

9733



**FIRST – TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CHI/24UF/LIS/2012/0111-0114**

**Property** : **73/74/76 Mantle Close and 106 Williams Close, Rodney Court, Gosport**

**Applicant** : **Rodney Court (Gosport) Management Co Ltd**

**Representative** : **Richard Egleton of Counsel and Ms Jenni Cole of Zephyr Property Management Ltd**

**Respondent** : **Samual Oparah, in person assisted by Mrs Simon-Hart**

**Type of Application** : **Sections 20C and 27A Landlord & Tenant Act 1985 and Schedule 11 Part 1 of the Commonhold & Leasehold Reform Act 2002**

**Tribunal Members** : **Judge N Jutton and Mr D Lintott**

**Date and Venue of Hearing** : **4 December 2013, Tribunal Office, First Floor, Midland House, 1 Market Avenue, Chichester, PO19 1JU**

**Date of Decision** : **13 January 2014**

---

**DECISION**

---

1     **INTRODUCTION**

2     In the summer of 2012 the Applicant instituted four sets of County Court proceedings against the Respondent seeking to recover arrears of service charge payments, administration costs, legal fees and interest as follows:

    i       In respect of 76 Mantle Close, Rodney Court, Rowner, Gosport, Hampshire, Claim No 2YL04189.

    ii       In respect of 74 Mantle Close, Rodney Court, Rowner, Gosport, Hampshire, Claim No 2YK19143.

    iii       In respect of 73 Mantle Close, Rodney Court, Rowner, Gosport, Hampshire, Claim No 2YK17859.

    iv       In respect of 106 Williams Close, Rodney Court, Rowner, Gosport, Hampshire, Claim No 2YK18379.

3     By an Order dated 26 November 2012, the County Court consolidated all four cases and referred them to the Tribunal.

4     As regards the claims for arrears of service charges, the County Court proceedings are in respect of on account service charges and are based upon budgets for the years 2010, 2011 and 2012 produced by the Applicant's Managing Agents.

5     The Respondent made a separate application dated 21 March 2013 to the Tribunal to determine actual service charges payable for the years 2010, 2011 and 2012.

6     The matter first came before the Tribunal for hearing on 2 October 2013. The Tribunal referred the parties to a Decision made by the Leasehold Valuation Tribunal (as it then was) dated 6 January 2011 which addressed and determined the budgeted service charges for the year ending 31 December 2010. The Tribunal noted that the budgeted service charges claimed by the Applicant within the County Court proceedings for the year ending 31 December 2010 were in accordance with that Decision. In the circumstances, the Respondent agreed that this Tribunal did not need to address the budgeted service charges for the year 2010, those having already been determined by the previous Tribunal.

7     That accordingly the issues to be determined by the Tribunal were as follows:

    i       In relation to items of expenditure for the service charge years ending 31 December 2010 and 31 December 2011, whether each item disputed by the Respondent is permitted by the lease of the Property (which is in the same form for each of the Respondent's properties) (the lease) to be included in the service charge and if

so, whether the costs incurred for each item was reasonably incurred.

- ii In respect of the service charge years ending 31 December 2011 and 31 December 2012, whether payments demanded by the Applicant in respect of anticipated expenditure were reasonable (as pre-estimates of expenditure which it was anticipated would be incurred during each year).
- iii Whether the administration charges claimed by the Applicant and which are included within the said County Court proceedings were permitted to be recovered by the Applicant under the terms of the lease and if so, whether such charges were reasonably incurred.
- iv Whether, and, if so, to what extent the costs incurred by the Applicant in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

## 8 Documents

9 The documents before the Tribunal were:

- i A bundle of documents of 568 pages containing invoices in respect of items of expenditure incurred by the Applicant for the years 2010, 2011 and 2012 (the Bundle).
- ii A further bundle containing copies of the County Court proceedings, a Decision of the Leasehold Valuation Tribunal of 6 January 2011, a copy of the Lease of the Property (the Lease for each Property being in the same format), a Decision made by the Leasehold Valuation Tribunal dated 18 December 2009 in relation to service charges for the years 2003-2008 inclusive, and the Respondent's application to the Tribunal dated 21 March 2013.
- iii A further bundle containing service charge accounts for the years 2010 and 2011 to including budgets/estimated charges for the years 2010, 2011 and 2012, and a Statement made by the Respondent dated 7 May 2013.
- iv A further bundle of documents produced by the Applicant running to 83 pages and including the Applicant's Statement of Case dated 26 June 2013.
- v The Respondent's further Statement of Case received by the Tribunal on 16 August 2013.
- vi The Applicant's further Statement of Case dated 12 September 2013.

- vii Schedules of invoices prepared by the Respondent which were disputed by him for the years 2010, 2011 and 2012.
- viii A supplemental statement of Jenni Cole dated 28 November 2013.
- ix Written submissions made by the Applicant pursuant to directions made by the Tribunal on 4 December in respect of administration charges.
- x Written submissions made by the Respondent dated 11 December 2013 in respect of administration charges.

**10 The Inspection**

- 11 The Tribunal attended at the Premises on the morning of 2 October 2013. Present were the Respondent Mr Oparah and Counsel for the Applicant Mr Egleton.
- 12 The subject Properties in Mantle Close and Williams Close are part of a development of 83 flats and maisonettes in 5 blocks (the Building). The buildings are of frame construction with largely precast panel infill and cladding. It is understood that they were formerly Ministry of Defence properties for families of service personnel based at the nearby naval establishments in Gosport. They do not appear to be well constructed and there is evidence of ongoing works to repair roofs and apply external cladding.
- 13 The Respondent pointed out to the Tribunal a water stop tap outside of No.66 Mantle Close which he said the Applicant had claimed to have replaced but he believed there was no evidence of that.
- 14 The Respondent referred the Tribunal to the exterior of 93-107 Mantle Close and to the exterior of 1-20 Williams Close. He said that he had seen an invoice relating to works allegedly carried out to wood installed above the door of No.20 Williams Close but believed there was no evidence of work being carried out. He showed the Tribunal the exterior of 6 Williams Close and said that although the Applicant claimed to have carried out work above the bathroom window, there was no evidence of that.
- 15 He referred the Tribunal to 2 Williams Close and said that he understood that the Applicant was claiming for the costs of replacing a timber strip above the windows but he said there was no evidence of that. He made the same point in relation to No.12 Williams Close.

**16 The Law**

- 17 The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19, 20C and 27A of the Landlord & Tenant Act 1985 (the 1985 Act) and in Schedule 11 Part 1 of the Commonhold & Leasehold Reform Act 2002 (the 2002 Act). They provide as follows:

## The 1985 Act

- 18 (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, improvements 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 for which the service charge is payable.*
- (3) *For this purpose –*
- (a) *"costs" includes overheads, and*
  - (b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*
- 19 (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*
- 27A (1) *An application may be made to the appropriate 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 the appropriate 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.*
- 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 leasehold valuation tribunal, or the First-Tier 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 –.....*
  - (b)(a) *in the case of proceedings before the First-Tier Tribunal, to the Tribunal.*
- (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.*

**The 2002 Act**

- 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 the covenant or condition in his lease.*

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

- .....
- 5 (1) *An application may be made to the appropriate 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*

- .....
- (4) *No application under sub-paragraph (1) may be made in respect of the 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 or by having made any payment*

**18 The Lease**

19 Clause 6 of the Lease provides:

*“The Management Company and the Purchaser each severally covenant with the other and the Company in the terms specified in Part 1 of the Sixth Schedule”.*

20 Part 1 of the Sixth Schedule provides:

*“(1) The Management Company shall as soon as reasonably practicable after the first day of January in every year, prepare an estimate of the sums to be sent by it in such year on the matters specified in Part II of the Schedule and shall add thereto or deduct therefrom (as may be appropriate) any difference between:*

- (a) *the amount notified in accordance with paragraph 3 hereof; and*

(b) *the amount of the estimate prepared in respect of the previous year*

*and shall serve on the Purchaser notice of the total amount so calculated.*

(2) *The Purchaser shall pay to the Management Company a sum equal to the Specified Percentage of the total amount specified in such notice, such payment to be made in four equal instalments on the First day of March, the First day of June, the First day of September and the First day of December in each year. The first such instalment or a proportionate part thereof from the date hereof to the next payment date shall be paid on the date hereof.*

(3) *The Management Company shall keep an account of the sums spent by it in each year on the matters specified in Part II of this Schedule and shall as soon as practicable after the end of such year notify the Purchaser of the total amount of the sums so spent.*

The 'Specified Percentage' is stated to be 1.205%.

