



Subject Property: Northampton House, Wellington Street, Northampton NN1 3NB

Applicant: Northampton House RTM Company Limited

Respondents: (1) Comer Properties (1) Ltd
(2) Comer Properties (2) Ltd
(3) Mountfield Properties Ltd

Respondent's Solicitors: Hilliers HRW Solicitors, The Old Vicarage, Bedford Road, Kempston, Bedford MK42 8BQ

Interested Party Freeholder and Landlord: Palacemews Properties Limited, Princess Park Manor, Friern Barnet Road, London N11 3FL

Date of Application: 23rd September 2011

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

Date of Pre-Trial Review: 12th April 2012

Date of Hearing: 3rd July 2012

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

Attendance:

Applicant: Ms Hazel Harman, Applicant's Representatives
Mr Allan Calverley, Applicant's Representatives
Mr Donogh Madigan M & C Property Management

Respondent: Mr Peter Ward, Counsel for the Respondent
Mr Robert Sheppard, Respondent's Portfolio Manager
Ms Caroline Bannon, Respondent's Representative (Comer Group)

Observers: Ms G Hare
Mr A Phillips, Leaseholder
Mr J Howson, Leaseholder

DECISION & STATEMENT OF REASONS

Decision:

- ✦ The Tribunal determined the reasonable costs for the Service Charge incurred for the financial year ending 31st March 2011 to total **£225,205.34**, as detailed in the **Appendix**, which forms a part of these Reasons. Therefore the Tribunal determined that the appropriate proportion of those costs expended attributable to the Respondents' apartment is payable by the Applicant to the Respondent when properly demanded.
- ✦ The Tribunal determined the Accountant's Certificate to be valid in respect of all costs subject to a determination as to reasonableness.
- ✦ The Tribunal evaluated the evidence relating to each cost in making its determination.
- ✦ The Tribunal determined that the service charge in issue had not been properly demanded in that the Statement of Rights and Obligations had been served in a font smaller than 10point as prescribed by Regulation 3 of the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)
- ✦ The Tribunal determined that in making a balancing payment under the Lease the Respondent was only liable to pay a proportion of the amount that the Landlord had "expended" and not the amount for which the Landlord was liable. However, the contribution payable by the Respondent by way of Interim Service Charge based on the estimated costs for the next year would take into account the amount of any future liability.

A copy of this Decision is to be sent to the County Court.

Reasons

Application

1. The Application is made on a transfer, for a determination as to the reasonableness and liability to pay service charges by a Leasehold Valuation Tribunal for the financial year ending 31st March 2011, from the Milton Keynes County Court by District Judge Venables of Claims Numbered:
 - ✦ 1MK01223 between the Applicant and Respondent (1) on the 12th September 2011
 - ✦ 1MK01222 between the Applicant and Respondent (2) on the 7th November 2011
 - ✦ 1MK01076 between the Applicant and Respondent (3) on the 13th September 2011.

The Law

2. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
3. Section 18 Meaning of "service charge" and "relevant costs"
 - (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*

- (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
- (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
- (3) *for this purpose*
- (a) *costs includes overheads and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
4. Section 19 Limitation of service charges: reasonableness
- (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
- (a) *only to the extent that they are reasonably incurred; and*
 - (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*
5. Section 21B Notice to accompany demands for service charges
- (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*
6. Section 27A Liability to pay service charges: jurisdiction

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable.*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
 - (a) *the person by whom it would be payable,*
 - (b) *the person to whom it would be payable,*
 - (c) *the amount which would be payable,*
 - (d) *the date at or by which it would be payable, and*
 - (e) *the manner in which it would be payable.*

Pre Trial Review

7. A Pre-trial review was held on the 12th April 2012 in order to determine a number of matters concerning a related Application and in respect of the present transfer.
 - a) To identify the issues to be determined in respect of the costs incurred for the financial year ending 31st March 2011.
 - b) To identify any matter already determined or to be determined by a Court and the effect of such determination, if any, on the Tribunal proceedings.
8. At the Pre-trial Review the Applicant provided accounts for the year ending 31st March 2011. These were divided into three columns. The first related to the costs incurred in that year under the agency of Canonbury. The second column related to costs incurred under the agency of M & C and the third column provided a total of these two sets of costs. The Applicant acknowledged that there had been significant difficulties. The Applicant said that it has repeatedly requested from Canonbury Management a breakdown of the Leaseholder Service Charges, including an account of the sums received and the costs paid, together with invoices. No information has been given and the accounts for the year ending 31st March 2011 have been carried out from such information as could be obtained from Canonbury Management for the first 6 months and from M & C Property Management UK Ltd for the second 6 months.
9. Mr Ward, Counsel for the Respondents, including Palacemews Properties Limited, stated that, reasonableness of the cost and standard of the services apart, the figures for M & C Property Management UK Ltd were accepted, being supported by invoices, but the Canonbury figures were not accepted due to the lack of evidence and the Respondents put the Applicants to proof.
10. The Tribunal stated that Canonbury were employed by the Right to Manage Company and therefore the requirement to produce documents held by them as Agents was the responsibility of the Right to Manage Company. The Tribunal also referred to a letter dated 13th January 2012 to Ms Harman, as Secretary of the Right to Manage Company, (Copies provided to all parties) which stated that:

"It is noted that you say the Right to Manage Company may not be able to produce certain supporting documents in relation to the above cases. A tribunal may be able to fill gaps in documentation on the balance of probabilities, such as where a utility bill cannot be produced, as a determination may be based on earlier and later readings or some invoices are missing but a course of conduct can be seen from earlier or later records or work carried out may be evidenced on the inspection. However there are occasions when a cost said to be incurred is not determined to be reasonable because there is no evidence or insufficient evidence of the work having been carried out."

11. The Tribunal required that between the end of the Pre-Hearing Review and the Hearing the Parties seek to set out those matters with which they agree and those that are in issue. It was agreed that a Scott Schedule should be produced itemising the matters agreed and those in dispute.
12. It was agreed that the Court had determined no matters so far as the reasonableness and payability of the costs incurred or to be incurred and reasonableness of the standard of services were concerned.

Description and Inspection of the Building

13. The Tribunal members had inspected the Building in which the Subject Properties are situated on the 2nd December 2009 in respect of a different case and inspected the Building again following the Pre-Trial Review on 12th April 2012. The Inspection on the 12th April 2012 was in the presence of Ms Hazel Harman and Mr Allan Calverley, the Applicant's Representatives, and Mr Peter Ward, Counsel for the Respondent, Mr Charles Goldthorpe, Solicitors for the Respondent, Mr Robert Sheppard, the Respondent's Portfolio Manager.
14. The Tribunal found that the Building comprised 187 apartments over 11 floors plus a roof space. The Building is a concrete structure faced with brick. Each floor is encircled by metal balconies, which are part of each tenant's demise.
15. Applicant retains the roof space, which is not part of the common parts, and no access is available to the Tenants. A metal gate prevents unauthorised access to the roof. Car parking is on the ground floor, upper ground floor and first floor levels (identification of floors is in accordance with the lift indicator). On the first floor there is a foyer with reception and a Leisure Centre. The Common parts comprise the foyer with mailroom and Leisure Centre, the stairwells, lifts and corridors giving access to the apartments and the pathways to the car parking spaces.
16. Pedestrian access to the Building is via a door entry system at first floor level. Vehicular access is via an electronic gate at Ground Floor level and access from the car park is by means of a fob to open the doors into the main part of the Building. The door entry is a system installed by the Landlord and is provided under a contract between the Landlord and Octopus Multi-Systems Ltd. The automated gates were operated under the same system although this has now been disconnected and the Applicant has installed a new system. Cctv surveillance had originally been installed and maintained by Octopus Multi-Systems Ltd but this was now no longer in operation. The Building is served by two new lifts to all floors installed by the Applicants. The Building is equipped with fire equipment and a sprinkler system. Water is provided by tanks filled from the rising main.

17. The Tribunal inspected the Gymnasium, which appeared to be well equipped. There is a swimming pool, which is not in use. The waste bins in the Gymnasium were overflowing on the day of the inspection. The desk in the foyer was not staffed. Each level of the Car Park was visited. The Ground Floor car park had an area that was flooded due to a blocked drain. The drainage pipes, which come down to the car parks were leaking on the previous inspection. This appears no longer to be the case. The Tribunal inspected the 11th floor (Penthouse Floor) and found the cleaning to be fair. The Tribunal then visited some 5 or 6 floors between and including the 2nd floor and found the standard of cleanliness fair to poor. The carpets on the lower floors were particularly dirty and worn with little or no nap. It was also noted that several ceiling tiles were missing and fire door was found to be defective. The balconies required cleaning and re-decoration. A window was damaged. It was apparent that tenants were storing furniture on the balconies and a balcony on the 9th floor had bags of rubbish.

