the contract specification does not include any requirement for undertaking maintenance or light bulb changing. It is noted that the applicants have not provided any comparable costs for the service provided. The landlord therefore considers these costs to be reasonable and reasonably incurred.	
Cleaning, windows & façade Estate	8,880.00	This fee is chargeable under the lease The cost of cleaning in themselves are not disputed.	Lease provisions: Headlease: Schedule 8, Part 2, paragraphs 2 and 5.	£8880 allowed in full

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		2. It is unreasonable in amount and standard, and is disputed because: a) windows have not been cleaned b) some of the flats have been phoned about window cleaning, but the cleaning has never taken place c) no other cleaning is taking place In addition: 3. This payment is demanded in breach of the lease, and is therefore not payable* **Agreed: 0** **Disputed: 8,880**	Underleases: Clause 3 (2) (b) The landlord has no reason to believe that the windows were not cleaned at the 6 monthly intervals that have been charged for. It is the managing agent's practice to check with the caretaker at the time of attendance and they are not aware of any complaints about lack of cleaning. Costs were last negotiated in December 2012 as part of a wider initiative and a contract for Pegaso agreed at £3,640 + Vat per clean. The works take between 2 and 4 days, subject to the number of operatives on site, with two men teams working on each area due to the access methods (abseiling) and health and safety requirements. The works include the cleaning of all windows and where required washable elements of the façade. This includes the external face of any balcony glazing but not the internal face, which cannot be safely accessed and is a residents responsibility. Rendall and Rittner do not accept that notification of lack of cleaning has taken place by telephone when all other communications seem to have been by email and it is also not accepted that the window cleaning 'has never taken place'.	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
			The landlord's agents believe that these services have been adequately performed at the frequencies invoiced and therefore considered costs are reasonable and have been reasonably incurred.	
Cleaning, windows & façade Block	2,808.00	1. This fee is chargeable under the lease The costs in themselves are not disputed. The payment in themselves under the circumstances is. 2. It is unreasonable in amount and standard, and we dispute payment because: - Very little cleaning takes place. Many of the flats' windows have not been cleaned during the disputed period. Under the circumstances, no more than half can be paid. 3. It is correctly demanded. **Agreed: 1,404** **Disputed: 1,404**	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 2. Underleases: Clause 3 (2) (b) It is believed that the Applicants are referring to the cleaning and caretaker contract which has a value of £2,808 in the March 2014 accounts. For the sake of clarity it is confirmed that no window and façade cleaning is charged to the Block accounts for 113 Britannia Walk. Presuming this is the case, the contract provided to the Applicants confirms that the charge is for weekly cleaning and therefore equates to £45 + vat per week. This cost is negotiated as part of a wider contract for the Pegaso development with a small allocation of cost to the Estate but the larger proportion being charged to the internal schedule for the private apartments. Therefore it is considered that the Applicants benefit from a wider dilution of costs compared to the position had this been a standalone contract.	£2808 allowed in full

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
			A copy of the specification is included in the contract (see extract at Appendix 11) and it will be noted that it does not include window cleaning and therefore the Applicant's reference to flat windows not being cleaned is not understood. It is noted that the Applicants have not provided any evidence as to standard of the services or comparable evidence as to cost.	
Reserve fund				
Reserve fund Estate	5,000.00	1. This fee may be chargeable under the lease 2. It is unreasonable in amount and standard, because: a) We don't know what happens with the reserve fund, b) its interest, c) when it will stop being taken, d) what will be used for (i.e. when will this be used and when insurance), e) do we have any say as to when it is used, and f) other similar relevant information including who decides on when to use this fund	Lease provisions: Headlease: Schedule 8, Part 1, paragraph 3.2. Underleases: Clause 3 (2) (b) The Headlease provides for the landlord to include within the statement of annual expenditure a provision for expenditure to be incurred in subsequent years. As Part 1 covers all service charge sectors of expenditure it is reasonable for an amount to be provided against each service charge element where appropriate. For the sake of clarity reserve funds are used to build up a capital fund to enable major works projects or one off capital	Allowed in full.

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		g) it is not clear why there need be 3 separate reserve fund charges 3. This payment is demanded in breach of the lease, and is therefore not payable* **Agreed: 0** **Disputed: 8,000**	works to be undertaken without the need (or limiting the need) for a substantial one off charge. All funds are held by Rendall and Rittner as managing agent in interest bearing designated client accounts in accordance with trust fund legislation and RICS regulations. Reserve funds are collected (in so far as the Applicants are concerned) against the following schedules: Estate – to cover cyclical major works to the exterior of the building including the roof. Heating and Hot Water – to cover long term replacement costs for the boilers and associated plant. 113 Britannia Walk Block Costs to cover internal cyclical works such as redecoration of the common parts or major long term repairs or renewal of the lift. It is absolutely correct that separate reserve funds are held for each of these schedules as differing parties contribute towards them. The audited accounts include a detailed	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
			reserve fund summary detailing income, expenditure and interest during the year and detail the reserve fund balance brought forward and carried forward.	
Reserve fund Estate	5,000.00	Same as above **Agreed: 0** **Disputed: 5,000**	See above	Allowed
Reserve fund Block	1,000.00	Same as above but - is correctly demanded **Agreed: 1,000** **Disputed: 0**	See above. In addition to the requirements of the headlease the Shared Ownership Underlease provides for a reserve fund collection in accordance with Section 7 (Service Charge) Clause 7 (4) (b).	Allowed
Other				
Rubbish bin hire & sacks	350.00	**Agreed**	The Landlord notes this item is agreed.	Agreed
Television system maintenance	599.00	2013/14 fee is agreed. 2014/15 fees There is large variance in price (of as much as £1,344.00) between each year: 0.0 for 2010 596.00 for 2011 148.00 for 2012 1,344.00 for 2013	It is noted that the 2013 / 14 figure is not disputed and as the estimate for 2014 / 15 is of the same value it is presumed this is not disputed either. The 2012 figure in the accounts was in fact a credit value of £148 (and not a charge as detailed by the Applicants). The accounting treatment in 2013 effectively covered both years. Therefore if you take the £1,344 figure and deduct £148 the total across the two years was £1,196 or an average of £598 per year. This is of course almost exactly the same cost as	The disputed cost for 2013 was confirmed to be £598 and was no longer disputed All costs allowed having heard the landlord's explanation