21 Part II of the 6<sup>th</sup> Schedule provides that the expenditure that may be recovered by means of the maintenance charge includes the sums spent by the Management Company as set out in the Fifth Schedule. The Fifth Schedule includes provisions for keeping the common parts in good state of repair and condition, the painting and cleaning of the common parts, the maintenance, tidying and cultivating of gardens within the common parts, the maintenance and replacing of lamps and electrical items in the common parts and insuring the property. The expression 'Common Parts' in the Lease is defined as "*the main structure of the Buildings on and over the said land shown edged green on plan 2 and all parts of the Development other than those comprised in the Leases*".

22 By clause 3 of the Lease the Purchaser covenants with the Company and the Management Company in the terms specified in the Third Schedule and clause 10 of the Third Schedule provides:

*"To pay all sums of any nature assessed or charged at any time upon the Property or the Company, the Management Company or the Purchaser in respect thereof".*

23 **The Service Charges**

24 Each item of service charges in respect of the actual charges for the years 2010 and 2011 and the budgeted charges for the years 2011 and 2012 was addressed in turn.

25 **Accounts**

26 **The Applicant's Case**



- 27 The actual charges for 2010 are £354 inclusive of VAT. Ms Cole explained that this was the charge for the accountants to produce the annual service charge accounts. That she would periodically check with other firms of accountants to ensure that the fees being charged were competitive. The Managing Agents were also able to compare these charges with those incurred in respect of other properties they managed and as such were satisfied that these charges were in their view reasonable.
- 28 The actual charges for 2011 are £400 inclusive of VAT. Ms Cole explained that periodically professional fees do increase. She also believed that the accounts for this year were more involved and thus the accountant was put to more work in producing the accounts.
- 29 The budget figure for 2011 is £400. Ms Cole submitted this was a reasonable budget figure in light of the actual figure of £400 for the year.
- 30 Ms Cole said that the budget figure for 2012 is £600. She was unable to explain why there had been an increase. On reflection, she felt that £400 would be reasonable. She did not have to hand the actual figure for the year 2012. She anticipated that this may have increased to say around £450.

31 **The Respondent's Case**

- 32 Mr Oparah agreed that the actual charges for 2010 and 2011 were reasonable. He agreed that the budget charge for 2011 was reasonable. As to the budget charge for 2012 Mr Oparah said he felt that the sum of £400 would be reasonable.

33 **The Tribunal's Decision**

- 34 The actual charges for 2010 and 2011 and the budget charge for 2011 are not disputed by the Respondent. The budget charge for 2012 represents an increase of 50% which Ms Cole is unable to explain. She reasonably suggested that a figure of £400 might be reasonable or possibly an increased figure of £450. As a budgeted figure, in the view of the Tribunal, it would be reasonable to expect to provide for some form of increase in the figure and as such the Tribunal determines that a figure of £450 would be reasonable.

- 35 Accordingly the Tribunal determines that the sums payable by the Respondent are as follows:

Actual 2010	354.00
Actual 2011	400.00
Budget 2011	400.00
Budget 2012	450.00

36 **Annual Return**

37 **The Applicant's Case**

38 Ms Cole pointed out that the actual charge for 2010 was 0. The actual figure for 2011 was £16.80. The budget figure for 2011 was £30. She explained that this had been based upon the anticipated cost of filing the Company Returns by paper. In the event, the Return was filed online which was cheaper. However she submitted this was a reasonable figure as an estimated budget figure given at the time it was anticipated that the Return would be filed on paper. The budget figure for 2012 was £20. Ms Cole explained that as a budget figure, she had simply rounded this up from the previous year's figure of £16.80.

39 **The Respondent's Case**

40 Mr Oparah suggested that the fact that there was no charge for 2010 was indicative of poor management. He accepted that the actual figure for 2011 and the budget figures for 2011 and 2012 were reasonable

41 **The Tribunal's Decision**

42 The Tribunal determines that the sums payable are as follows:

Actual 2010	0.00
Actual 2011	16.80
Budget 2011	30.00
Budget 2012	20.00

43 **Professional Fees**

44 **The Applicant's Case**

45 Ms Cole explained that this item was to cover professional fees incurred in relation to the management, repair and maintenance of the Building including surveyor's charges and legal fees if the legal fees could not be recovered as administration fees. In the event the figure for 2010 was zero.

46 Ms Cole said that the actual figure for 2011 was £1636.26. She was unable to explain how exactly this was made up. She said that part of these fees in the sum of £850 related to administration charges which had been disallowed by a previous Tribunal. That as the Applicant had been unable to recover this sum as an administration fee from the Respondent, it had sought instead to recover it as an item of service charge expenditure. Ms Cole also explained that part of this item related to solicitors' fees of £300 incurred in relation to the adoption of estate roads by the local authority. As to the balance, she was unable to explain how that was made up but believed it may relate to surveyor's fees.

47 Ms Cole explained that the budget figure for 2011 was £500. She said that whilst she appreciated that the actual figure for the previous year had been zero, it had been felt prudent to include a figure for fees that might be incurred.

48 The budget figure for 2012 was £1000. Ms Cole explained that this was based on the actual previous year's expenditure and that in the circumstances it had been decided that it would be reasonable to increase the budget accordingly.

#### 49 **The Respondent's Case**

50 The actual figure for 2010 was not disputed. As to the actual figure for 2011 Mr Oparah questioned whether it was reasonable or proper for the Applicant having failed to recover £850 as administration charges before a previous Tribunal to in turn seek to recover the same sum as part of the service charges. He felt that would be inappropriate. He said he had no views as regards the sum of £300 incurred in relation to solicitor's charges and if the balance related to surveyor's fees he agreed that would be reasonable if the fees had been necessarily incurred.

51 As regards the budget figure for 2011 Mr Oparah said he had no issue with this. He agreed that the sum was reasonable.

52 As to the budget figure for 2012 Mr Oparah said that by reference to his Statement of Case of 14 August 2013, that he did not believe that this should be part of the service charge at all. That because he said of what he believed to be poor management on the part of the Managing Agents. However, if a figure was to be paid he felt a sum of £500 would be reasonable.

#### 53 **The Tribunal's Decision**

54 A previous Tribunal had reduced a figure claimed by the Applicant for administration charges by £850 on the basis that it had determined that the charges claimed were unreasonably high. Whether the Applicant seeks to recover these monies as an administration charge or as a service charge does not alter the fact that these were the same monies which had already been disallowed by a previous Tribunal as unreasonable. The Tribunal agrees with Mr Oparah that in the circumstances it is wrong for the Applicant to seek to recover the same sum as a service charge and as such this sum should be disallowed.

55 As to the sum of £300 incurred in relation to solicitors' charges, those related to works which would appear to have been to the benefit of the Property and the lessees. They are in the view of the Tribunal reasonable.

56 The budget figure for 2012 is £1000. If the said deduction of £850 is applied then the actual figure for 2011 is £786.26. Bearing in mind that a budget figure is no more than an estimate of anticipated expense, the Tribunal does not regard a budget figure of £1000 for 2012 as unreasonable in light of the adjusted actual figure for the previous year.

57 The Tribunal accordingly determines that the sums payable are as follows:

Actual 2010	0.00
Actual 2011	786.26
Budget 2011	500.00
Budget 2012	1000.00

58 **Buildings Insurance**

59 **The Applicant's Case**

60 The actual figure for 2010 is £4860.05. Ms Cole explained this was arranged by the directors of the Management Company. That the directors instructed a broker to act for them. That the broker tested the market to obtain the best price. She also considered that the figure was reasonable by reference to her experience of managing other properties. She explained that historically the cost of insurance had been substantially higher in the region of £40,000 a year.

61 The actual figure for 2011 is £5955.14. Again, Ms Cole said that this was placed by the directors. The reason for the increase she believed was because there had been a large insurance claim in relation to a burst water tank which had caused a flood. The cover had been arranged through the offices of a broker who had tested the market.

62 Ms Cole explained that the budget figure for 2011 was £5500 which was based upon the previous year's premium plus an allowance for what she described as 'index linking'.

63 Ms Cole said that the budget figure for 2012 was £7500. She believed that the reason why it had risen was because of historic claims. In the event, the actual figure for 2012 was now known and she referred to page 457 in the Bundle which was a letter from a firm called DIB Insurance Ltd advising that the renewal premium for the year commencing 15 February 2012 was £5898. She explained that the budget figure had been put to the directors of the Management Company and that it had been left to them to contact their brokers to seek advice as to whether or not it was a reasonable figure. She did not know whether or not they had done that. She confirmed that no commission was received by the directors or the Managing Agents for arranging the insurance.