The Lease

18. A copy of the Lease was provided which was agreed to be the same as all the Leases in the Property except for the description of the specific demise. The Lease is for a term of 125 years from 24th June 2000.
19. Clause 1 of the Lease defines the demise in general terms and refers to the specific definition of the demise in Schedule 2 of the Lease together with the easements and rights set out in Schedule 3 except and reserving the rights in Schedule 4 and subject to the matters set out in Schedule 5. The apartments have designated parking spaces in the car parks.
20. Schedule 7 requires the Tenant to pay a Service Charge which is a fair proportion of the Service Costs which are the costs incurred by the Landlord in carrying out its obligations under the Lease including buildings insurance. The Tenant shall pay an Interim Charge in advance on the 29th September and 25th March each year. A negative balance is payable within 14 days of invoice whereas a positive balance is carried forward to the next year. The "fair proportion" for the years in issue has been calculated according to the area of each Apartment. There are four sizes of apartment as follows:
- | | | |
|-----|--|-------|
| 104 | apartments with 2 bedrooms & 2 bathrooms | 0.58% |
| 31 | apartments with 2 bedrooms & 1 bathroom | 0.53% |
| 51 | apartments with 1 bedroom & 1 bathroom | 0.45% |
| 1 | apartment with 1 bedroom & 1 bathroom | 0.48% |
21. The Landlord must keep a detailed account of the Service Costs and prepare a Service Charge statement for each accounting period ending 31st March. The statement must:
- ◆ State the Service Costs for each major category of expenditure
 - ◆ State the amount of the Service Charge
 - ◆ State the total of the Interim Charge paid by the tenant
 - ◆ State the negative or positive balance and
 - ◆ Be certified by a qualified accountant.
22. The Services to be provided and which shall be the subject of the Service Charge are set out in Part 2 of Schedule 7 and include:
- ◆ Repairing, replacing, renewing, maintaining, inspecting and cleaning the roof main structure outside and foundations of the Building

- ◆ Repairing, replacing, renewing, maintaining, inspecting and cleaning the shared conduits and facilities and other matters including the road and footpaths of the Estate.
- ◆ Decorating the outside of the Building.
- ◆ Repairing and decorating the common parts.
- ◆ Lighting and cleaning the common parts including the amenity areas and car park.
- ◆ Maintaining a fire protection system and providing security arrangements
- ◆ Maintaining, repairing, replacing, renewing, surveying, insuring, inspecting and cleaning any lifts.
- ◆ Obtaining insurance valuations.
- ◆ Maintaining, insuring, staffing, running, repairing and replacing the Leisure Centre
- ◆ Paying the reasonable salaries, fees and expenses of any employees.
- ◆ Maintaining and preparing Service Charge accounts.
- ◆ Repairing fences, walls, hedges and other boundary structures
- ◆ Maintaining a common facility for television reception and an entry phone system
- ◆ Paying the reasonable and proper fees and disbursements of any managing agent.
- ◆ Maintaining a reserve fund

Evidence

23. The Applicant's Statement of Case opened with a witness statement dated 7th October 2011 by Ms Hazel Harman, Secretary of the Applicant the contents of which were confirmed at the hearing and were as follows.
24. The Applicant is a Right to Manage Company, which was formed in February 2009 and took over the management of Northampton House, which includes the Subject Property from the 1st April 2010. Canonbury Management was appointed as the Managing Agents for the Applicant. On taking over as Agents a budget based on the 2009 estimate of charges prepared under the auspices of the Landlord was set. It was stated that Canonbury Management did not consult with the Directors of the Applicant. In her statement Ms Harman said that:
- "Canonbury Management worked on their own agenda and it soon became abundantly clear that they would go their own way and not heed the opinion of the Directors or the Leaseholders."*
25. It was said that a meeting was held on 19th May 2010 at which it was apparent that the Directors and Leaseholders did not have any faith in Canonbury Management and at the end of May the Chairman of the Applicant sent a directive to Canonbury Management asking it not to expend any more money than that which it had collected in, without express sanction from the Applicant. Ms Jennifer Middleton, Canonbury Management's Manager of the Subject Property gave an undertaking to comply with this directive. However, she was replaced and Canonbury Management did not comply with the undertaking. By September 2010, it was said that the Canonbury Management had spent £90,000 more than had been collected.
26. It was said that because Canonbury Management's spending was so high it issued a second Interim Service Charge payable on 29th September 2010 that was significantly higher than its estimate at the beginning of the financial year. It appeared to the Directors of the Applicant that Canonbury Management did not intend to curb its expenditure and therefore it was informed that its contract would be terminated. M &

C Property Management UK Ltd were appointed from the 1st November 2010 although it was agreed that Canonbury Management could draw its fees up to the 31st March 2012 from the service charges it had already collected but the balance of the sums were to be returned to the Applicant.

27. The Applicant said that it has repeatedly requested from Canonbury Management a breakdown of the Leaseholder Service Charges, including an account of the sums received and the costs paid together with invoices. No information has been given and the accounts for the year ending 31st March 2011 have been carried out from such information as could be obtained from Canonbury Management for the first 6 months and from M & C Property Management UK Ltd for the second 6 months.
28. Because a substantial number of Leaseholders had paid Canonbury Management the inflated second Interim Service Charge, the Directors of the Applicant decided that to maintain equality between all leaseholders those Leaseholders who had not yet paid the second Interim Charge before the termination of Canonbury Management' contract should be required to pay it to M & C Property Management UK Ltd. It was anticipated that with better management the second Interim Service Charge invoiced by Canonbury Management would be found to lead to an excess payment and in fact as at 31st March 2012 a surplus of nearly £27,000 was carried forward. However, it was said that this excess is needed to pay for costs to be incurred for the following year.
29. The Applicant provided accounts for the year ending 31st March 2011 as follows:

Item	Canonbury	M&C	Total
	£	£	£
Customer services			
Security	349	5,201	5,550
Cleaning	10,694	5,368	16,062
Porterage	11,748	3,791	15,539
Sub Totals	22,791	14,360	37,151
Utilities			
Electricity	9,035	13,270	22,305
Gas	0	0	0
Water & Sewage	27,000	24,330	51,330
Refuse Collection	776	1,201	1,977
Sub Totals	36,811	38,801	75,612
Insurance			
Buildings	14,473	18,845	33,318
Other	3,125	439	3,564
Sub Totals	17,598	19,284	36,882
Plant			
Lift Servicing	0	780	780
Lift Repair	12,917	1,080	13,997
Lift Emergencies	0	0	0
Electrical Repairs	10,697	3,660	14,357
General Repairs	118	11,387	11,505
Sub Totals	23,732	16,907	40,639
Compliance			
Asbestos	8,666	0	8,666
Other Inspections	8,478	0	8,478
Sub Totals	17,144	0	17,144
Administration			
Stationery & Postage	3,273	241	3,514

Bank Charges	288	18	306
Meeting Facilities	300	0	300
Sub Totals	3,861	259	4,120
Management Costs			
Management Fees	38,249	8,100	46,349
Management Admin Fees	6,423	0	6,423
Management Legal Costs	9,242	2,184	11,426
Accountant Fees	2,705	2,000	4,705
Sub Totals	56,619	12,284	68,903
Other Costs			
Sundries	0	29	29
Totals	178,556	101,924	280,480

30. The notes in the accounts under "Contingencies":

"The [Applicant] appointed Canonbury Management to manage its affairs from the 1st April 2010. However this contract was suspended on 20th October 2010 and at that date expenses incurred (including Canonbury's administration charges) exceeded the service charges collected. The Directors are of the opinion that should Canonbury attempt to collect its outstanding debt, the [Applicant] would counterclaim for a poor service and excessive charges. Canonbury have advised that at 31st March they were owed "not less than £25,000".

31. The certificate attached to the accounts signed by the Accountant on 24th June 2011 stated as follows:

"In accordance with your [the Applicant's] instructions we have prepared these unaudited financial statements, in order to assist you to fulfil your statutory responsibilities, from the accounting records and information and explanation supplied to us.

We have not received sufficient accounting records for the period covering 1st April 2010 to 20th October 2010 from Canonbury Management and no detailed breakdown for expenditure amounting to £14,291."

32. The certificate also carried an endorsement as follows:

"We [the Accountants] confirm that the total income and expenditure shown in the attached Service Charges and Costs Statement and the excess of charges over cost of £26,998 agrees to the Accounts prepared by us, however, we have not been able to confirm the analysis of the Canonbury costs."

