

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/21UG/LSC/2008/0005

REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Leaseholders : St Peter’s Court (Bexhill) RTM Co Ltd

Respondent/Landlord : Regis Group plc

Building : St Peter’s Court, 24 De La Warr Road, Bexhill on Sea, East Sussex, TN40 2JD

Flats : the flats in the Building, including the penthouse flats

Leases : the leases of the Flats

Date of Application : 24 January 2008

Date of Provisional Directions : 28 January 2008

Date of further directions : 18 July 2008

Date of hearing : 15 September 2008

Venue : Devonshire Boardroom, International Lawn Tennis Centre, College Road, Eastbourne

Appearances for Applicant/Leaseholders: Mr Carey (Flat 4), Mr Ellis (Flat 17), and Mrs Ellis

Appearances for Respondent/Landlord: Mr S Whybrow MIRPM of Pier Management Ltd

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr M Ayres FRICS, and Mr K Lyons FRICS

Date of Tribunal’s Reasons : 26 September 2008

Introduction

1. This application by the Applicant/ Leaseholders comprises :
 - a. an application under Section 27A of the 1985 Act for the Tribunal to determine the payability of service charges
 - b. an application under section 20C of the 1985 Act for an order that the costs incurred by the Respondent/Landlord are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders

- c. an application pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 for an order for costs against the Respondent/Landlord

2. At a hearing on the 18 July 2008, at which Mr M Powell of Gaby Hardwicke, solicitors, represented the Applicant/Leaseholders, and at which no-one attended on behalf of the Respondent/Landlord in relation to this application, the following matters were identified as issues for the Tribunal to determine at the substantive hearing of this application, namely :

- a. whether, in relation to the year 2001/2002 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £1,102.57 for management charge
 - if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- b. whether, in relation to the year 2001/2002 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £1,795.40 for external repairs
 - if so :
 - whether the cost was reasonably incurred
 - whether the works were of a reasonable standard
 - whether the consultation requirements of section 20 of the 1985 Act had been either complied with or dispensed with
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- c. whether, in relation to the year 2001/2002 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £176.25 for internal accounts charge and £940.00 for reporting accounts charge
 - if so :
 - whether the cost in each case was reasonably incurred
 - whether the work in each case was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- d. whether, in relation to the year 2001/2002 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £352.50 for surveyors fees
 - if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- e. whether, in relation to the year 2001/2002 a service charge was payable by the Applicant/Leaseholders in respect of the sum of £2,614.74 for insurance premium, and, in particular, whether the cost was reasonably incurred
- f. whether, in relation to the year 2002/2003 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £2,115.00 for management charge

- if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- g. whether, in relation to the year 2002/2003 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £239.70 for external repairs
 - if so :
 - whether the cost was reasonably incurred
 - whether the works were of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- h. whether, in relation to the year 2002/2003 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £176.25 for internal accounts charge and £423.00 for reporting accounts charge
 - if so :
 - whether the cost in each case was reasonably incurred
 - whether the work in each case was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- i. whether, in relation to the year 2002/2003 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £1,120.63 for surveyors fees
 - if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- j. whether, in relation to the year 2002/2003 a service charge was payable by the Applicant/Leaseholders in respect of the sum of £3,262.17 for insurance premium, and, in particular, whether the cost was reasonably incurred
- k. whether, in relation to the year 2003/2004 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £2,036.25 for management charge
 - if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- l. whether, in relation to the year 2003/2004 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £822.50 for external repairs
 - if so :
 - whether the cost was reasonably incurred
 - whether the works were of a reasonable standard

- whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- m. whether, in relation to the year 2003/2004 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £176.25 for reporting accounts charge
 - if so :
 - whether the cost in each case was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- n. whether, in relation to the year 2003/2004 a service charge was payable by the Applicant/Leaseholders in respect of the sum of £3,664.86 for insurance premium, and, in particular, whether the cost was reasonably incurred
- o. whether, in relation to the year 2004/2005 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £2,115.00 for management charge
 - if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- p. whether, in relation to the year 2004/2005 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £235.00 for internal accounts charge and reporting accounts charge
 - if so :
 - whether the cost in each case was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- q. whether, in relation to the year 2004/2005 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £973.75 for surveyors fees
 - if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- r. whether, in relation to the year 2005/2006 :
 - a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £2,115 for management charge
 - if so :
 - whether the cost was reasonably incurred
 - whether the work was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- s. whether, in relation to the year 2005/2006 :