64 **The Respondent's Case**

65 Mr Oparah accepted there had been a dramatic reduction in the amount of the premium from previous years. The Tribunal explained to him that it had to consider whether or not the premium that had been charged had been reasonably incurred, that did not necessarily mean that the

premium would be the cheapest available. Mr Oparah said that he accepted that the premium for 2010 was reasonable.

66 Mr Oparah said he felt that the actual figure for 2011 was too high. He handed up a form of quote that he had obtained from a company called Lansdown Insurance Brokers dated 15 November 2013. A copy was passed to the Applicant. Mr Egleton confirmed that the Applicant did not object to its late production. The quote was in relation to insurance commencing in February 2014 and depending upon the amount of excess that had been applied, the premium proposed ranged from £4903.98 to £5433.77. It was for a declared buildings value of £8m. Mr Oparah accepted that in obtaining the quote he had been unable to produce details of the claims history for the Building to his broker and that therefore the quote did not take that into account.

67 As to the budget figure for 2011 Mr Oparah reminded the Tribunal that the previous year's figure had been £4860.05 and as such he felt a figure of £5000 would be reasonable.

68 As regards the budget figure for 2012 Mr Oparah said he felt that the estimate was high. It was not a reasonable figure based upon the actual figure for the year. That the Applicant could have either itself or through its Managing Agents consulted with a broker before producing an estimated figure.

#### 69 **The Tribunal's Decision**

70 Mr Oparah accepts that the premium for 2010 was reasonable.

71 His view is that the actual figure for 2011 is too high. The actual figure was £5955.14. Mr Oparah produced an insurance quote for the year commencing February 2014 which provides for premiums of between £4903.98 and £5433.77. Mr Oparah reasonably and fairly accepted that the quote he had obtained was not necessarily on a like for like basis.

72 To determine whether or not a buildings insurance premium is reasonable, the Tribunal must have regard to whether or not it has been reasonably incurred. That does not necessarily mean that the premium should be the cheapest that can be obtained. There was no evidence before the Tribunal to suggest that the insurance premium incurred for 2011 had not been reasonably incurred. From the Tribunal's own knowledge and experience, the premium appears to be reasonable.

73 As to the budget figure for the year 2011, the figure was £5500. In the event the actual figure had been more; £5955.14. Given that a budget figure is no more than an estimate of anticipated expense, even if regard were had to the figures produced by Mr Oparah, the Tribunal finds that the budget figure for 2011 is reasonable.

74 As regards the budget figure for 2012, that figure is £7500. It is now known that the actual premium for the year commencing 15 February 2012 was £5898. The Tribunal has to consider whether at the time that

the budget was set it was a reasonable budget figure, a reasonable pre-estimate of the costs that would be incurred for buildings insurance. It was in the view of the Tribunal reasonable for the Applicant to take the view, given there had been a number of historic insurance claims that the insurance premium would rise. In the circumstances in the view of the Tribunal a budget figure of £7500 was reasonable.

75 Accordingly, the Tribunal determines that the sums payable are as follows:

Actual 2010	4860.05
Actual 2011	5955.14
Budget 2011	5500.00
Budget 2012	7500.00

76 **Grounds Maintenance**

77 **The Applicant's Case**

78 Ms Cole said that the actual figure for 2010 is £1625. She explained that a specification for grounds maintenance was put out to tender. In the event, a company called Lyndens had been instructed, the owners of which were two lessees. She believed that the work had last been put out to tender in 2010. The work included cutting the grass, sweeping the pathways and parking areas, picking up litter and spraying hard surfaces. That the directors advised Lyndens as and when the grass required cutting. There were four areas of grass to cut. A charge of £125 was incurred each time the grass was cut.

79 The actual figure for 2011 is £2125. Ms Cole explained that the same company was still employed who worked very closely with the directors of the Management Company. She said because of weather conditions the need to cut the grass increased in 2011 over that of 2010. She referred to an invoice at page 400 in the Bundle which suggests that the grass had last been cut in 2011 on 24 October and 4 November. She said that the Managing Agents carried out periodic inspections of the site both with and without the directors of the Management Company accompanied by the contractors. That happened once or twice a month. It helped to decide what work was required.

80 The budget figure for 2011 is £3000. Ms Cole explained this had been based upon the 2010 budget. That it had been felt that the actual figure for 2010 was rather low and that to properly maintain the grounds, more work was required hence the increase in the budget.

81 The budget figure for 2012 is £2500 which Ms Cole explained was based upon the actual figure for 2011 of just under £2200. That this had been rounded up because it was her practice to err on the side of caution in such matters.

## **82 The Respondent's Case**

- 83 Mr Oparah felt that the grass was cut too regularly. He referred to invoices in relation inter alia to grass cutting at pages 179 and 170 of the Bundle. He accepted that a charge of £125 to cut the grass was reasonable but felt that it was not necessary in the summer months to cut the grass every couple of weeks or to cut the grass at all during the winter months.
- 84 The Tribunal pointed out to Mr Oparah that if the grass was cut twice a month over a 6 month period during the summer, that would equate to a total cost of £1500. Against an actual total expense in 2011 of £2125, this would leave a relatively small sum to cover the balance of the work. Mr Oparah said his concern was that grass in his view did not grow much over a 2 week period and that it was reasonable to cut just once a month. He believed that sweeping of the pathways and parking areas had not been done as often as they should be. On reflection, he felt that the figure of £2125 was not unreasonable.
- 85 As regards the budget figure for 2011 Mr Oparah said he did not understand why it had been anticipated that more work would be required that year. That when compared to the actual figure for the previous year of £1625 he felt that the budget figure was too high. He felt a more reasonable figure would be £2000.
- 86 As to the budget figure for 2012 Mr Oparah felt that the nature of the work hadn't changed and that in his view a figure of £2200 was reasonable.

## **87 The Tribunal's Decision**

- 88 The Tribunal does not accept Mr Oparah's submission that the grass had been cut too regularly. As and when the grass was cut, was a decision to be made by the Applicant through its Managing Agents and Contractors. In any event, cutting the grass once every two weeks in the summer does not appear to the Tribunal to be unreasonable. Mr Oparah accepted that the cost incurred each time to cut the grass of £125 was reasonable.
- 89 Mr Oparah also accepted that the actual charge of £2155 incurred in 2011 was reasonable. In the view of the Tribunal, there is nothing to suggest that the figure of £1625 incurred in 2010 was unreasonable. The fact that it was lower than that incurred in the following year may, as Ms Cole thought, have been because there had been less need to cut the grass so often in that year.
- 90 The budget figure for 2011 of £3000 is in the view of the Tribunal on the high side but not unreasonable. Ms Cole explained that it had been felt that the actual figure in 2010 was low and that in order to properly maintain the grounds, more monies would need to be spent hence the increase in the budget. The Tribunal does not accept Mr Oparah's suggestion that a more reasonable figure would have been £2000 not

least given that the actual figure, which Mr Oparah accepts was reasonable, was more than that, £2125.

91 As to the budget figure for 2012, that is £2500 which in light of the actual figure for the previous year of £2125 was not in the view of the Tribunal an unreasonable pre-estimate or budget figure for the cost that it was anticipated might be incurred.

92 Accordingly, the Tribunal determines that the sums payable are as follows:

Actual 2010	1625.00
Actual 2011	2125.00
Budget 2011	3000.00
Budget 2012	2500.00

93 **Repairs and Maintenance**

94 **The Applicant's Case**

95 The actual figure for 2010 is £5486.73. Ms Cole explained that this related to general repairs and maintenance including unblocking drains, repairing buildings, removing rubbish and so forth.

96 The actual figure for 2011 is £8497.95. Ms Cole explained that there were five blocks in differing states of repair and that there was a substantial amount of repair and maintenance required not least due to the nature of the construction.

97 The budget figure for 2011 is £11,000 which Ms Cole explained was no more than an estimate. That it had been felt that the actual figure for 2010 was unusually low and that the cost of this item would rise dramatically during the year 2011.

98 The budget figure for 2012 is £10,000. Ms Cole explained that it had been anticipated that expenditure for 2012 would be £9000. It was felt that £11,000 would be too much and therefore a prudent figure as an estimate to cover the anticipated figure was £10,000. She explained that because historically the insurance premium had been so high (in the region of £40,000) that she believed that the previous managing agents had had difficulty in practice in obtaining sufficient funds from lessees to cover ongoing repairs and maintenance. That as such, there had been some historic neglect. Substantial works were therefore required. That a reduction in the insurance premium had the effect of 'releasing' monies in the accounts to pay for those repairs.