33. In addition to the Accounts the Applicant provided:

- ✦ a list of the expenditure under the auspices of M & C (hereinafter referred to as the M & C List of Expenditure).
- ✦ all invoices that could be provided.
- ✦ a statement of costs incurred by Canonbury Management (hereinafter referred to as the Canonbury Statement of Costs), however, for these items of expenditure no invoices were available.

34. The Tribunal considered each of the costs incurred, following the order of the accounts provided. The costs incurred by Canonbury were considered separately from those incurred by M & C.

Security

35. Counsel for the Respondent stated that the sum of £349.00 was duplicated. On looking at the statement of costs incurred by Canonbury Management there was no amount recorded for £349.00. However, in the list of expenditure and amongst the invoices for costs incurred when M & C managed the Subject Property there was an invoice raised by Mr Hyde for fitting locks to various doors for that sum. The Applicant's Representatives conceded that this might have been duplicated.
36. Counsel for the Respondent questioned what was included in the "accrual" of £2,272.10 which had been incurred during the period when Canonbury were managing but was included in the account under the column for when M & C managed the Subject Property. The Applicant's Representatives referred to the statement of costs incurred by Canonbury. The Tribunal noted that most of the costs related to arrangement fees. The Applicant's Representatives said that it had never been explained by Canonbury what these amounts were for, nevertheless it appeared that every time the agent undertook a task a charge was made.
37. The Tribunal said it was of the opinion that the tasks listed would normally be included in the Management Fee, which was a separate item in the accounts. The tasks of this kind were engaging and enabling access to work personnel to repair the gate to the roof, to repair the bin store doors, to give access to the roof for T Mobile and others who had masts on the roof to maintain. Most of the arrangement fees were modest although one fee was for £284.97 for arranging the repair of the gate to the roof. The Tribunal identified the items where repair work had been undertaken or a service provided with a view to considering the arrangement fees in the context of the Management Fee. The repairs and services listed under the headlining of Security in the Canonbury Statement of Costs were:

Work	Amount
	£
Securing access to the roof after vandalism	493.32
Repairing the bin door locking mechanism	393.39
Replacing electronic key fobs to open the doors to the building	(£175.31 x 2) 350.62
Glazing repairs	316.08
Glazing repairs (under "Renovations")	206.80
Total	1,760.21

38. The Tribunal commented that if the key fobs had been lost by the leaseholders then it suggested that those leaseholders should be charged. The Applicant's representatives stated that this was now being done.
39. Counsel for the Respondent questioned the invoices while M & C managed the Subject Property. In particular he asked why it was necessary to employ security personnel when a porter was engaged. The Applicant's Representatives stated that additional security had been required and that one person alone could not secure the building. It was pointed out that the invoices showed that the attendance of the security personnel was at weekends and evenings, which would be outside the porter's normal working day.
40. Counsel for the Respondent pointed out that all Mr Hyde's invoices were dated the 2nd March 2012 and there was no date recorded for when the work was actually carried out. He also pointed out that the numbering of the invoices was consecutive

and yet it was likely that he would have had other work in between one invoice and another. He said that this was very irregular and questioned their veracity. He also commented that one of the invoices had been addressed to Mrs Hazel Harmon and not the Agent or RTM Company. The Applicant's Representatives stated that Mr Hyde was a small firm but his work was competitively priced. However, it had been found in the past that he tended to issue invoices in batches all of which then had consecutive numbers and the same invoice date. With regard to the invoice addressed to Mrs Harman it was pointed out that this was for her attention and that it was received during the interregnum between Canonbury and M & C's management.

41. The Tribunal were critical of this practice, which made it difficult to identify when work was carried out. The only saving grace for the invoices was that they did describe the work undertaken clearly.
42. Counsel for the Respondent questioned the invoices relating to repairs to the gate to the roof required as a result of vandalism, as this was a matter which should have been referred to the Landlord who retains the roof. The Applicant's Representatives confirmed that the freeholder had been informed. Counsel also questioned the need for new locks to be fitted on the pool. The Applicant's Representatives said that the existing locks had been tampered with and were not of the best quality. It was particularly necessary for safety reasons for the area to be secure.

Cleaning

43. Counsel for the Respondent said that the Respondent was very critical of the standard of cleaning. From the Canonbury Statement of Costs under the heading of "Cleaning" there were 10 charges of £1,140.00. It was not clear what period each of the charges covered some entries indicated specific period while others merely referred to "Cleaning (internal)". The invoice dates also did not indicate a particular pattern. Counsel said that specification was referred to but none had been produced and it was asked if there was a formal written contract. Similar questions were asked in relation to the cleaning under the agency of M & C who employed Fastclean for whom there were three invoices for cleaning between February and March 2011 totalling £2,782.20. Counsel further commented that no schedules were kept of any of the cleaning. He also questioned why Mr Hyde was employed to clean as indicated by one of the invoices. It was submitted that cleaning costs had increased by 60% on 2009/2010 figures when Mrs Duncan of Britannic Services Ltd was the cleaner.
44. The Applicant's Representatives stated that Canonbury had employed a company called ComClean who had carried out the cleaning from April to November 2010. When ComClean ceased to be employed Mr Hyde cleaned the building for a brief period until Mr Marchant was engaged. From November 2010 to January 2011 Mr A Marchant had been employed as porter and cleaner whose salary had been underwritten by Mrs Harman. The cost of employing Mr Marchant was included in the portage item of the account under the column relating to M & C's period of management except for one amount of tax. This it was said inadvertently appeared under cleaning and was payable by the Applicant as an employer to HMRC as a deduction from Mr Marchant's wages. Fastclean were employed from February to March 2011. The Applicant's Representatives went on to say that they could not say what the contract was with ComClean as Canonbury had arranged this. The contract with Fastclean had been by e-mail. The duties in respect of both Mr Marchant and Fastclean were much the same and required 26 hours work over 7 days. The reception area was to be cleaned every day as it took the heaviest traffic. The stairwells were to be cleaned every week and every floor was to be vacuumed during the course of a week. The Applicant's Representatives said that cleaning up to

March 2010 when the RTM Company took over was good but the standard fell when Canonbury brought in Comclean. Fastclean started well but the standard deteriorated.

45. Counsel for the Respondent questioned the cost of £1,697.88 for cleaning the carpets which he submitted should have been included in the general cleaning contract under which ComClean, Mr Hyde, Mr Marchant and Fastclean were engaged. The Applicant's Representatives stated that this was a single deep clean of the carpets, which would be required periodically and was outside the regular internal cleaning contracts. No renovation work had been undertaken and none of the carpets had been changed since the building had been finished and yet traffic in the communal areas had increased as the apartments had been leased. The building was now 99% full. Most of the damage to the carpets was said to be as a result of the spillage from refuse sacks being taken from the apartments to the bin store. It was said that a particular problem when Comclean were cleaning was that they cleaned particular floors on certain days. Therefore if, for example floor 6 was cleaned on Monday and then there was a spillage on Tuesday, the spillage was not cleaned until the next Monday. It was also felt that Comclean charged London rates. It was not known what the specification was for the cleaning contract with Comclean.

Porterage

46. Counsel for the Respondent questioned the porterage charge of £11,748 in the accounts under Canonbury's management. The Canonbury Statement of Costs itemised 6 amounts of £2,070 and one of £1,433.09 under the heading of "Porterage". Counsel referred to the same objections as were raised with regard to the cleaning. It was submitted that, apart from the amount of £1,433.09, it was not clear to what period each of the payments related. It was also not clear what the hours and duties of the porter were.
47. With regard to the porterage charge listed under M & C's management it was noted that this related solely to Mr A Marchant's employment. Counsel was also submitted that, if there was a porter on the premises there should be no need to employ security staff.
48. The Applicant's Representatives said they could not speak for Canonbury but that a porter was in attendance from April to October 2010. So far as Mr Marchant was concerned he was employed as porter and cleaner until Fastclean were engaged. However he needed the support of additional security staff at weekends and evenings especially as there were particular security problems in November 2010. His cleaning duties were for 8 to 10 hours per week.