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		599.00 for 2014 This is worrying because the price for next year could be of any amount and for the years to come. We request that there is an annual contract that covers the maintenance and the price to be reasonable each year. 3. It is correctly demanded	the 2014 actual and 2015 estimate.	
Management fee Estate	5,610.00	1. This fee is chargeable under the lease 2. It is unreasonable in amount and standard because: The management has been very poor for multiple reasons including errors in accounts, negligent spending including in the boiler repairs and other contracts. We consider the management of unacceptable standard and therefore demand repayment of the management fee In addition: 3. This payment is demanded in breach of the lease, and is therefore not payable*	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 21. Underleases: Clause 3 (2) (b) The Estate management fee is charged to the estate schedule and relates to the provision of management and accounting services to the Estate as defined in the leases. This includes regular inspection, arranging contracts, monitoring contractors, compliance with health and safety obligations and management accounting including regular client reporting, credit control and the provision of year end accounts for audit. Is it disputed that the management	

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		Agreed: 0 **Disputed: 5,610**	services to the Estate have been poor and the fees are not considered 'unreasonable in amount'. The estate fee is payable by all occupiers, be they private, affordable or commercial. Therefore the fee of £5,610 inclusive of Vat equates to £54 + vat per unit per annum. This level of fee is considered to be below market levels and therefore not unreasonable. It is noted that the applicants have not provided any comparable evidence in relation to the level of fees.	
Management fee Block	2,700.00	1. This fee is chargeable under the lease 2. It is unreasonable in amount and standard because: FM's management has failed to meet any reasonable standard. For multiple reasons outlined in our case and as admitted by FM during the hearing, the management fee would be inappropriate under the circumstances and we demand the full compensation of these fees for 2013/14 and 2014/15 3. It is correctly demanded	Lease provisions: Headlease: Schedule 8, Part 2, paragraph 21. Underleases: Clause 3 (2) (b) The fee detailed in the accounts and disputed by the Applicants does not relate to the fee charged by Family Mosaic but in fact relates to the fee charged by Rendall and Rittner in relation to their management contract for the internal areas of 113 Britannia Walk. The fee equates to £225 + Vat per unit and is not considered unreasonable for the level of work involved in providing	See decision

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		Agreed: 0 **Disputed: 2,700**	management and accounting services to a block of 10 flats. The Applicant's state that the fee is unreasonable in the amount but have offered no comparable evidence.	
Health and safety inspection /training Estate	67.00	The price for 2014/15 is agreed However, this payment is demanded in breach of the lease, and is therefore not payable* **Agreed: 0** **Disputed: 67**	Lease provisions: Headlease: Schedule 8, Part 2, paragraphs 14 and 21. Underleases: Clause 3 (2) (b) It is noted that the cost is agreed. Although Health and Safety is not specifically referenced as an Estate Service, the cost relates an apportionment of cost for the provision of Fire and General Risk Assessments for the Estate areas. As these are a statutory requirement and are undertaken by a consultant, the Headlease provides for such costs.	Agreed
Health and safety inspection/training Block	168.00	1. This fee is chargeable under the lease 2. It is unreasonable in amount and standard because: There is no contract. It states that it comes under the bulk procurement of R&R for health and safety assessment	Lease provisions: Headlease: Schedule 8, Part 2, paragraphs 14 and 21. Underleases: Clause 3 (2) (b) This fee relates to the provision of both Fire and General Risk Assessments for the	Allowed

Item	Cost £	Tenant's Comments	Landlord's Comments	Blank for Tribunal
		Since this is the case, it is not clear why this is not under the same element as the above A comprehensible explanation is required or payment refunded It is correctly demanded **Agreed: 168** **Disputed: 0**	internal areas of 113 Britannia Walk. The Risk Assessments are provided annually with quarterly audit visits undertaken on the three non risk assessment visits. It is correct that the rates applicable form part of a Rendall and Rittner bulk procured arrangement with an independent Health and safety consultant. The cost of these Health and Safety services is actually £260 + Vat per annum, however a prior year accrual was written back in 2013 reducing the audited amount to £168. This was detailed in the invoice summary provided to the Applicants in the copy invoice files. These bulk procured rates represent excellent value and it is noted that the Applicants have not provided comparable costs.	
Lift telephones	340.00	**Agreed**	The Landlord notes this item is agreed.	Agreed