99 **The Respondent's Case**

100 Mr Oparah referred to a number of invoices in the Bundle.



101 **Page 14**

102 This is an invoice from a company called Willow Roofing & Building Co dated 13 January 2010 for £64.63 and relates to works carried out at 12 Williams Close described as "*all works completed for the re-siliconing above window to stop leak and the re-fixing of wood to the front of property*". Mr Oparah said he believed this was what he described as 'private work'; work carried out to this particular flat and not work which properly should be recovered as part of the service charge.

103 Miss Cole said that the work arose following the ingress of water due to a failure in the fabric of the Building. It was not a repair to a window but to the structure or fabric of the building above the window.

104 **Page 34**

105 This is an invoice from a company called Mactronic Ltd Electrical Services for the cost of fitting a handset to the door entry system at 104 Williams Close in the sum of £41.13. Mr Oparah regarded this as 'private work' which he believed was not recoverable as part of the service charge.

106 Mr Egleton said that the work related to the entry phone system. This regulates who can enter the Building and thereafter individual properties. It is a security issue. The handset allows a gate in the common parts to be opened to allow access. As such, it is part of a system which is for the benefit of all lessees and which forms part of the fabric of the Building as opposed to being part of an individual demise.

107 **Page 96**

108 This is another invoice from Willow Roofing & Building Co dated 22 April 2010 for £170.37 relating to works at 4 Williams Close described as "*all works completed as stated on previous estimate for the removal of rotten timber and renewing and applying paint where required*". Mr Oparah said that he felt this was not reasonable. The quality of work was poor and should be covered by some form of warranty.

109 Ms Cole said this was not a matter of the contractors putting right works previously carried out by them. To putting right faulty work. It was not work therefore which they should have carried out for nothing under the terms of some form of warranty or guarantee.

110 **Page 97**

111 This is another invoice from Willow Roofing & Building Co Ltd dated 16 April 2010 for £111.62 in relation to works at 71 Mantle Close described as "*all works completed as stated on previous estimate for the silicone required around cladding*". Mr Oparah made the same points as he had in relation to page 96. He felt a reasonable figure for these works would be £40 or £45. Ms Cole made the same points as she made in relation to page 96.

112 **Page 191**

113 Another invoice from Willow Roofing & Building Co Ltd dated 28 October 2010 for £82.25. It relates to works at 95 Williams Close described as *“All works completed for the rectifying of water ingress to kitchen area of above property. Works rectified; removed rotten wood over top of kitchen window, fitted new UPVC architrave trim, sealed with silicone and also sealed around the door threshold of the flat directly above the kitchen window”*. Again, Mr Oparah felt these were what he described as ‘private works’ and not recoverable as part of the service charge. Ms Cole said these were external works, they were not works to the doors or windows themselves. They were works that were carried out to the fabric or structure of the Building.

114 **Page 204**

115 This is an invoice from a company called J&J Plastering dated 12 November 2010 for £1490 and appears to be for internal decoration works to 107 Williams Close. Mr Oparah said these appeared to ‘private works’ not covered by the service charge. Works on the face of it to decorate the interior of a flat. Ms Cole said that the works arose because of water ingress due to a failure in relation to the structure or fabric of the Building. That as such, it was felt reasonable that these works be paid for as part of the service charge. That a decision had been made not to make an insurance claim because of the adverse effect that would have upon the insurance premium.

116 **Page 283**

117 This is an invoice from Dyno-Rod dated 14 March 2011 which is for the costs of an engineer attending site to investigate a blocked sewer. The invoice indicates that the engineer found that the main sewer was blocked and that the Applicant was advised to liaise with Southern Water who subsequently attended and cleared the main sewer. The invoice is for a total of £996. Mr Oparah suggested that a blockage in the main sewer was something which was the responsibility of Southern Water, that this was a fee which the Applicant should seek to recover from Southern Water. He accepted that it was reasonable for the Applicant to have instructed Dyno-Rod to investigate and to pay a fee for doing so.

118 **Page 281**

119 This is another invoice from Willow Roofing & Building Co Ltd dated 25 March 2011 for £468 headed ‘Camera Survey Williams Close’. Mr Oparah said he did not know what this was for. Ms Cole said that the flat roofs at the Building have a drainage outlet from which water ingress into flats had been reported by lessees. That it had been necessary to arrange for a camera to be sent down the pipe to find the reason for the blockage or breakage.

120 **Page 280**

121 This is an invoice from Now Professional Property Management dated 21 March 2011 for £775. Again Mr Oparah wondered what it was for. Ms Cole explained this was an electrical item which should have been recorded under a different heading, that of 'electrical repairs'. That it related to the fitting of sensors for lighting of common areas in all 5 blocks which would come on or off automatically at dusk and dawn.

122 **Page 294**

123 This is another invoice from Now Professional Property Management dated 29 March 2011 for £60 relating to electrical works at 1-16 Mantle Close. Mr Oparah said that he simply felt it was too much for the work carried out. It was a charge of 2 hours labour at £30 per hour. Ms Cole explained this was part of the works which fell under the heading of 'electrical repairs'.

124 **Page 341**

125 An invoice dated 25 July 2011 again for electrical works for which labour had been charged at a cost of £30 per hour for 4 hours' work. Mr Oparah said he felt simply that the figure was too high. Ms Cole again explained that it related to electrical repairs. She did not think a figure of £30 per hour for an electrician was too high.

126 As to the budget figure for 2011 Mr Oparah said he felt the figure was too high when compared with 2010. He felt that a figure of £8000 would be reasonable.

127 As regards the budget figure for 2012 Mr Oparah had no further comments to make further to those made in respect of the previous year.

128 **The Tribunal's Decision**

129 Mr Oparah referred to a number of invoices in the bundle which are listed above. The Tribunal has considered those invoices and submissions made by both parties in respect thereof.

130 The invoice of Willow Roofing & Building Co dated 13 January 2010 for £64.63 at page 14, Mr Oparah suggested that related to work within the demise of a flat (what he described as 'private work') and therefore not recoverable as part of the service charge. Ms Cole said that the work had been necessitated by the ingress of water which was due to a failure in the fabric or structure of the Building. That the work carried out was not a repair to the window to the flat, but to the structure above the window.

131 There was no evidence before the Tribunal to suggest that the work was to the window or arose due to a failure of the window. The work of re-siliconing above a window and the fixing of wood to the front of a property is not work within the demise (as defined in the lease) but is work to the structure or fabric of the Building (defined as 'Common Parts' in the lease) and thus recoverable as a service charge expense.

- 132 As to the invoice at page 34 in respect of the fitting of a handset to a door entry system at 104 Williams Close for £41.13, the Tribunal understands Mr Oparah's concern that this might amount to 'private work' given that the handset fitted was specific to this particular flat. However the Tribunal accepts Mr Egleton's submission that the handset forms part of an entry phone system fitted to the Building which is for the benefit of all lessees. That, when viewed as a whole, the system formed part of the fabric of the Building as opposed to being part of an individual demise.
- 133 The invoice at page 96 also from Willow Roofing & Building Co Ltd for £170.37 was challenged by Mr Oparah on the basis that he believed this was work that should be covered by some form of warranty. The Tribunal accepts Ms Cole's explanation that the work was not to put right previous faulty workmanship, and was not work covered by a form of warranty or guarantee.
- 134 The invoice at page 97 is another invoice from Willow Roofing & Building Co Ltd dated 16 April 2010 for £111.62. It relates to works to 71 Mantle Close for 'silicone required around cladding'. For the reasons stated, the Tribunal accepts that this is work to the fabric or structure of the Building and not to the individual demise. There was no evidence before the Tribunal to suggest that the figure charged was unreasonable.
- 135 The invoice at page 191 is also from Willow Roofing & Building Co Ltd dated 28 October 2010 for £82.25. It relates to work to rectify damage caused by water ingress. The works are described in the invoice. The Tribunal accepts the Applicant's submission that these were works not to doors and windows, but to the fabric of the Building around doors and windows. As such, there are works which properly are recoverable as service charge items.
- 136 Page 204 is an invoice from a plastering company for £1490 for internal decoration works to 107 Williams Close. Again the Tribunal understands Mr Oparah's concern that on the face of it, these appear to be works relating to a particular demise. However the Tribunal accepts Ms Cole's explanation that the works were necessitated by the ingress of water caused by a failure in the structural or fabric of the Building. The damage caused was consequential upon that failure. Further, that it was reasonable for the Applicant to decide not to make a claim against the buildings insurance policy to cover the cost of the works because of the adverse effect it was anticipated that would have upon future insurance premiums. That was a reasonable management decision for the Applicant through its Managing Agents to make.
- 137 Page 238 is an invoice from DynoRod dated 14 March 2011 for £996. Mr Oparah accepted that it was reasonable for the Applicant to instruct DynoRod to investigate the blockage and to pay a fee for doing so. It was Mr Oparah's case that in turn however the Applicant should seek to recover the cost that it had thereby incurred from Southern Water because in the event the blockage was discovered to be in the main sewer which he believed was the responsibility of Southern Water.