Utilities

49. Invoices were provided for electricity consumption from Eon, the supplier, which corresponded to the Accounts. The invoices showed that there had been regular readings taken. Each invoice was considered in detail. The Respondent was critical of the Applicant's management of the cost of supply as it was submitted that a better price could have been negotiated. The Applicant's Representative stated that they had negotiated a better price but that it had taken time particularly as there had been some difficulty in transferring the account. Billing from the 2nd April to 13th July 2010 had been under Canonbury (£9,035) and billing from 14th July to 31st March 2011 is shown under M & C (£13,270.00 plus £919.00 carried forward)

50. As for electricity the Respondent argued that the Applicant could have negotiated a better price. The Applicant provided a number of print outs which the Respondent submitted were not official bills. The Applicant disputed this and stated that on-line billing produces bills as provided in the bundle.
51. The Applicant's Representatives stated that in previous years the water rate had been undercharged and therefore there were arrears. The main reason for the undercharging appeared to be that the meter that had originally been installed was faulty. A new meter was fitted in June 2009 and the Applicant's Representatives produced a table of all the readings from 19th June 2009 to the 13th November 2012, only one of which had been estimated. The table charted the increased usage, which was noted to have increased by 22%. This was to be expected as the building is now 99% occupied against 80% occupation in 2009. It was said that another factor influencing usage was the number of occupants per apartment, which was likely to have increased with the trend towards student lettings. It was said that an agreement had been reached with Anglia Water for a payment plan to meet the current charges and to clear the arrears. It is also believed that the water company has rated the building as domestic and therefore VAT is not to be applied. There are a number of tariffs available depending on usage and it will be necessary to select the most economical. As the amount of water supplied approaches 10,000 cubic metres it appears that a business rate may be possible and most cost effective.
52. It was submitted that the amount of £51,330.00 was a reasonable estimate of the amount payable up to the end of the year in issue, including arrears. Counsel for the Respondent asked how much had been actually paid in of this sum in the year in issue. The Applicants Representatives said that £7,000.00 had been paid to date. Counsel submitted that the Respondent was only liable to pay a service charge of the appropriate proportion of the £7,000.00 because the Lease provided that a Leaseholder was only liable to pay the amount that the Landlord had "expended" and not the amount for which the Landlord was liable.
53. The Tribunal agreed that so far as the balancing sum was concerned this was correct. However, the contribution payable by the Leaseholders by way of Interim Service Charge based on the estimated costs for the next year would take into account the amount of the outstanding sum [said to be £51,330.00], which the Landlord [the Applicant in the present case] would be liable to pay under any agreed payment plan.

Refuse

54. The charge for refuse collection and storage included 12 months hire of euro bins from Northampton Borough Council. The Accounts apportioned £776.00 for the 8 months of Canonbury Management and £387.91 for the 4 months of M & C Management. In addition there were charges of £240.00 and £573.17 for removal of waste, which had been deposited by Leaseholders or their tenants. These amounts were not challenged individually.

Insurance

55. Counsel for the Respondent submitted that the Respondent should not have to pay the insurance premium because no details of the policy had been provided notwithstanding several requests and therefore it was not possible for the Respondent to make a claim under the insurance.

56. The Applicants stated that Canonbury Management had arranged buildings insurance for 10 months of £28,946.24 payable in two instalments of £14,473.each. The first amount was paid through Canonbury and the second through M & C in December 2010. Insurance for a 12-month period commencing on 1st February 2011 for £25,892.96 was arranged through Pi-Insurance with a payment plan with the first two instalments amounting to £4,444.52 (£2,424.52 & £2,020.00). The Applicant's Representatives were not able to say why Canonbury Management had failed to provide details of the buildings insurance to the Respondent.
57. The Account showed that the Directors and Officer's Insurance during the period of Canonbury management was £3,125.00. During M & C management the cost was £520.00. The first of £73.00 was included under Building Insurance with the remainder of £439.00 appearing separately. No details were available as to why there was such a discrepancy between the two amounts.

Lifts

58. In relation to the maintenance costs for the lifts Counsel for the Respondent referred to the items listed under the heading of "Lifts" in the Canonbury Statement of Costs and submitted that there was a lack of detail which could only be supplied by invoices which were not available. The Applicant's Representatives said that the statement of costs produced by Canonbury was not clear and in producing the accounts the Accountants had noted the amount that was attributed to the lift repairs by Canonbury and then worked forward from the first entry reference number 1294651 to number 1301653 to assess which of the items had been charged by Canonbury to the Leaseholders.
59. The Tribunal noted that many of the costs related to arrangement fees. As previously said it was of the opinion that the tasks listed would normally be included in the Management Fee. The Tribunal again identified the items where repair work or call out had been undertaken with a view to considering the arrangement fees in the context of the Management Fee. The Tribunal referred to the whole list of items and not just those relating to reference number 1294651 to number 1301653. It said that it would analyse these and look at its determination for the years ending 31st March 2008, 2009 and 2012 to ensure consistency. On those occasions the Tribunal had assessed the cost of a maintenance contract (which it determined the lift should have been under) and then added on the cost of vandalism repairs, which would not be covered in the service contract and a reasonable number of emergency releases. The items relating to repairs and maintenance in the statement were as follows:

Work	Amount
	£
Call Out	209.15
Call Out	164.50
Repair	235.00
Call Out	209.15
Call Out	164.50
Repair	564.00
Call Out	164.50
Repair due to vandalism	293.75
Repair	4,112.50
Repair	329.00
Call Out	164.50
Repair	246.75

Repair	311.38
Call Out	164.50
Repair	394.80
Call Out	209.15
Repair	164.50
Call Out	209.15
Call Out	164.50
Repair	1,763.50
Repair	564.00
Repair	235.00
Repair	1,762.50
Call Out	164.50
Total	12,196.33

60. In relation to the above title, it was noted that only one repair was said to be as a result of vandalism. It appeared that items that were charged at £209.15 or £164.50 were for call outs where adjustments to the lift were carried out whereas larger amounts involved repair work as well. In addition to the above there was an Insurance Survey at a cost of £2,890.00 and three charges of £665.88 made by the Fire and Rescue Service for the release of a trapped person.
61. Lift maintenance charges during the period of M & C's management were £1,080.00, which comprised a consultancy fee of £780.00 to negotiate a maintenance contract and a maintenance contract fee of £1,080.00 from 24th February 2011.

Electrical Repairs and Maintenance

62. In relation to the electrical repairs and maintenance costs, Counsel for the Respondent referred to the Canonbury Statement of Costs and submitted that there was a lack of detail which could only be supplied by invoices which were not available.
63. The Tribunal again noted that many of the costs related to arrangement fees. As with the charges under the "Cleaning" and "Lift Maintenance" headings the Tribunal was of the opinion that the tasks listed would normally be included in the Management Fee. The Tribunal again identified the items where repair work had been undertaken. The charges identified in the Canonbury Statement of Costs under the heading "Electrical" were:

Work	Amount
	£
Electrical investigation of lamp failures	550.43
Replacement of vandalised door entrance button	107.87
Repair of vandalised intercom in car park	1,131.95
Repair of electrical fault	296.63
Re-setting of building access codes	216.92
Repair of sockets and replacement of circuit breakers	235.95
Repair to gate to roof	166.16
Supply of CCTV camera and cabling for gym fire door	1,147.57
Replacement of lamps	286.32
Investigation of fault with fire alarm and battery replacement	854.20
Installation of CCTV camera and cabling for gym fire door	302.18
Temporary Repair to hi voltage lift cupboard	283.15
Installation to key safe and key pad to gym	4,581.93

Replacement of 20 failed lamps in communal areas	535.40
Total	10,696.66

64. Mr G Hyde carried out all electrical repairs and maintenance during M & C's period of management except for one in respect of exit lights, which was carried out by PT Electrics. Counsel for the Respondent repeated his earlier point that all Mr Hyde's invoices were dated the 2nd March 2012. There was no date recorded for when the work was actually carried out and the numbering of the invoices was consecutive and yet it was likely that he would have had other work in between one invoice and another. Only one of the 6 invoices provided under this head had a different date, which was 23rd November 2011.

General Repairs

65. In relation to the General Repair costs, Counsel for the Respondent referred to the Canonbury Statement of Costs and questioned what the charge of £118.00 incurred by Canonbury management was for, as it did not correspond to any cost itemised. The Applicant's Representatives stated that it appeared to be for the putting up of signs to say that the building was under Canonbury management. Counsel submitted that this was for Caonobury's own benefit and was not a reasonable charge to the Leaseholders.
66. With regard to the General Repair costs incurred during the period in which M & C managed the building, Counsel for the Respondent said that the Respondent accepted the invoices from BCK in respect of the maintenance of the sprinkler system and from Northampton Aerials in respect of the aerial maintenance. However the same criticism applied to the invoices from Mr Hyde as were previously made. Of the 11 invoices produced 3 were dated 23rd November 2010 and the remainder were again dated 2nd March 2011.
67. Counsel also questioned the justification in charging some of the work to the Service Charge as follows:

Work	Amount
Repair to water supply apartment 804	£190.00
Repair to soil stacks for 9 apartments	£480.00
Repair to soil stacks of 214, 207, 208	£310.00
	£280.00
	£190.00
De-icing pipes for 21 days	£1,320.00

He submitted that as the costs related to specific apartments the leaseholders of those apartments should be charged and not the all Leaseholders through the service charge.