- a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £235 for internal accounts charge and reporting accounts charge
 - if so :
 - whether the cost in each case was reasonably incurred
 - whether the work in each case was of a reasonable standard
 - whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- t. whether, in relation to the year 2005/2006 a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £646.25 for asbestos, and, in particular, whether the cost was reasonably incurred, and whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- u. whether, in relation to the year 2005/2006 a service charge was in principle payable by the Applicant/Leaseholders in respect of the sum of £436.96 for lift repairs, and, in particular, whether the cost was reasonably incurred, and whether any part of the cost was not payable by virtue of section 20B of the 1985 Act
- v. whether, in relation to the year 2005/2006 a credit against service charge in the sum of £1,300 for electricity was reasonable
- w. whether, and, if so, to what extent, the costs incurred by the Respondent/Landlord 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 Applicant/Leaseholders
- x. whether an order for costs should be made against the Respondent/Landlord pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the grounds that the Respondent/Landlord had acted vexatiously in connection with the proceedings
3. The Tribunal noted at the hearing on the 18 July 2008 that no dispute had been raised concerning the identity of the person by whom such a service charge would be payable, the person to whom it was payable or when or in what manner it was payable

4. **Statutory Provisions**

5. Section 19(1) of the 1985 Act provides as follows :

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*

6. Section 20B of the 1985 Act provides as follows :

20B Limitation of service charges : time limit on making demands

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

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

Documents

7. The documents before the Tribunal are :
 - a. the Applicant/Leaseholders' bundle, pages 1 to 407, prepared by Mr M Powell of Gaby Hardwicke Solicitors
 - b. the Respondent/Landlord's bundle, comprising a statement by Mr Whybrow and documents PM1 to PM14
 - c. a statement by Mr KW Ellis

Expressions used in these reasons

8. The following expressions in these reasons have the following meanings :
 - a. A1, A2, and so on : page numbers in the Applicant/Leaseholders's bundle
 - b. PM1, PM2, and so on : document numbers in the Respondent/Landlord's bundle
 - c. the Applicant/Leaseholders' statement of case : the statement of case dated the 26 June 2008 at A13 to A22
 - d. the Respondent/Landlord's statement in reply : the statement dated the 14 August 2008 at the beginning of the Respondent/Landlord's bundle

Inspection

9. The Tribunal inspected the Building on the morning of the hearing on the 18 July 2008. Also present were Mr Powell, Mr B Meagher MIRPM of Ground Rent Managers Ltd (representing the Respondent/Landlord in relation to another issue between the parties), Mr Carey, and Mrs Mitchell (Flat 19)
10. The Building comprised an "L"-shaped block of 18 Flats on five floors. The Flats were numbered 1 to 12 in one "arm" of the "L" and 14 to 19 in the other. There was no number 13. There was a detached garage, and a further detached block of 4 garages. There were other garages beneath the Building
11. The Tribunal also inspected the interior of Flats 4 (first floor) and 19 (penthouse)
12. There is a photograph of the Building at the beginning of PM7, and a brief description under the heading "surveyor's report" near the end of PM7

The leases

13. At pages A386 to A395 is a copy of the lease of Flat 12 and garage 16 dated the 29 December 1971. The parties agreed at the hearing that for the purposes of these proceedings the leases of the other Flats, including the penthouses, were in materially the same terms

14. For the purposes of these proceedings the material parts of the lease of Flat 12 and garage 16 are as follows :

Clause 1

AND ALSO YIELDING AND PAYING to the Lessors by way of further yearly rent the yearly sums of :