- 138 Whether or not the Applicant should seek to recover these monies from Southern Water is a separate issue. The question for the Tribunal to determine is whether or not these fees were reasonably incurred and Mr Oparah accepts that they were.
- 139 The invoice at page 281 is another invoice from Willow Roofing & Building Co Ltd. It is dated 25 March 2011 for £468. Mr Oparah had simply asked for an explanation for these works which Ms Cole had given.
- 140 The invoice at page 280 is from Now Professional Property Management dated 21 March 2011 for £775. Again at the request of Mr Oparah, Ms Cole had explained the invoice.
- 141 The invoices at pages 294 and 341 both relate to charges for electrical works. Mr Oparah challenged these upon the basis he felt that the hourly rate claimed of £30 was unreasonable. In the view of the Tribunal, and in the absence of any evidence to the contrary, and relying upon the Tribunal's own experience and expertise, a figure of £30 per hour for an electrician to carry out such works is not unreasonable.
- 142 The budget figure for 2011 was £11,000. Mr Oparah suggested a figure of £8000 would be reasonable. The Tribunal notes that the actual figure was £8497.95. The Tribunal accepts Ms Cole's explanation that the budget figure was significantly increased above the actual figure for the previous year because it was anticipated that the cost of repairs and maintenance would rise dramatically in the year 2011. The Tribunal accepts Ms Cole's submission that the figure is no more and can be no more than an estimate. The Tribunal bears in mind from its inspection that significant works of repair and maintenance have been carried out and undoubtedly still need to be carried out. That no doubt in part reflects on the nature of the construction of the Building. That such works benefit the lessees and the investment that each makes in their own property. In the circumstances, the Tribunal accepts that a figure of £11,000 was a reasonable pre-estimate or budget figure for 2011.
- 143 The budget figure for 2012 was £10,000, a reduction on the budget figure for the previous year and some £1500 more than the actual figure for 2011. In the view of the Tribunal, by reference to the actual figure in the previous year and the anticipated further works that will be carried out to the Building, this is a reasonable budget figure.
- 144 Accordingly, the Tribunal determines that the sums payable are as follows:

Actual 2010	5486.73
Actual 2011	8497.95
Budget 2011	11,000.00
Budget 2012	10,000.00

145 **Electrical Repairs**

146 **The Applicant's Case**

147 The actual figure for 2010 is zero. The actual figure for 2011 is £483. Ms Cole felt this was reasonable. The budget figure for 2011 is zero. The reason was she explained that in 2011 this heading had been moved to a different category and included within general repairs and maintenance. It was one of the reasons why the repairs and maintenance figure had increased for that year. The budget figure for 2012 was zero for the same reasons.

148 **The Respondent's Case**

149 There was no objection by Mr Oparah to the actual figure for 2010. As to the actual figure for 2011 Mr Oparah referred to page 399. This is an invoice dated 31 October 2011 for £173 in the name of Robert Franckeiss. It is for replacing defective lighting with new. There are 5 hours of labour claimed at £30 per hour. Mr Oparah felt this was excessive.

150 Ms Cole explained that this was the cost of checking all the lights in the common areas in five blocks of flats. To carrying out replacements where necessary. That as such, in her view this was not an unreasonable figure nor did she believe that £30 per hour was unreasonable.

151 Mr Oparah referred to pages 341 and 408. Both of these are invoices for electrical works, the first dated 25 July 2011 and the second 3 November 2011 in the name of Robert Franckeiss. Both included labour charges at £30 per hour. Mr Oparah simply felt that there was an element of duplication of works but he was not able to explain the nature of that duplication.

152 Mr Oparah accepted the reason why the budget figures for 2011 and 2012 were put at zero.

153 **The Tribunal's Decision**

154 The actual figure for 2010 and the budget figures for 2011 and 2012 were all zero. The actual figure for 2011 was £483.

155 Mr Oparah referred to an invoice at page 399 which he felt was excessive. It was for 5 hours of labour at £30 per hour which Ms Cole explained was the cost of checking all the lights in the common areas of 5 blocks of flats. The Tribunal accepts Ms Cole's submission that in the circumstances the figure is reasonable.

156 Mr Oparah also referred to invoices at pages 341 and 408 which he suggested were duplication of work. He was not able to explain the

duplication. The Tribunal has examined the invoices and there is no evidence of duplication.

157 Accordingly the Tribunal determines that the sums payable are as follows:

Actual 2010	0.00
Actual 2011	483.00
Budget 2011	0.00
Budget 2012	0.00

158 **Management Fees**

159 **The Applicant's Case**

160 The actual figure for 2010 is £8777.24. Ms Cole said that equated to £105.75 per flat inclusive of VAT or £90 per flat net of VAT. In her view that was a reasonable figure.

161 The actual figure for 2011 is £8,917.31. This represented a slight increase from the previous year. Ms Cole felt it was reasonable.

162 The budget figures for 2011 and 2012 are £8964 and £8860 respectively. Ms Cole felt that these were reasonable figures given the nature of the property managed.

163 **The Respondent's Case**

164 Mr Oparah felt that a figure of £80 would be reasonable. He said he had obtained a comparable figure in relation to the Grange Village Estate which was in the same neighbourhood. He said that this was a similar development and the fees there equated to £74-75 per flat. That was why he felt a figure of £80 would be reasonable.

165 **The Tribunal's Decision**

166 The Tribunal notes that the actual figure for 2010 equates to £90 per flat net of VAT. The actual figure for 2011 is similar. The budget figure for 2011 is only slightly more than the actual figure for that year and the budget figure for 2012 is a slight reduction.

167 The Tribunal does not accept Mr Oparah's submission that a figure of £80 per flat would be reasonable. It may well be the case that lessees at the Grange Village Estate are paying £74-75 each. It does not however follow that a figure that equates to approximately £90 per flat for this property is necessarily unreasonable. In the experience of the Tribunal, a figure net of VAT of £90 per flat for managing a property of this nature is not unreasonable.

168 Accordingly, the Tribunal determines that the sums payable are:

Actual 2010	8777.24
Actual 2011	8917.31
Budget 2011	8964.00
Budget 2012	8860.00

169 **Communal Electricity**

170 **The Applicant's Case**

171 Ms Cole explained that most blocks have two suppliers for common areas and there is also the cost of street lighting. When the contracts for the supply of electricity are due for renewal, the Managing Agents receive a notice from the supplier. There is then usually a negotiation as to price and the Applicant agrees a fixed price contract so that the price is not affected by fluctuations in the market rate. The Managing Agents also have regard to the cost incurred for other properties that they manage so as to make sure as far as they reasonably can that the amount charged is reasonable.

172 **The Respondent's Case**

173 Mr Oparah said that he felt that the charges were uncompetitive. One supplier was British Gas which he said that everybody knew were expensive. He also suggested that everybody knew that Southern Electric were expensive. He accepted that he had no evidence to put before the Tribunal by way of comparable evidence to support an argument that the charges were unreasonable. He said he was content to leave the question as to reasonableness in the hands of the expertise of the Tribunal. He made reference to some entries for credits in the invoices. Ms Cole explained that the meters historically had been in meter cupboards where access was difficult. That as such, some invoices had been based on estimated readings. When actual readings were taken, there was sometimes an adjustment made in the form of a credit.

174 **The Tribunal's Decision**

175 Mr Oparah's submission was simply that the two suppliers involved, British Gas and Southern Electric, were known to be expensive and uncompetitive. He produced no evidence to support that contention. He produced no comparable evidence.

176 In the view of the Tribunal, there was no evidence before it to suggest that the charges were unreasonable. Further, in the knowledge and



experience of the Tribunal, the figures do not appear to be unreasonable.

177 Accordingly, the Tribunal determines that the sums payable are:

Actual 2010	2248.24
Actual 2011	1021.66
Budget 2011	2500.00
Budget 2012	2000.00

178 **Major Works**

179 **The Applicant's Case**

180 The actual figure for 2010 is £29,574.76. Ms Cole explained that this related to roof repairs and to works of internal decoration to internal stairwells. Some of these works had been subject to a consultation process pursuant to section 20 of the Landlord & Tenant Act 1985.