68. The Applicant's Representatives stated that it had been necessary to install a new water supply to apartment 804. As the water supply to each apartment is communal and not a main supply it was the responsibility of the Landlord (in this instance the RTM Company) to secure a supply to the apartment.
69. It was said that the soil stacks served a number of apartments and were therefore communal. They had been defectively installed and their repair had been going on for some time. The reference to an individual apartment is merely the point at which the communal stack had been found to be leaking.

70. The Applicant's Representatives said that the de-icing of pipes had been necessary because the boilers in a number of apartments had over heated and discharged water into the overflow/blow off pipes. Although the water is hot initially in the particularly cold weather as it ran down the overflow pipe it froze. If these pipes freeze over and the boiler continues to overheat without being able to 'blow off' there is a risk of burst pipes and apartments flooding or more dangerously, boilers bursting. It was therefore considered necessary to de-ice the pipes to allow the water to escape.
71. Counsel for the Respondent submitted that this was a failure of proper maintenance by individual leaseholders as regular servicing should prevent or substantially reduce the risk of a boiler overheating and having to 'blow off'. The failure to monitor leaseholders in carrying out this servicing showed a lack of management. The Applicant's Representatives agreed and leaseholders had been informed of the risks but many still did not service their boilers regularly. They submitted that the risks of damage to other apartments justified the action taken
72. The costs also comprised what was shown in the M & C List of Expenditure an Accrual – Hyde of £1,653.85. In the additional notes provided by the Applicant it was said that this was an: "Accrual for works undertaken not billed for GJ Hyde. Mainly plumbing and drainage works May 2011". The Respondent objected to this sum as not being justified by any invoices.

Asbestos

73. Both Respondent and Applicant questioned the charge for an Asbestos Survey and Removal, which had been arranged by Canonbury Management. It was agreed that it was difficult to see how any asbestos that was liable to cause a risk could be present in a building that had been converted and comprehensively renovated.

Inspections

74. The Canonbury Statement of Costs listed 4 inspections under this heading as follows:

Work	Amount
Fire risk assessment	£2,020.00
Health and Safety Inspection	£985.00
Preliminary Asbestos Inspection	£985.00
Detailed Property inspection and Dilapidations Report	£4,488.00

75. The Respondent objected to the Preliminary Asbestos Inspection in that if it was believed that there was a risk of asbestos an agent would seek a full survey without incurring the cost of a preliminary survey. A full survey was procured and had been charged for. Canonbury Management apparently carried out the Detailed Property inspection and Dilapidations Report without being requested to by the RTM Company and no copy of the Report was received the Company. The Respondent submitted that this was not a reasonable cost because no report had been received.

Stationery & Postage

76. The Tribunal had considered the items under this heading and said that it would consider these costs under Management Fees.

Bank Charges & Meetings & Sundries

77. Bank Charges were not in issue. The Respondent's Representatives said that the charge of £300.00 was for the Annual General Meeting with Leaseholders'. The charge of £29.00 for Sundries was accepted.

Legal Costs

78. The Accounts showed a cost of £9,242.00 for legal costs during the period of Canonbury's management. The Canonbury Statement of Costs referred to a sum of £4,989.45 under the heading of "Legal Costs" which comprised a series of arrangement fees. These mostly related to collection and enforcement of service charges, which the Tribunal stated it viewed as being a matter that should be considered in relation to the Management Fee. It also comprised a number of Land registry fees also in respect of the collection and enforcement of service charges but which, as disbursements, would be considered to be in addition to Management Fees. There was also a charge of £600.00 for acting as Company Secretary.
79. The Accounts showed a cost of £2,184.00 for legal costs during the period of M & C's management. The Respondent's Representatives stated that the charges were for work carried out by Geoffrey Leaver, Solicitors and related to the dispute between the RTM Company and Canonbury Management. Two paid invoices were provided, one for £1,224.35 (£500.00 on account had already been paid) and one for £459.43.
80. It was noted that the Lease only provided for the Landlord (or in this case the RTM Company) to charge legal costs to the Service Charge in respect of a section 146 Law of Property Act notice and for the enforcement of payment of the Service Charge against the Leaseholders. It was recalled that in previous cases an application had been made for an order limiting the amount the landlord could claim for costs through the service charge in respect of Leasehold Valuation Tribunal proceedings. It had been found on those occasions by the tribunal and conceded by the Landlord that the Lease did not provide for the Landlord to claim such costs through the service charge.

Accountant Fees

81. The Accounts showed a charge of £2,705.00 for accountant's fees during the period of Canonbury's management and this was referred to in the Canonbury Statement of Costs. A charge of £2,000.00 for accountant's fees during the period of M & C's management was shown which an invoice supported. Counsel for the Respondent submitted that this amount was excessive. The Applicant's Representatives stated that the lack of co-operation from Canonbury had increased the charge.

Management Fees

82. Counsel for the Respondent submitted that the management under both Canonbury and M & C had been unsatisfactory. The charges were said to have been excessive under Canonbury. It was said that the service had been poor under M & C. Mr Sheppard for the Respondent said that he understood that M & C were an Irish company without an office in the UK and that as a result they rarely visited the Subject Property. Mr Madigan for M & C Property Management said that the company did have a representative in the UK and disputed the allegation that they rarely visited the Subject Property stating that it was inspected regularly and that a full service was offered. The Applicant's Representatives said that they had been very

satisfied as Leaseholders with M & C and that the service had been far superior to that of Canonbury.

83. The Tribunal stated that from the Accounts Canonbury had charged £38,249.00 by way of Management Fees and a further £6,423.00 as Management Administration Fees. It said that it was not clear how these two amounts differed. The parties were not able to throw any light on this and therefore it was agreed that the two sums should be aggregated when assessing the Management Fee. The Tribunal was aware that agency contracts varied and that some quoted a lower unit cost and then added such items as company secretary work and correspondence e.g. reminding leaseholders of certain obligations with regard to such matters as parking, the depositing of large items of refuse etc. Others quoted a higher unit cost for a full or more inclusive service. In this instance Canonbury took the former approach and the Tribunal would therefore seek to balance the two sums in assessing a reasonable cost for the service provided.
84. In Canonbury's Statement of Costs, under all the headings, arrangement fees had been itemised, in particular under Security, Cleaning, Lift Maintenance, Electrical Maintenance and Legal Services. It was not clear whether these were intended to be additional to the Management Fee or whether they were an internal record for Canonbury itself to assist it in calculating the cost of the management it was carrying out. The terms of the agreement under which Canonbury were employed were not provided and therefore this could not be looked to for an explanation. The Tribunal took the view that on looking at the arrangement fees listed they appeared to be all tasks, which would be included in a Management Fee. In making its determination it would analyse these arrangement fees and assess whether there was a task, which might be outside the usual contract that should be charged for additionally.

Quality of Evidence

85. A recurring issue raised by the Respondent throughout the hearing was that the quality of evidence produced by the Applicant was insufficient to support the service charge costs. The lack of invoices and the inadequacy of the Canonbury Statement of Costs were referred to particularly as was the irregular invoices produced by Mr Hyde. Mr Sheppard, a Director of the Respondent, asked the Tribunal to note its previous decisions in respect of Northampton House for the years ending 31st March 2008 and 2009. It was stated that in those cases the present Applicants had said in respect of costs incurred by the present Respondents that if an invoice did not support them they should not be allowed.

Legal Issues as to Payability

86. Counsel for the Respondent raised the following legal issues as to the payability of the Service Charge. The first was that he said that the production of certificated accounts was under Schedule 7 of the Lease a prerequisite for the payment of the Service Charge. He submitted that the certificate provided by the accountant did not include the costs incurred during the period that Canonbury managed the Subject Property stating that the term in the certificate:

We have not received sufficient accounting records for the period covering 1st April 2010 to 20th October 2010 from Canonbury Management and no detailed breakdown for expenditure amounting to £14,291."

and the endorsement in the certificate:

"We [the Accountants] confirm that the total income and expenditure shown in the attached Service Charges and Costs Statement and the excess of charges over cost of £26,998 agrees to the Accounts prepared by us, however, we have not been able to confirm the analysis of the Canonbury costs."

excluded the Canonbury costs from it and therefore these were not payable by the Respondent.