- (a) such a sum as shall represent [5.25%] of the figure which the Lessors shall estimate that they will require to expend in the ensuing year in the performance of their covenants contained in sub-clauses (a) (b) (c) (d) (e) and (f) of Clause 5 hereof and of all moneys expended by the Lessors from time to time in the performance of their said covenants so far as such expenditure relates to the maintenance and repair of the Building and the Retained Parts and to the repair and renewal of the floor covering in the common hallway and stairway of the Building and*
- (b) the the Lessors Agents Management charges amounting to [10%] of the amount from time to time chargeable in respect of the sums payable under sub-clause (a) hereof*

[payable] on the [24] June in each year..... PROVIDED ALWAYS..... that on the [1] September in each year or as soon thereafter as possible the Lessors will render to the Lessee a statement setting out the details of all amounts expended by the Lessors during the calendar year to the [24] June in respect of all matters previously referred to and certifying the Lessee's proportion thereof [with surpluses being carried forward into the statement for the next year, and shortfalls being paid by the Lessee within 14 days of the Lessor's certificate]

Clause 2 Lessee's covenants

(d) To pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessors for the purpose of or incidental to the preparation and service of or incidental to the preparation a schedule of dilapidations after the expiration of the term hereby granted and of notices under sections 146 and 147 of the Law of Property Act 1925.....

Clause 5 Lessors' Covenants

- (a) [to insure the Building]*
- (b) [to require other lessees to observe the restrictions in the schedule]*
- (c)to keep the roof timbers and main walls stackpipes and gutters of the Building and the drains gas and water pipes and electric wires outside the Building used in common.....in good and substantial repair and as often as in the opinion of the Lessors shall be proper and necessary to paint all the outside wood and ironwork of the Building and to keep in good order and condition the paths entrance drives and garden and properly to clean and light all stairways and any other part of the retained parts which would normally be cleaned and lighted.....*
- (d)to keep the common halls stairways and upper landings and lifts of the Building covered with a suitable floor covering.....*
- (e)[to] maintain the lifts in the Building in proper working order and keep the*

- same in good repair and condition*
(f)to maintain and keep in repair the forecourt and driveway.....

Preliminary points

15. Mr Ellis said at the hearing that Gaby Hardwicke were no longer representing the Applicant/Leaseholders
16. The Respondent/Landlord's statement in reply set out the history of :
- a. the Respondent/Landlord's acquisition of the freehold of the Building in about June 1997
 - b. the history of the managers of the Building, including :
 - Equity Asset Management until 2002
 - Johnson Cooper Ltd until November 2006
 - Pier Management, to collect ground rents and insurance premiums separately from the general service charge, from 2004
 - the Applicant/Leaseholders, pursuant to the acquisition of the right to manage, from November 2006
 - Pier Management Ltd, to collect ground rent and insurance, from August 2008

The service charges in issue

17. The parties respective cases in relation to each sum demanded, and the Tribunal's findings in each case, are as set out in the following paragraphs of these reasons
18. **General points**
19. The Applicant/Leaseholders' statement of case stated that :
- a. the Applicant/Leaseholders were unaware of any service charge statements being rendered by the lessors on the lessees within the timescales prescribed by the leases, or at all
 - b. in the absence of such statements the service charge demands to date were irrecoverable as a consequence of the lessors' failure to observe the conditions in clause 1 of the leases
 - c. in any event, it was not admitted that service charge demands had been served on the lessees in the prescribed form or within the time limit prescribed by section 20B of the 1985 Act
20. The Respondent/Landlord's statement in reply stated that :
- a. the lessees were informed of all the costs in advance by way of service charge estimates and accompanying applications for payment of service charges in advance
 - b. in each year in question a certified statement of expenditure, which was a service charge account, was sent to each lessee after the year end
 - c. covering letters to each lessee were at PM11 to PM14
21. At the hearing, the parties' evidence and submissions about the question of service of the service charge demands were as follows :
- a. Mr Whybrow said that :
 - the service charge account for 2001/2002 was at page 24, and had been sent to the lessees with a letter dated the 23 January 2003, of which the letter at PM11 was an example