181 The actual figure for 2011 is £61,465.80. Ms Cole explained this related to ongoing roof works and works of cladding to the exterior of the Building.

182 The budget figure for 2011 is £40,000. Ms Cole said that there had been an 'under spend' the previous year. That the figure included anticipated professional fees such as surveyor's fees. Surveyor's fees for providing specifications and supervising the work. That surveyor's fees for drawings and specifications were 10% of the cost of construction. That with works of this nature tenders were sent out to several contractors, at least two possibly three.

183 The budget figure for 2012 is £40,000. Ms Cole explained that this had been kept the same as the previous year's budget because there was still further cladding work to be carried out.

184 **The Respondent's Case**

185 Mr Oparah's case was simply that these were unreasonable figures. He said he was content to rely upon the Tribunal's expertise in that regard. He was not able to produce any comparable evidence to support his argument.

186 As to the budget figure for 2012 Mr Oparah referred to page 472. This is an invoice from Richardson Decorating Contractors Ltd dated 29 February 2012 for £4512.58 described as carrying out decoration to four stairwells. That equated to a cost of £940.12 per stairwell plus VAT. Mr Oparah felt that the invoice was excessive. He was not able to produce any comparable evidence to support his argument nor could he

say what he felt a reasonable figure would be. However, he felt that based on the actual figure for 2011, a budget of £40,000 was reasonable.

187 **The Tribunal's Decision**

188 It was clear to the Tribunal that this was a building to which major works had been carried out and which continued to be carried out. The nature and structure of the Building and its condition necessitated major works.

189 Mr Oparah challenged the figures simply upon the basis that he felt they were unreasonable. He was not able to produce any evidence to support his submission.

190 He made reference to an invoice at page 472 from a firm called Richardson Decorating Contractors Ltd dated 29 February 2012 for £4512.58. This was for carrying out decoration works to 4 stairwells. The Tribunal viewed one of the stairwells during its inspection. The invoice equates to a cost of £940.12 per stairwell, which in the view of the Tribunal is not an unreasonable sum for the work involved.

191 Accordingly the Tribunal determines that the sums payable are as follows:

Actual 2010	29,574.76
Actual 2011	61,465.80
Budget 2011	40,000.00
Budget 2012	40,000.00

192 **Cleaning**

193 **The Applicant's Case**

194 Ms Cole explained that as with the grounds maintenance, a specification is drawn up and the work put out to tender. In fact the work is carried out by the same contractors as the gardening works, Lydens Cleaning Services.

195 **The Respondent's Case**

196 Mr Oparah simply said he felt that the cleaning was poor. He said he relied upon the same arguments as he had put forward in relation to the grounds maintenance item.

197 **The Tribunals Decision**

198 In the view of the Tribunal, the figures claimed were not unreasonable. Mr Oparah did not produce any evidence in the form of comparable figures or suggest what he felt a reasonable figure would be.

199 Accordingly the Tribunal determines that the sums payable are as follows:

Actual 2010	3150.00
Actual 2011	3575.00
Budget 2011	3200.00
Budget 2012	3500.00

200 **Health and Safety**

201 Mr Oparah did not dispute this item.

202 **The Tribunals Decision**

203 This item is not disputed. The figures payable are:

Actual 2010	0.00
Actual 2011	0.00
Budget 2011	500.00
Budget 2012	500.00

204 **Bank Charges**

205 **The Applicant's Case**

206 Ms Cole explained that historically the bank account used with HSBC had attracted an activity fee for cheques and standing orders. That the Managing Agents had renegotiated an arrangement with the Bank so that there would no longer be any bank charges. Nonetheless they had retained a budget figure to be on the safe side but in the future there would be no bank charges item.

207 **The Respondent's Case**

208 Mr Oparah said he was pleased that an arrangement had been made with the Bank to bring an end to bank charges and he was prepared to accept this item.

209 **The Tribunals Decision**

210 This item was not disputed. Accordingly the figures payable are:

Actual 2010	203.60
Actual 2011	160.70
Budget 2011	220.00
Budget 2012	200.00

211 **Insurance, Directors and Officers**

212 **The Applicant's Case**

213 Ms Cole said that the directors volunteer to work for the Management Company for no remuneration but that they can be held personally liable if they fail in their duties. Therefore it was felt reasonable to arrange insurance cover for their benefit. That a 'standard policy' was used which was arranged by the directors themselves. She did not have information as to the amount of the cover.

214 **The Respondent's Case**

215 Mr Oparah felt the premium was high. He said he had received a quote for a lower sum. He handed up a quote from a company called Insurance Consultants Ltd and a copy was passed to the Applicant. Mr Egleton said there was no objection to its late production. This showed a premium of £150.41 based upon cover of £250,000, a premium of £153.70 with no details as to the amount of cover and a figure of £145.57 based upon cover of £125,000.

216 Ms Cole said that the figures obtained by Mr Oparah were not necessarily on a like for like basis.

217 **The Tribunal's Decision**

218 It is in the view of the Tribunal reasonable for such insurance to be put in place. That had not been disputed by Mr Oparah.

219 As to the amount of the premiums incurred, the issue for the Tribunal to address is whether or not such premiums have been reasonably incurred. It did not necessarily follow that the insurance premiums had to be the cheapest available.

220 The alternative quote obtained by Mr Oparah was for lower figures than had been incurred by the Applicant. However there was no evidence before the Tribunal as to whether or not the alternative quote was on a like for like basis. In the circumstances, the Tribunal does not feel that it had sufficient evidence before it to conclude that the insurance premiums incurred were unreasonably incurred. Further, from its own knowledge and experience, the figures did not appear to be unreasonable.

221 Accordingly, the Tribunal determines that the sums payable are as follows:

Actual 2010	310.53
Actual 2011	335.29
Budget 2011	360.00
Budget 2012	360.00

222 **Rubbish Removal**

223 **The Applicant's Case**

224 Ms Cole explained that this was private land. It was as such the responsibility of the Management Company to remove rubbish that was left on the site, fly tipping. She said there was a real fly tipping issue in the area. In 2010 the Applicant had come to an arrangement with Gosport Borough Council for the Council to remove the rubbish free of charge. That had however been rescinded by the Council in July 2013.

225 **The Respondent's Case**

226 Mr Oparah said that he had no objection to this item.

227 **The Tribunal's Decision**

228 This item was not disputed by Mr Oparah. The sums payable are:

Actual 2010	0.00
Actual 2011	150.00
Budget 2011	0.00
Budget 2012	0.00

229 **Water**

230 **The Applicant's Case**

231 Ms Cole explained that there were two taps in the stairwells which were used by the cleaners to help clean the stairwells and the bins.

232 **The Respondent's Case**

233 Mr Oparah said he accepted this item.

234 **The Tribunals Decision**

235 This item was not disputed by Mr Oparah. The sums payable are:

Actual 2010	37.06
Actual 2011	35.84
Budget 2011	30.00
Budget 2012	30.00

236 **Company Secretary's Fees**

237 **The Applicant's Case**

238 Ms Cole explained that the company was required to file Annual Returns. It was required to maintain a registered office. There was administrative work to be carried out such as preparing minutes of meetings. All this work was carried out by the Managing Agents, at an additional fee over and above their standard management fees. In her view the fees were reasonable.

239 **The Respondent's Case**

240 Mr Oparah said he felt the fees were too high and were unreasonable. He was unable to produce any comparable evidence or suggest any alternative figures. He said he was content to rely upon the expertise and experience of the Tribunal to determine whether these fees were reasonable.

241 **The Tribunal's Decision**

242 The Tribunal accepts that this is a reasonable expense incurred by the Applicant in managing the building. Mr Oparah was unable to produce any evidence in the form of comparables or otherwise to support his contention that the fees were unreasonable. In the view of the Tribunal, based upon its experience and expertise, the figures are not unreasonable.

243 Accordingly the Tribunal determines that the sums payable are:

Actual 2010	352.50
Actual 2011	352.50
Budget 2011	360.00
Budget 2012	360.00

244 **Sundries**

245 **The Applicant's Case**

246 Ms Cole explained that this covered miscellaneous items that did not fit into any other category such as sending round-robin letters to lessees, hiring a room for the AGM and directors' expenses.

247 **The Respondent's Case**

248 Mr Oparah said he did not dispute this item.

249 **The Tribunals Decision**

250 This item was not disputed. The sums payable are:

Actual 2010	195.66
Actual 2011	206.32
Budget 2011	258.00
Budget 2012	242.00

251 **Legal Insurance**

252 **The Applicant's Case**

253 Ms Cole said this was cover for legal costs incurred which could not otherwise be recovered by way of service charge contributions and also cover for legal costs which the Applicant might incur if for example it had a dispute with a contractor.