87. The second issue was that even if the certificate was considered to cover the Canonbury costs, the Canonbury Statement of Costs was insufficient evidence to justify that part of the Service Charge. There are no invoices and hence little or no indication or explanation as to what the costs related. Counsel added that this point applied to certain of the costs incurred under the M & C period of management, in particular the invoices of Mr Hyde. In supporting his argument with reference to the lack of invoices he referred to three authorities:
- ◆ Under section 21 of the Landlord and Tenant Act 1985 the Leaseholder is entitled to withhold payment of a service charge until documents requested are supplied.
 - ◆ In *Barrington v Sloane Square Property Ltd* (2007) 40 EG 268 the Lands Tribunal (as it then was) held that where an account had been drawn up in the absence of evidence of the actual costs the account was not binding on the leaseholders.
 - ◆ That there is a general principle that where a doubt exists in respect of whether an amount in a service charge in dispute should be paid it should be resolved in favour of the paying party.
88. The third issue was that the demand had been accompanied by a Statement of the Rights and Obligations in a font smaller than that prescribed by Regulation 3 of the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257) i.e. less than 10 point. A copy of the demand was produced.
89. Finally Counsel submitted that the Lease provided that a Leaseholder was only liable to pay the amount that the Landlord had "expended" and not the amount for which the Landlord was liable.
90. The Applicant's Representatives said that for the RTM Company Canonbury had been extremely difficult to deal with.

Determination

Quality of Evidence

91. The Tribunal first considered the Respondent's point that the costs incurred by Canonbury should be disregarded due to the lack of invoices and the unsatisfactory nature of the Canonbury Statement of Costs. In addition the invoices of Mr Hyde should be disallowed due to their irregular form. The Tribunal must consider each item in turn and cannot make a ruling as to what evidence it will treat as being cogent as a matter of policy. Although not making a ruling it was able in this case to set out some general principles for its approach.
- ◆ With regard to the Canonbury Statement of Costs it was found that there were headings, which corresponded to the heads in the Accounts. Under these headings there were items, which both parties had identified which were either regular payments for work, such as cleaning, or specific payments for anticipated work, such as repairs. Where a narrative supports these items the Tribunal considered that, on the balance of probabilities and in the absence of evidence to the contrary, the costs were incurred for that item.

- ◆ With regard to invoices, where these were clear, then they will be accepted. All parties would agree this point. However, where the invoices have some irregularity the Tribunal would need to consider whether that irregularity cast doubt upon what the work was, when and how it was carried out (e.g. for Northampton House or another property), whether the invoice had been duplicated and therefore whether it could be accepted as a cost incurred. The Tribunal would need to consider this per invoice or group of invoices as appropriate.
- ◆ Where invoices are missing and not recorded on a statement of costs the Tribunal would in the absence of evidence to the contrary accept a cost where it was one of a series e.g. utility bills or cleaning. Where it is a single cost the Tribunal would consider any surrounding evidence e.g. a letter or e-mail referring to the work or its cost. In the absence of such evidence the situation may become one, which Counsel for the Respondent referred to, namely if there is doubt about a disputed cost, it should be determined in the paying party's favour.

Security

92. The only cost incurred for security in the Accounts under the Canonbury period of management was the sum of £349.00. On looking at the Canonbury Statement of Costs there was no equivalent amount recorded but there was an invoice for that amount from Mr Hyde that had already been charged for the M & C management period. The Applicant's Representatives could offer no explanation for the cost therefore the Tribunal found the £349.00 to have been duplicated and determined it to be unreasonable and not payable.
93. The Tribunal then considered the amounts that had been included under the item of "accrual" for which the Applicant's Representatives had referred it to the Canonbury Statement of Costs. The Tribunal determined the lock and glazing repairs to be reasonable but was of the opinion that generally leaseholders should pay for the key fobs they had lost. It was appreciated that the potential extent of this cost had not initially become apparent to the Applicant but that action was now being taken to charge. In the circumstances the Tribunal accepted it as a reasonable cost to the service charge for this year but that it may not be seen as such in the future. The sum of £1,760.21 for the accrual from Canonbury was determined to be reasonable. However, the sum of £511.89 for arrangement fees was determined to be unreasonable under this head and the issue of arrangement fees generally is dealt with under Management Fees.
94. Finally under this head the Tribunal considered the costs of employing security personnel in addition to the porter during the management period of M & C. The Tribunal accepted the evidence of the Applicant's Representatives when they said that it was necessary to have additional cover. Therefore the security costs of £4,669.11 attributable solely to the period of M & C's management were determined to be reasonable.

Cleaning

95. The Tribunal accepted the Canonbury Statement of Costs as being evidence of the 10 payments of £1,140.00 to ComClean. The Tribunal then considered whether this amount was reasonable. It was noted that there were no details of the cleaning contract. The Tribunal found from the narrative that payments related to a period of a fortnight, being £570.00 per week. A reasonable hourly charge in the experience of the members of the Tribunal was determined to be between £12.00 and £15.00. If the rate of £15.00 were used the charge of £570 per week would mean one cleaner

attending for 38 hours a week to clean the whole building (or pro rata with more than one cleaner). From the evidence given by the Applicant's Representatives one cleaner would in the course of a day clean the reception area and gym, two floors and a proportion of two staircases.

96. For additional guidance the Tribunal referred back to its previous decisions for the years ending 31st March 2008 and 2009 as the parties had requested it. It noted that Britannic Services had provided the cleaning, employing Mrs Duncan as a full time cleaner. During the course of that hearing it had been said that the cleaning during this period was good. It was estimated by the Respondents in that case that Mrs Duncan had been employed for around 40 hours at about £10.00 per hour equating to £20,000.00 per annum. The Applicants in that case had obtained a quotation in the region of £30,000 for cleaning the Subject Property, which would have been about £15.00 per hour for 38 hours a week. The Tribunal had determined that an hourly rate of £10.00 to £12.00 at that time to be reasonable. On reviewing the evidence the Tribunal determined that the charge of £1,140.00 per fortnight at an hourly rate of £15.00 (particularly taking into account an increase in VAT) for cleaning the Subject Property in 2010 was reasonable. Therefore the charge of £10,694.00 for cleaning during the period of Canonbury's management was determined to be reasonable
97. The Tribunal then considered the charges for Fastclean, which were for cleaning between February and March 2011 totalling £2,782.20. This is a period of approximately 8 weeks, which would give a weekly charge of £348.00 per week. The Applicant's Representatives stated that the cleaner undertook 26 hours a week, which would give an hourly rate of about £13.00. Therefore the charge of £5,368.00 for cleaning during the period of M & C's management was determined to be reasonable
98. The Respondent had said that the standard of cleaning was unreasonable. From the evidence both ComClean and Fastclean had started well but the standard had deteriorated at which point they had been dismissed. Therefore in the absence of evidence to the contrary the cleaning had been of a reasonable standard and when it ceased to be so the contract was terminated. The Tribunal had found on its inspection the cleanliness of the Subject Property had deteriorated significantly since its previous inspection in December 2009. However, the most recent inspection had taken place after a period when cleaning had not been carried out. It would appear that the Respondent's dissatisfaction with the standard of cleanliness is due to the lack of any cleaning in recent months.

Porterage

99. The Tribunal accepted the Canonbury Statement of Costs as being evidence of 6 amounts of £2,070 and one of £1,433.09 for porterage. The Tribunal found that porterage related to the employment of a concierge who acted as a receptionist and security person and that the amounts related to monthly payments giving an annual charge of £24,840.00. No contract was provided but in the absence of evidence to the contrary the Tribunal found that the porter would be in attendance for about 38 hours a week at an hourly rate of £12.57.
100. As with the cleaning the Tribunal referred back to its previous decisions for the years ending 31st March 2008 and 2009 as the parties requested. Britannic Services Limited had provided the concierge services employing Mr Duncan as a resident caretaker, receptionist, security officer and manager for £65,000 a year including a £7,500.00 allowance for accommodation, working some 80 hours a week. This, excluding the accommodation allowance, gave a similar hourly rate to the present

charge. Therefore the Tribunal determined the portage charge of £11,748.00 during Canonbury's management to be reasonable.

101. With regard to the portage charge under M & C's management it was noted that this related solely to Mr A Marchant who also undertook some cleaning. These costs were not put in issue other than in relation to the employment of additional security personnel, which has already been addressed. Therefore the charge of £3,791.00 was determined to be reasonable.

Utilities

102. The Tribunal accepted the invoices for electricity and water provided. It also accepted, based upon the knowledge and experience of its members that if there are any arrears it is generally not possible to negotiate a more advantageous price for supply. As stated at the hearing the Tribunal accepted Counsel's submission that the Respondent was only liable to pay a service charge of the appropriate proportion of the £7,000.00 because the Lease provided that a Leaseholder was only liable to pay the amount that the Landlord had "expended" when making a balancing payment and not the amount for which the Landlord was liable. However, the contribution payable by the Leaseholders by way of Interim Service Charge based on the estimated costs for the next year would take into account the amount of the outstanding sum [said to be £51,330.00], which the Landlord [the Applicant in the present case] would be liable to pay under any agreed payment plan.