- the document at pages 25 to 31 showed the internal ledger entries comprising the expenditure summarised in the service charge account at page 24, and had not been sent to the lessees
- b. Mr Carey said that he had been a leaseholder at the Building since 2000, and, although he could not specifically recall receiving a letter like the one at PM11 or the account at page 24, he thought it likely that he had
 - c. Mr Ellis said that the lease provided, at page 389, that the service charge account had to be up to the 24 June in each year, so that the service charge accounts prepared on behalf of the Respondent/Landlord were up to the 23 June in each year, and were therefore not in accordance with the lease
 - d. however, in answer to a question from the Tribunal, Mr Ellis agreed that the proviso at page 389 referred to a period of 12 months previous to the 24 June
 - e. Mr Whybrow said that the lease was ambiguous, that one day made no difference, and that there was no prejudice to the lessees because any expenditure not contained in one year's service charge account would be contained in the next year's service charge account
 - f. Mr Whybrow said that :
 - the service charge account for 2002/2003 was at page 33
 - the service charge account for 2003/2004 could not be found, but the document at pages 41 to 44 showed the internal ledger entries comprising the expenditure summarised in that service charge account
 - the 2 service charge accounts had been sent together to the lessees with a letter dated the 19 November 2004, of which the letter at PM12 was an example
 - g. Mr Ellis said that he not received that letter or the enclosures, and the fact that the Respondent/Landlord could not find the service charge demand for 2003/2004 was evidence that it had not been sent
 - h. Mr Carey said that in about November 2005 he had spoken to Johnson Cooper's finance director, who had said that the service charge accounts were incorrect at that time
 - i. Mr Whybrow said that the reference in the Johnson Cooper letter dated the 7 November 2005 at PM13 to their "currently working on the breakdown of accounts required for financial years ended 23 June 2003 and 23 June 2004 which is continuing to be worked on and will not be available in the immediate future" was probably a reference to a breakdown in response to queries about the accounts already submitted, rather than an indication that the 2003 and 2004 accounts had not by then been prepared and served
 - j. Mr Whybrow said that :
 - the service charge account for 2004/2005 was at pages 45 to 46
 - the service charge account had been sent to the lessees with a letter dated the 7 November 2005, of which the letter at PM13 was an example
 - the service charge account for 2005/2006 was at pages 51 to 53
 - the service charge account had been sent to the lessees with a letter dated the 31 October 2006, of which the letter at PM14 was an example
 - no significance should be attached to the fact that the letters at PM11 and PM14 were addressed to individual lessees, whereas the letters at PM12 and PM13 were not; the latter had simply been saved on the computer as "mail merge" letters, whereas the former had been saved with the individual lessees named
 - k. Mr Ellis confirmed that he had received the 2 sets of accounts, which had been bound, but said that they had arrived together in the same post in one envelope in late 2006, which he remembered specifically, even though he had not retained the envelope and could not recall whether or not there was a covering letter, because he had remarked at the time that he had

not received bound copies of any previous accounts and had not previously received accounts of that clarity

- l. Mr Ellis said that he did not recall receiving the letters at PM13 and PM14, but could not say categorically that he had not
- m. Mr Ellis produced for inspection the 2 bound copies of the accounts, in respect of which Mr Whybrow submitted that :
 - at the end of each of the bound copies of the accounts, but not copied in either of the bundles before the Tribunal, there was a balancing-payment invoice dated 13 October 2005 (number 26035) and 25 October 2006 (number 61304) respectively
 - the dates and the non-sequential numbering indicated that the accounts had been sent in separate years, and not both together
 - otherwise it would have to be suggested that the 2005 accounts had been retained in the agents' office for a year, which was inconceivable
 - in any event, the letters at PM13 and PM14, which would not have been on file if they had not been sent, confirmed that the accounts had been sent in 2005 and 2006 respectively
- n. Mr Ellis said that :
 - Johnson Cooper might have kept the accounts on file with a view to obtaining the money just before the Applicant/Leaseholders' acquisition of the right to manage and the purchase of the freehold
 - in any event without a doubt he had not received the 2005 accounts until the end of 2006
- o. Mr Ellis said that, if the Tribunal found, contrary to the Applicant/Leaseholders' submissions, that the service charge accounts had been served, then they had not been served "*on the [1] September in each year or as soon thereafter as possible*", and had accordingly not been served in accordance with the lease