254 The Tribunal asked Mr Egleton if he could refer the Tribunal to the provision in the Lease which he relied upon to recover this item as service charge expenditure. Mr Egleton referred to paragraph 4 of Part II of the 6<sup>th</sup> Schedule to the Lease which he submitted was worded in sufficiently wide terms to cover this item.

255 **The Respondent's Case**

256 Mr Oparah said he did not object to this item in principle but he wished to challenge it on the basis that he was not sure if it was recoverable under the terms of the Lease. He did not think that the wording in paragraph 4 of Part II of the 6<sup>th</sup> Schedule was sufficiently wide enough to cover this.

257 **The Tribunal's Decision**

258 In short, it is the Applicant's case that the costs of legal insurance can be recovered as a service charge item in reliance upon paragraph 4 of Part II of the 6<sup>th</sup> Schedule to the Lease. It is the Respondent's case that

the wording of that paragraph is not sufficiently wide enough to allow recovery.

259 Paragraph 4 of Part II of the 6<sup>th</sup> Schedule (Part II lists items of expenditure which are recoverable by means of service charges) allows for recovery of *“the costs of effecting and maintaining in force the insurance policy referred to in paragraph 7 of the fifth schedule and of any further insurance policy which the Management Company may effect in respect of the Property or Development (including insurance against public and third party liability)”*.

260 In the view of the Tribunal, the provision is sufficiently wide as contended by the Applicant. In particular, it allows for the recovery of the costs of effecting and maintaining *“any further insurance policy”*. It is a policy taken out to cover legal costs in the event that the Applicant has a dispute for example with a contractor who had been working on the Building. That in such circumstances, it is in the interests of the lessees for the Applicant to have access to sufficient funds to cover the legal costs of pursuing such a dispute which ultimately is for the benefit of the lessees.

261 Accordingly, the Tribunal determines that the sums payable are:

Actual 2010	248.87
Actual 2011	19.09
Budget 2011	0.00
Budget 2012	0.00

262 **Reserve Fund**

263 No submissions or representations were made by either party at the hearing in relation to the reserve fund item. In his statement of case, the Respondent indicated that he did not think that the reserve fund was recoverable as a service charge item. Although this was not raised as an issue before the Tribunal at the hearing, in case it may assist the parties, the Tribunal notes that paragraph 11 of Part II of the 6<sup>th</sup> Schedule to the Lease does provide that the Applicant may set aside a sum in each year towards a reserve fund to make provision for expected future substantial capital items of expenditure.

264 **Other Matters in relation to Service Charges**

265 The Tribunal referred the parties to the Court proceedings in respect of 76 Mantle Close, claim no 2YLO4189. The Schedule of alleged arrears attached to the Particulars of Claim contains an item dated 11 August 2010 for £400 described as *‘service charge – recharge invoice from KPS Services for work carried out to 69 Mantle Close following leak from 76 Mantle Close’*.



266 The Tribunal asked the Applicant if this could be explained. Ms Cole said that this related to a leak from Mr Oparah's flat, No.76 into the flat below. The escape of water. She said that she understood that there was a provision in the Lease allowing the Applicant to recover costs incurred by reason of water escaping from demised premises. She agreed this was not as described in the Particulars of Claim a service charge item but instead a form of administration charge.

267 Mr Oparah said that he was not able to say whether or not there had been a flood. That the flat had been tenanted at the time and his tenant had not reported a flood. In any event he suggested this matter should be covered by insurance.

### 268 **The Tribunal's Decision**

269 This item relates to flooding which it is said originated from a flat of which Mr Oparah is the lessee, No.76 Mantle Close, into the flat below. No.76 was at the time occupied by a tenant of Mr Oparah. Mr Oparah does not know if there was a flood but quite fairly says that he can't say that there may not been.

270 In the view of the Tribunal, the provision to which Ms Cole was referring is at paragraph 5 of the 7<sup>th</sup> Schedule to the Lease. The 7<sup>th</sup> Schedule sets out rules and regulations to which the Lessee is bound. Paragraph 5 provides "*No purchaser shall permit any water or liquid to soak through the floors of the flat and in the event of such happening, he will immediately rectify and make good all damage and injury occasioned to any parts of the development and to the furniture, chattels, effects and belongings whatsoever of the Management Company and the registered proprietors of the Leases*".

271 It is not in the view of the Tribunal a provision which allows the Applicant to recover the cost of carrying out works to make good damage allegedly caused to the flat below No.76 by reason of a leak from No.76. It simply provides that the Lessee will be responsible for making good and rectifying damage so occasioned. Essentially, the escape of water from one flat to another flat is a matter to be addressed between the Lessees or occupiers of the respective flats.

272 Accordingly, the Tribunal determines that the sum of £400 claimed by the Applicant is not recoverable.

### 273 **Administration Charges**

274 The Arrears Schedule attached to the Particulars of Claim in respect of each of the four County Court proceedings contains items which are claimed by the Applicant from the Respondent as administration charges. Those items are as follows:

#### **76 Mantle Close**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
25.01.2011	Accrued legal fees - LVT attendance fee	210.00
14.03.2011	Accrued legal fees – SLC fee for attending legal proceedings	337.82
19.05.2011	Accrued legal fees – SLC fee for advocate to attend court hearing	384.00
23.06.2011	Admin charges – bounced cheque fee charged by HSBC	4.00
10.08.2011	Accrued legal fees - SLC invoice for collecting overdue invoices	180.00
01.09.2011	Admin charges – SLC invoice for recovering arrears	2856.96

#### **73 Mantle Close**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
09.06.2010	Accrued legal fees - LVT hearing fee	95.82
25.01.2011	Accrued legal fees – LVT attendance fee	210.00
14.03.2011	Recharge fee from SLC re Counsel attending legal proceedings	337.81
23.06.2011	Admin charges – bounced cheque fee charged by HSBC	4.00
24.08.2011	Accrued legal fees - SLC invoice for chasing arrears	1005.38

#### **74 Mantle Close**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
25.01.2011	Accrued legal fees – LVT attendance fee	210.00
14.03.2011	Accrued legal fees – SLC fee re Counsel attending legal proceedings	337.81
23.08.2011	Accrued legal fees – SLC invoice re collecting arrears	904.63

#### **106 Williams Close**

<b>Date</b>	<b>Description</b>	<b>Amount</b>
25.01.2011	Accrued legal fees – LVT attendance fee	210.00
14.03.2011	Accrued legal fees – SLC fee re Counsel attending legal proceedings	337.81
23.06.2011	Admin charges, bounced cheque fee charged by HSBC	4.00
24.08.2011	Accrued legal fees – SLC invoice re chasing arrears	978.38

- 275 The Tribunal invited the Applicant to take it to the provisions in the Lease that it relied upon to allow recovery of administration charges. Mr Egleton referred to clause 10 of the Third Schedule which is headed ‘Assessments’. It provides that the lessee will *“pay all sums of any nature, assessed or charged at any time upon the Property or the Company, the Management Company or the Purchaser in respect thereof”*.
- 276 The Tribunal suggested to Mr Egleton that the clause could be read in terms that it applied to charges incurred in respect of the Property (the demised premises are defined in the lease as ‘the Property’) and not to charges addressed directly to the tenant by reason of his failure to meet demands for payments. Mr Egleton said that administration charges arose as part of the Applicant’s cost of managing the Building and as such were caught by this clause. That they were charges incurred by the Applicant in respect of the Property. That in his submission the clause was sufficiently wide to allow the recovery by the Applicant of administration charges.
- 277 The Tribunal said it would give consideration as to whether or not it felt that clause 10 of the Third Schedule of the Lease was sufficiently wide enough to allow recovery of administration charges. Subject thereto, if it found that the charges could be recovered then it would assess whether or not the charges were reasonable.
- 278 The Applicant had no evidence at the hearing to present to the Tribunal to support or explain in detail the charges that had been incurred. In particular, the calculation of alleged legal costs. The Tribunal suggested that it would be assisted in that regard if it had details as to how such charges had been calculated by reference where appropriate to supporting documents such as terms of retainer agreed between the Applicant and its Solicitors/Advisers. It suggested therefore to the parties that it was minded to make directions providing for the Applicant to file a Statement explaining the administration charges claimed supported by any relevant documents and for the Respondent then, if he wished, to reply.