Refuse

103. In the absence of evidence to the contrary the Tribunal determined the charges of £1,977.00 for refuse over the whole year to be reasonable.

Insurance

104. The Tribunal found on the evidence adduced that insurance had been placed and it was agreed by the Respondent that the premiums totalling £36,882.00 were reasonable. No evidence was submitted to show that the Respondent had not actually been able to make a claim through not having received details of the insurance. The Tribunal therefore determined that the Respondent's share of the insurance was payable.

Lifts

105. The Tribunal's decisions in relation to the Service charge for the years ending 31st March 2008 and 2009 and its subsequent decision in relation to year ending 31st March 2010 were based upon the matter of the lifts having been fully argued at the hearings on the 2nd and 4th December 2009. The Tribunal had taken the view that the lifts should have been put in such a condition when the newly refurbished Subject Property was let and that a comprehensive service contract could have been entered. This had not been the case. The Tribunal had determined based upon the knowledge and experience of its members and the evidence produced at the time that a service contract for the lifts, had one been entered, would have been in the region of £4,500 per lift. For the year ending 31st March 2010 the Tribunal revised this in line with raising costs to £5,000 per lift. The charge did not take account of emergency releases by the Fire and Rescue Service, the repairs as a result of vandalism, statutory and insurance surveys or telephone costs.

106. Therefore the maximum charge that the Tribunal would determine to be reasonable in the absence of evidence to the contrary would be £15,178.75, comprising £10,000 (£5,000 for each lift) maintenance contract, £1,995 for the 3 Fire and Rescue Emergency Releases, £293.75 for a vandalism repair and £2,890.00 for insurance survey. No charge appears to have been included in the Accounts for telephone costs.
107. The total actual costs incurred are £14,777.00, which is below what might be determined to be reasonable and therefore are determined reasonable.

Electrical Repairs and Maintenance

108. The Tribunal did not agree with Counsel for the Respondent that there was a lack of detail in the Canonbury Statement of Costs, which could only be supplied by invoices, which were not available. The Tribunal determined that the works itemised were sufficiently narrated and that the costs, in the absence of evidence to the contrary were on the balance of probabilities, incurred. The Tribunal considered each of the items and determined them to be reasonable in the knowledge and experience of its members.
109. With regard to Mr Hyde's invoices the Tribunal accepted the explanation given by the Applicant's Representatives and allowed the costs. The Tribunal considered each of the items and determined them to be reasonable in the knowledge and experience of its members. The total cost of electrical maintenance of £14,357.00 was therefore determined to be reasonable.

General Repairs

110. The Tribunal could not find a corresponding item to the sum of £118.00 in relation to the General Repair costs in the Canonbury Statement of Costs. If it was, as submitted by the Applicant's Representatives putting up signs to say that the building was under Canonbury management it considered this to be for Canonbury's own benefit and was not a reasonable charge to the Leaseholders.
111. With regard to the General Repair costs incurred during the period of M & C's management the Tribunal accepted the Applicant's explanation as to the irregularities with Mr Hyde's invoices and also accepted their justification for the work itemised with regard to the water supply for Apartment 804, the repairs to the soil stacks and the de-icing. However, it did not accept the sum of £1,653.85 said to be payable to Mr Hyde by way of an accrual for plumbing work. The costs that have been allowed under Canonbury's Statement of Costs for which invoices are not available have a narrative explaining to what they relate and a specific sum for the work. The Leaseholders generally and the Respondent in particular are able to identify the task and the cost it incurred. Unlike the situation with Canonbury the Tribunal could see no reason why the Applicant could not obtain invoices from Mr Hyde for the works (even if they were duplicates). There was no identification of the task (other than the Applicant's Representatives' statement that it was mostly for plumbing), no statement of the cost for the work if more than one job had been done and no clear indication as to when the work was undertaken. There was an item of plumbing and heating repairs in the Canonbury Statement of Costs but these did not appear to bear any relation to the amount of the accrual claimed. Therefore the cost of General Repairs during M & C's period of management less the accrual attributed to Mr Hyde was determined to be reasonable and totalled £9,733.15.

Asbestos

112. The Tribunal members were as surprised as the Respondent and Applicant that any asbestos likely to cause harm was present in the Subject Property following the conversion and renovation. However, an invoice was provided and the Applicant's Representatives were able to confirm that work had been carried out by A & E Asbestos Limited. In the absence of evidence it was not open to the Tribunal to find that no asbestos had been found. Whether or not the asbestos found created a risk requiring its removal is a matter of expert opinion. There was no expert evidence to suggest that the company engaged was not expert or that the work was not necessary. The Tribunal therefore felt bound to find that the survey and work was necessary and determined the cost of £8,666.00 to be reasonable.

Inspections

113. The Tribunal agreed that the Preliminary Asbestos Inspection should be included in the cost of the full survey. The Applicant's Representatives stated that the Detailed Property inspection and Dilapidations Report had not been requested by the RTM Company and no copy of the Report was received by the Company. The Tribunal agreed that this was not a reasonable cost. The charges for the other inspections were agreed.

Legal Costs

114. The Tribunal considered the costs for the collection and enforcement of service charges in the Canonbury Statement of Costs, in relation to the Management Fee. In the absence of evidence to the contrary the Tribunal accepted the obtaining of copies of Land Registry entries as reasonable in respect of the collection and enforcement of service charges and considered them to be additional to Management Fees as disbursements of £843.08. The Tribunal also accepted the charge of £600.00 for acting as Company Secretary as a reasonable fee for such work in the knowledge and experience of its members. The Tribunal could not find any invoices or other evidence to justify the charge of £9,242.00 attributed in the accounts to the period of Canonbury management. Under the Lease legal charges for enforcement of the Service Charge are allowed but there was no evidence that a solicitor had been instructed to pursue a claim or that legal work of this kind had been undertaken or charged. Therefore the total charge determined to be reasonable for the period Canonbury's management was £1,443.08.
115. The Tribunal noted that the legal costs of £2,184.00 during the period of M & C's management were for work carried out by Geoffrey Leaver, Solicitors relating to the dispute between the RTM Company and Canonbury Management. The Tribunal were of the opinion that these costs should not be charged to the Service Charge because not all Leaseholders were members of the RTM Company. The RTM Company members should meet the cost, as the Company is the party to the dispute not the Leaseholders.

Accountant Fees

116. The Tribunal found that the total Accountant Fees of £4,705 in the knowledge and experience of its members to be unreasonably high. Previous annual fees had been in the region of £1,750.00. A fee of £2,000 was determined to be reasonable.

Management Fees

117. In considering the Management Fees charged, the Tribunal included the items of Stationery and Postage, Management Fees and Management Administration Fees. The total fees under these heads attributed to the period of Canonbury's Management, which was for the 6 months from the 1st April 2010 to the 30th September 2010, are £48,945.00. This would give a unit management Fee of £262.00 (including VAT). The Tribunal analysed all the arrangement fees to assess whether there was a task, which might be outside the usual agency contract for which an additional charge should be made. The Tribunal was of the opinion that all the arrangement fees listed would be incorporated into the Management Fee. The only additional work was that of acting as company secretary and that had already been accounted for under the head of Legal Costs.
118. According to the Applicant, Canonbury Management had failed to follow the instructions of the RTM Company and the relationship between them had broken down. This latter point had resulted in a detriment to the Leaseholders in that Canonbury had authorised spending in excess of the RTM Company's instructions and had withheld information.
119. With regard to exceeding the RTM Company's instructions the Tribunal was of the opinion that the RTM Company should have put in place procedures to prevent this, which should have been incorporated into the contract between the Company and Canonbury Management. If work has been undertaken which was beyond its remit and which has been determined to be unreasonable it is for the RTM Company to pursue such matter.
120. In assessing a reasonable Management Fee the Tribunal referred back to its determinations in respect of the Subject Property for the years ending 31st March 2008, 2009 and 2010. The Tribunal noted that it had been critical of the management in respect of 2008 and 2009 as a significant proportion of the responsibility had been left to Mr Duncan who had become a general factotum. The Management Fee was balanced against the charge made by Britannic Services Limited who employed Mr Duncan and the Agent's annual unit fee was reduced to £75.00 plus VAT for these years to reflect Mr Duncan's role. For the year ending 31st March 2010 the annual unit charge had been £110 including VAT. Mr Duncan was now officially the Agent and satisfactorily combined his duties with those of concierge and the fee was determined to be reasonable.
121. The Tribunal then looked at the current level of management and annual unit charge of £262.00 including VAT. It found that Canonbury Management had taken an active role in the management of the Subject Property and the porter or concierge did not undertake any of the agent's duties. Reference was made to the Arrangement Fees, which recorded the management activities of the Agent. It had:
- ◆ sent out invoices for service charges and collected funds, enforcing where necessary
 - ◆ arranged insurance
 - ◆ arranged repair work, cleaning and portage
- However, there did appear to be failings. The situation with the utility companies had not been settled, the Respondent had not received information regarding the insurance, the Agent failed to produce invoices for the preparation of the accounts, which should have been done irrespective of the relationship with the RTM Company itself. In addition both RTM Company and Agent will bear a responsibility to a greater or lesser extent for the breakdown and any effect that might have had on the Leaseholders. The Tribunal therefore determined that an annual unit charge of