22. At the hearing, the parties' evidence and submissions about the impact of section 20B of the 1985 Act, if the Tribunal accepted that the letters at PM11 to PM14 had been sent with the respective accounts referred to, were as follows :

- a. in answer to questions from the Tribunal Mr Whybrow conceded on behalf of the Respondent/Landlord that :
 - there was no evidence before the Tribunal that any notification had been given by the Respondent/Landlord pursuant to section 20B(2) in relation to any relevant costs incurred
 - the respective dates when relevant costs had been incurred by were the dates in the left-hand column of the respective internal ledger entries
 - according to the letters at PM11 and PM12 before the Tribunal, in relation to which the Tribunal had not yet made a finding :
 - the account for 2001/2002 had been served on the 23 January 2003, so that the 18-month period referred to in section 20B meant that the lessees would not be liable to pay any of the costs referred to in the 2001/2002 account incurred before the 23 July 2001
 - the account for 2002/2003 had been served on the 19 November 2004, so that the 18-month period referred to in section 20B meant that the lessees would not be liable to pay any of the costs referred to in the 2002/2003 account incurred before the 19 May 2003

- the lessees would accordingly not be liable to pay any of the following costs referred to in the 2001/2002 account incurred before the 23 July 2001 :
 - page 25 25 June 2001 JL Gardner £140.00
 - page 25 2 July 2001 SA Services £65.00
 - page 26 3 July 2001 Stannah Lift Services £84.98
 - page 26 1 July 2001 MAS £2,614.74
- the lessees would be liable to pay only the following costs referred to in the 2002/2003 account incurred after the 19 May 2003 :
 - page 34 16 June 2003 JL Gardner £140.00
 - page 34 27 May 2003 Seeboard £17.50
 - page 34 27 May 2003 Seeboard £13.00
 - page 34 23 June 2003 accrual £23.06
 - page 35 23 June 2003 accrual SA Services £52.00
 - page 37 23 June 2006 Maurice Lake £176.25
 - page 37 23 June 2003 internal accounts fee £423.00

b. Mr Ellis accepted these figures on behalf of the Applicant/Leaseholders

c. Mr Ellis conceded that, if the Tribunal accepted that the letters at PM12 to PM14 had been sent with the respective accounts referred to, then the service charge demands for the accounts for 2003/2004, 2004/2005 and 2005/2006, would all have been served within the 18-month period referred to in section 20B

23. The Tribunal's findings

24. Service of service charge demands

25. The Tribunal finds that :

- a. the 2001/2002 account at page 24 was sent to the lessees on the 23 January 2003 with the letter at PM11
- b. in making that finding, the Tribunal has taken account of all the submissions on behalf of the Applicant/Leaseholders in that respect, but finds, on a balance of probabilities, that there is no reason to doubt the evidence on behalf of the Respondent/Landlord that the letter at PM11 was on file and was sent on that date
- c. the account was sent less than 5 months after the 1 September 2002, which was within the period prescribed by the lease, namely as "*on the [1] September in each year or as soon thereafter as possible*"
- d. the account, being in respect of expenditure up to the 23 June 2002, complied with the requirement in the lease to set out "*the details of all amounts expended by the Lessors during the calendar year to the [24] June*"
- e. in making that finding, the Tribunal has taken account of Mr Ellis's submission that the lease provided, at page 389, that the service charge account had to be up to the 24 June in each year, so that the service charge accounts prepared on behalf of the Respondent/Landlord, being up to the 23 June in each year, were therefore not in accordance with the lease
- f. however, the Tribunal has also taken account of :
 - the fact, as the Tribunal finds, that the proviso at page 389 referred to a period of 12 months previous to the 24 June
 - Mr Whybrow's submission, which the Tribunal accepts as persuasive, that the lease was ambiguous, that one day made no difference, and that there was no prejudice to the