- 279 Both parties said they were content to proceed on that basis. The Tribunal made directions accordingly.
- 280 The Tribunal has considered written submissions accordingly made by both parties to the Tribunal following the hearing on 4 December 2013.
- 281 The Applicant has set out details of the costs it says it incurred both prior to the issue of various sets of County Court proceedings which were the subject matter of a hearing before the Leasehold Valuation Tribunal (as it then was) on 16 December 2010 and incurred after the issue of those proceedings. The latter includes costs allegedly incurred in attending before the County Court and in preparing for and attending before the Leasehold Valuation Tribunal. The Applicant accepts that where the Court awarded fixed costs and court fees in its favour, that the Respondent has paid these.
- 282 Mr Oparah says he believes there is an element of duplication. That as part of these proceedings, the Applicant has sought to recover costs which have already been the subject of proceedings before the County Court on 6 May 2011 and the Leasehold Valuation Tribunal on 16 December 2010. He refers in particular to legal fees claimed for attending "*legal proceedings*" or attending "*court hearing*". He also makes reference to, by way of example, the "*recharge invoice*" for £400 dated 11 August 2010 in respect of 76 Mantle Close. That has been addressed by the Tribunal at paragraphs 264-272 above.

283 **The Tribunals Decision**

- 284 The first issue for the Tribunal to determine in light of the written submissions made by the parties is whether or not there is, as Mr Oparah contends, an element of duplication. Has the Applicant sought to recover administration charges which have already been determined/addressed by the County Court or by the Leasehold Valuation Tribunal?
- 285 In the view of the Tribunal, that does not appear to be the case. The County Court proceedings which concluded on 6 May 2011 were, it is understood, in the Small Claims Court. That as such, the Applicant would have been unable to recover legal costs incurred save for fixed fees and court fees. It appears that it has therefore sought to recover such costs subsequently (to include its legal fees for preparing for and attending before the Leasehold Valuation Tribunal) as administration fees. In short, fees which would not have been addressed by the County Court. Further, the Tribunal notes with reference to the Schedules of arrears attached to the various County Court proceedings that save for two exceptions, the dates on which the administration charges are claimed are after the hearing before the Leasehold Valuation Tribunal on 16 December 2010 and in the main after the County Court hearing on 6 May 2011.

- 286 The two exceptions are the item which has been addressed by this Tribunal at paragraphs 264-272 above, and an LVT hearing fee dated 9 June 2010 in respect of 73 Mantle Close.
- 287 If nonetheless it were the case that the Applicant was seeking to recover administration charges which had already been addressed by the County Court or by the previous Tribunal, then it would be an abuse of process for it to do so. It would be wrong for the Applicant to seek to recover through these proceedings and those before the County Court charges which had been disallowed by the Leasehold Valuation Tribunal or by the County Court.
- 288 The second issue for the Tribunal to determine is whether or not in any event the administration charges claimed by the Applicant are recoverable from the Respondent under the terms of the Lease.
- 289 Clause 10 of the 3<sup>rd</sup> Schedule to the Lease which is headed 'Assessments' is a form of indemnity. It provides that the Lessee (described in the Lease as the 'Purchaser') will pay all sums assessed or charged upon the Property or the Lessor or the Applicant, or indeed the Lessee, "*in respect thereof*". The common sense meaning of the words 'in respect thereof' is that they refer to monies assessed or charged upon or directly relating to the Property. The draftsman presumably had in mind items such as rates and charges for services such as electricity supplied to the Property.
- 290 The administration charges claimed are costs which the Applicant has incurred by reason of the Respondent's failure to pay service charges; costs that it has incurred in pursuing the Respondent and which it seeks to recover from him. It is in the view of the Tribunal too much of a leap to say that such costs are in the nature of sums assessed or charged 'in respect of' the Property. Had the draftsman intended that this clause would allow the Applicant to recover administration charges from the Respondent, he could have included a clear provision to that effect. He did not. (Although the Tribunal notes that the draftsman did make provision for the Applicant to recover costs in bringing or defending any action or other proceedings as part of the service charge at clause 9 of Part II of the 6<sup>th</sup> Schedule to the Lease).
- 291 Accordingly, the Tribunal determines that the administration charges which are listed at paragraph 274 above are not payable by the Respondent to the Applicant.

292 **Section 20C Application**

293 **The Respondent's Case**

- 294 Mr Oparah said that he felt that these proceedings arose solely because of bad management by the Managing Agents of the Building. A failure by them to respond to complaints made by him. A lack of

communication. That as such, he felt it would be unreasonable for the costs of these proceedings to be recovered as part of the service charges.

**295 The Applicant's Case**

296 Mr Egleton said that the Respondent effectively challenged every item of expenditure as expensive. This is the third time that he had been before the Tribunal challenging service charges. That each time the Management Company was put to the expense of addressing such challenges and where necessary instructing Solicitors and Counsel. He admired Mr Oparah's diligence in going through the paperwork and the figures but that however his challenges did place a strain on the Applicant company. That in the circumstances, it was reasonable given the time and expense to which the company was put, that it should be able to recover its costs reasonably incurred by way of service charges.

**297 The Tribunal's Decision**

298 The Tribunal does not accept Mr Oparah's submission that the proceedings instituted by the Applicant in the County Court and which had been referred to this Tribunal have arisen solely by reason of poor management by the Applicant and its Managing Agents of the Building. The Respondent had challenged just about every item of expenditure. In general he has failed to produce any evidence to support his case. In the view of the Tribunal it was reasonable for the Applicant to pursue the Respondent for payment and in doing so it has been put to expense.

299 Accordingly, the Tribunal declines to grant the Respondent's application.

**300 Summary of Tribunal's Findings**

301 The sums payable by the Respondent to the Applicant and which are determined by the Tribunal as reasonable are for each property owned by the Respondent, namely 73, 74 and 76 Mantle Close and 106 Williams Close, 1.205% of the following:

<b>Item of expenditure</b>	<b>Actual 2010</b>	<b>Actual 2011</b>	<b>Budget 2011</b>	<b>Budget 2012</b>
Accounts	354.00	400.00	400.00	450.00
Annual Return	0.00	16.80	30.00	20.00
Professional fees	0.00	786.26	500.00	1000.00
Buildings insurance	4860.05	5955.14	5500.00	7500.00
Grounds	1625.00	2125.00	3000.00	2500.00

maintenance				
Repairs and maintenance	5486.73	8497.95	11,000.00	10,000.00
Electrical repairs	0.00	483.00	0.00	0.00
Management fees	8777.24	8917.31	8964.00	8860.00
Communal electricity	2248.24	1021.66	2500.00	2000.00
Major works	29,574.76	61,465.80	40,000.00	40,000.00
Cleaning	3150.00	3575.00	3200.00	3500.00
Health & Safety	0.00	0.00	500.00	500.00
Bank charges	203.60	160.70	220.00	200.00
Insurance, directors and officers	310.53	335.29	360.00	360.00
Rubbish removal	0.00	150.00	0.00	0.00
Water	37.06	35.84	30.00	30.00
Company Secretary's fees	352.50	352.50	360.00	360.00
Sundries	195.66	206.32	258.00	242.00
Legal insurance	248.87	19.09	0.00	0.00
Reserves	0.00	623.00	4850.00	4000.00
<b>Totals</b>	<b>57,424.24</b>	<b>95,126.66</b>	<b>81,672.00</b>	<b>81,672.00</b>

The amount payable by the Respondent for each property owned by him is 1.205% of the above totals, namely:

<b>Actual 2010</b>	<b>Actual 2011</b>	<b>Budget 2011</b>	<b>Budget 2012</b>
691.96	1146.28	984.15	984.15

302 The Applicant is not entitled to recover the administration charges claimed.

- 303 The Tribunal does not make an Order pursuant to section 20C of the 1985 Act.
- 304 Legal costs in respect of the Court proceedings including Court fees and interest claimed are matters outside of the jurisdiction of the Tribunal and are referred, in the absence of an agreement between the parties, back to the County Court.
- 305 The amounts claimed by the Applicant in respect of Court proceedings for service charge payments are on account charges based upon the budgets for the years 2010, 2011 and 2012. Payments are demanded in accordance with the terms of the Lease quarterly. The amounts payable accordingly in respect of the Court proceedings are as follows:
- i Claim no 2YLo4189, 76 Mantle Close  
Service charges £1892.82  
Administration charges £0.00
  - ii Claim no 2YK19143, 74 Mantle Close  
Service charges £1817.82  
Administration charges £0.00
  - iii Claim no 2YK17859, 73 Mantle Close  
Service charges £1722.00  
Administration charges £0.00
  - iv Claim no 2YK18379, 106 Williams Close  
Service charges £1889.82  
Administration charges £0.00

Dated this 13th day of January 2014

Judge N Jutton (Chairman)



## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.