£262.00 was not reasonable as it reflected a level of service and expertise beyond what had been provided. Also the Tribunal members have found that annual unit charges for larger blocks are less than for smaller ones as there is an economy of scale. At 187 units Northampton House is a larger Block. The Tribunal determined that in the knowledge and experience of its members, particularly taking into account the failure to produce invoices and other information for the satisfactory preparation of the accounts, a reasonable annual unit charge was £144.00 (£120.00 per unit plus £24.00 VAT @ 20%) equating to £26,928 per annum. The charge attributable to the 6 months in which Canonbury Management were agents is therefore £13,464.00.

122. The Tribunal determined in the knowledge and experience of its members that an annual unit charge of approximately £145.00 excluding VAT charged by M & C including the additional sum for stationery and postage was reasonable.

Legal Issues as to Payability

123. With regard to the legal issues as to the payability of the Service Charge raised by Counsel for the Respondent the Tribunal decided as follows.
124. First the Tribunal agreed that the production of certificated accounts was, under Schedule 7 of the Lease, a prerequisite for the payment of the Service Charge. It did not agree that the certificate excluded the costs incurred during the period that Canonbury managed the Subject Property. In relation to certified accounts the accountants are merely confirming that the accounts reflect the income and expenditure for which information has been provided. In addition, in relation to these accounts they draw attention to the limit of the information that has been provided. This is a warning to those who seek to use the accounts, such as the Tribunal, to examine the information provided to draw them up, which in this case the Tribunal has done. The Tribunal therefore determined the Certificate to be valid in respect of all costs subject to a determination as to reasonableness.
125. The second issue has already been dealt with at the beginning of the determination under the heading Quality of the Evidence. In response to the specific point referred to in the case of *Barrington v Sloane Square Properties Ltd* (2007) 40 EG 268 the Tribunal found that the accounts had not been drawn up in the absence of evidence of the actual costs. The Tribunal was of the opinion that the Canonbury Statement of Costs, although not the best evidence, was nevertheless evidence of the actual costs. It was also cogent to the extent that it provided a narrative and the entries were understood to have been made contemporaneously with the expenditure.
126. Thirdly the Tribunal agree that the Rights and Obligations accompanying the demand are in a smaller font than that prescribed by Regulation 3 of the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)). Therefore the Applicant is obliged to re-issue the demand with the Rights and Obligations in the correct font before the Service Charge is payable.
127. The final issue submitted by Counsel was that the Lease provided that a Leaseholder was only liable to pay the amount that the Landlord had "expended". This has already been dealt with specifically in relation to the heading of Utilities in these Reasons. But to express the point in more general terms the Tribunal determined that in making a balancing payment under the Lease the Respondent was only liable to pay a proportion of the amount that the Landlord had "expended" and not the amount for which the Landlord was liable. However, the contribution payable by the Respondent by way of Interim Service Charge based on the estimated costs for the next year would take into account the amount of any future liability.

Summary

128. The Tribunal determined the reasonable costs for the Service Charge incurred for the financial year ending 31st March 2011 to total **£225,205.34**, as detailed in the **Appendix**, which forms a part of these Reasons. Therefore the Tribunal determined that the appropriate proportion of those costs expended attributable to the Respondents' apartment is payable by the Applicant to the Respondent when properly demanded.


(JR Morris (Chair))

Date: 31st August 2012

Appendix

Item	Canonbury		M & C		Total		Comment
	Original cost	Determined Cost	Original Cost	Determined Cost	Original Cost	Determined Cost	
	£	£	£	£	£	£	
Customer services							
Security	349.00	0	5,201.00	4,689.11	5,550.00	4,689.11	Canonbury: £349 found to be a duplication Canonbury Accrual in M & C: £511.89 determined to be unreasonable because it was included in management fee Other costs determined to be reasonable
Cleaning	10,694.00	10,694.00	5,368.00	5,368.00	16,062	16,062.00	Determined to be reasonable
Porterage	11,748.00	11,748.00	3,791.00	3,791.00	15,539.00	15,539.00	Determined to be reasonable
Sub Totals	22,791.00	22,442.00	14,360.00	13,848.11	37,151.00	36,290.11	
Utilities							
Electricity	9,035.00	9,035.00	13,270.00	13,270.00	22,305.00	22,305.00	Determined to be reasonable
Gas	0	0	0	0	0	0	
Water & Sewage	27,000.00	27,000.00	24,330.00	24,330.00	51,330.00	51,330.00	Determined to be reasonable £7,000 "expended"
Refuse Collection	776.00	776.00	1,201.00	1,201.00	1,977.00	1,977.00	Determined to be reasonable
Sub Totals	36,811.00	36,811.00	38,801.00	38,801.00	75,612.00	75,612.00	
Insurance							
Buildings	14,473.00	14,473.00	18,845.00	18,845.00	33,318	33,318	Determined to be reasonable
Other	3,125.00	3,125.00	439.00	439.00	3,564	3,564	Determined to be reasonable
Sub Totals	17,598.00	17,598.00	19,284.00	19,284.00	36,882.00	36,882.00	
Plant							
Lift Servicing	0	0	780.00	780.00	780.00	780.00	Determined to be reasonable
Lift Repair	12,917.00	12,917.00	1,080.00	1,080.00	13,997.00	13,997.00	Determined to be reasonable
Lift Emergencies	0	0	0	0	0	0	
Electrical Repairs	10,697.00	10,697.00	3,660.00	3,660.00	14,357.00	14,357.00	Determined to be reasonable

General Repairs	118.00	0	11,387.00	9,733.15	11,505.00	9,733.15	Canonbury: £118.00 determined not to be reasonable M & C: £1,653.85 determined not to be reasonable (no evidence adduced)
Sub Totals	23,732.00	23,614.00	16,907.00	15,253.15	40,639	38,867.15	
Compliance							
Asbestos	8,666.00	8,666.00	0	0	8,666.00	8,666.00	Determined to be reasonable
Other Inspections	8,478.00	3,005.00	0	0	8,478.00	3,005.00	£985.00 preliminary asbestos survey determined not to be reasonable £4,488.00 Detailed Property Inspection and Dilapidations Report determined not to be reasonable (No report)
Sub Totals	17,144.00	11,671.00	0	0	17,144.00	11,671.00	
Administration							
Stationery & Postage	3,273.00	0	241.00	241.00	3,514.00	241.00	Canonbury: £3,273 determined not reasonable as included in the Management Fees
Bank Charges	288.00	288.00	18.00	18.00	306.00	306.00	Agreed to be reasonable
Meeting Facilities	300.00	300.00	0	0	300.00	300.00	Determined to be reasonable
Sub Totals	3,861.00	588.00	259.00	259.00	4,120.00	847.00	
Management Costs							
Management Fees	38,249.00	13,464.00	8,100.00	8,100.00	46,349.00	21,564.00	Canonbury: reasonable annual unit charged determined to be £144.00 (£120.00 per unit plus £24.00 VAT @ 20%) equating to £26,928 per annum = £13,464.00 for 6 months for period of agency M&C charge determined to be reasonable.

Management Admin Fees	6,423.00	0	0	0	6,423.00	0	£6,423.00 determined not reasonable as included in the Management Fees
Management Legal Costs	9,242.00	1,443.08	2,184.00	0	11,426.00	1,443.08	Canonbury: £7,798.92 determined not to be reasonable (no evidence adduced) M & C: £2,184 determined not to be reasonable as not allowable within the Lease
Accountant Fees	2,705.00	0	2,000.00	2,000.00	8,705.00	2,000.00	£2,705.00 determined not to be reasonable
Sub Totals	56,619.00	14,907.08	12,284.00	10,100.00	68,903.00	25,007.08	
Other Costs							
Sundries	0	0	29.00	29.00	29.00	29.00	Agreed to be reasonable
Sub Total	0	0	29.00	29.00	29.00	29.00	
Totals	178,556.00	127,631.08	101,924.00	97,574.26	280,480.00	225,205.34	