- lessees because any expenditure not contained in one year's service charge account would be contained in the next year's service charge account
- g. the 2002/2003 account at page 33 and the 2003/2004 account, which is not before the Tribunal, but in respect of which the document at pages 41 to 44 shows the internal ledger entries comprising the expenditure summarised in that account, were sent together to the lessees on the 19 November 2004 with the letter at PM12
 - h. in making that finding, the Tribunal has taken account of all the submissions on behalf of the Applicant/Leaseholders in that respect, but finds, on a balance of probabilities, that there is no reason to doubt the evidence on behalf of the Respondent/Landlord that the letter at PM12 was on file and was sent on that date
 - i. the 2002/2003 account was sent more than 14 months after the 1 September 2003, in respect of which the Tribunal finds that :
 - a delay of 14 months is longer than the Tribunal would normally expect in the sending of a service charge account
 - however, the period prescribed by the lease for so doing, namely "*on the [1] September in each year or as soon thereafter as possible*" is an imprecise period, and depends on what is or is not "possible"
 - there is no evidence before the Tribunal about any factors which might or might not have made it possible for the account to have been sent earlier
 - the delay of 14 months was not, on a balance of probabilities, so long that the sending of the accounts on the 19 November 2004 was outside the period prescribed by the lease for so doing
 - j. the 2003/2004 account was sent less than 3 months after the 1 September 2004, which was within the period prescribed by the lease, namely as "*on the [1] September in each year or as soon thereafter as possible*"
 - k. the accounts, being in respect of expenditure up to the 23 June 2003 and the 23 June 2004 respectively, complied in each case with the requirement in the lease to set out "*the details of all amounts expended by the Lessors during the calendar year to the [24] June*", for reasons already given
 - l. the 2004/2005 account at pages 45 to 46 was sent to the lessees on the 7 November 2005 with the letter at PM13
 - m. in making that finding, the Tribunal :
 - has taken account of all the submissions on behalf of the Applicant/Leaseholders in that respect
 - has taken account in particular of Mr Ellis's evidence that he received the bound copies of the 2005 and 2006 accounts together in late 2006; that he recalled remarking on them at the time, and his reasons for doing so; and that he definitely did not receive the 2005 accounts in 2005
 - has also taken account of Mr Ellis's submissions about the possible reasons why the Respondent/Landlord's then agents might have sent the 2 sets of accounts together in 2006
 - has, however, also taken account of :
 - Mr Whybrow's submission that :
 - at the end of each of the bound copies of the accounts, but not copied in either of the bundles before the Tribunal, there was a balancing-payment invoice dated 13 October 2005 (number 26035) and 25 October 2006 (number 61304) respectively

- the dates and the non-sequential numbering indicated that the accounts had been sent in separate years, and not both together
 - otherwise it would have to be suggested that the 2005 accounts had been retained in the agents' office for a year, which was inconceivable
 - in any event, the letters at PM13 and PM14, which would not have been on file if they had not been sent, confirmed that the accounts had been sent in 2005 and 2006 respectively
 - Mr Ellis's very fair concession that he did not recall receiving the letters at PM13 and PM14, but could not say categorically that he had not
 - the fact, as the Tribunal has found, that the Respondent/Landlord's records show one letter sending the accounts for 2003 and 2004 together is an indication that there would have been only one letter on file sending the accounts for 2005 and 2006 together if that had actually occurred
 - accepts, on a balance of probabilities, and having considered all the evidence and submissions in the round, the evidence on behalf of the Respondent/Landlord that the letter at PM13 was on file and was sent on that date with the accounts at pages 45 to 46
- n. the 2004/2005 account was sent less than 3 months after the 1 September 2005, which was within the period prescribed by the lease, namely as "*on the [1] September in each year or as soon thereafter as possible*"
- o. the account, being in respect of expenditure up to the 23 June 2005, complied with the requirement in the lease to set out "*the details of all amounts expended by the Lessors during the calendar year to the [24] June*", for reasons already given
- p. the 2005/2006 account at pages 51 to 53 was sent to the lessees on the 31 October 2006 with the letter at PM14
- q. in making that finding, the Tribunal has taken account of all the submissions on behalf of the Applicant/Leaseholders in that respect, but finds, on a balance of probabilities, that there is no reason to doubt the evidence on behalf of the Respondent/Landlord that the letter at PM14 was on file and was sent on that date
- r. the 2005/2006 account was sent less than 2 months after the 1 September 2006, which was within the period prescribed by the lease, namely as "*on the [1] September in each year or as soon thereafter as possible*"
- s. the account, being in respect of expenditure up to the 23 June 2006, complied with the requirement in the lease to set out "*the details of all amounts expended by the Lessors during the calendar year to the [24] June*", for reasons already given
26. Section 20B
27. The Tribunal makes findings in accordance with the concessions made by the parties at the hearing, and finds that the lessees are not liable to those costs included in the service charge accounts for 2001/2002 and 2002/2003 which are identified as such in the Appendix to these reasons
28. ***Year 2001/2002 £1,102.57 management charge***
29. The Applicant/Leaseholders' statement of case stated that :
- a. this was irrecoverable because the Respondent/Landlord had failed to render an expenditure statement on the 1 September or as soon as possible thereafter as required by clause 1(b) of the lease

- b. in any event, the estimate of £1,102.57, being 10%, suggested a service charge of £11,025.70, which was unreasonable for reasons set out in the Applicant/Leaseholders' statement of case
- c. in any event, the performance of the Respondent/Landlord's managing agent fell woefully short of a reasonable standard, as would be set out in Mr Carey's evidence
30. The Respondent/Landlord's statement in reply stated that :
- a. the fee charged was £938.36 plus VAT which equated to £52.13 a flat
 - b. the service charge account and supporting invoices showed expenditure for various services, including accounting, gardening, cleaning, repairs, and maintenance
 - c. in any event, a management fee at that level could not be regarded as unreasonable, when the market norm was between £100 and £200 a flat
 - d. the accounts showed that the expenditure for the year was less than the on-account charges, which suggested that the budgeting had been sound
31. At the hearing, both Mr Ellis and Mr Whybrow conceded that :
- a. the amount chargeable to the lessees was 10% of the total maintenance costs excluding the management charge itself
 - b. the total maintenance costs in the accounts were £9,383.62
 - c. the management fee was therefore £938.36 plus VAT of £164.21, namely £1,102.57
 - d. if the Tribunal were to find that any part of the total maintenance costs in the accounts of £9,383.62 were not to be payable by the lessees, then the management fee would be reduced accordingly
32. The Tribunal's findings
33. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
34. ***Year 2001/2002 £1,795.40 external repairs***
35. The Applicant/Leaseholders' statement of case stated that there was no explanation for this sum
36. The Respondent/Landlord's statement in reply stated that :
- a. the sum comprised 4 invoices :

• A76 : Westoaks to install sump pump	£683.85
• A77 : Westoaks repair flashing and RWG	£507.60
• A87 : Westoaks repair leaks	£272.60
• A90 : CDA sign installation (invoice noted as directed by Mr Carey)	£331.35
 - b. the invoices appeared appropriate and had all been approved for payment by Mr R Monk BSc MRICS, who was a qualified surveyor employed by the agent, or approved for payment by the property manager of the time
 - c. the works were not a qualifying long-term agreement or a single project in excess of the limits imposed by section 20 of the 1985 Act
37. At the hearing, Mr Ellis conceded that, having now seen the invoices, the only issue in relation to these items would be if they were not payable pursuant to section 20B of the 1985 Act

38. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
39. ***Year 2001/2002 £176.25 internal accounts charge and £940.00 reporting accounts charge***
40. The Applicant/Leaseholders' statement of case stated that :
- a. the lease did not provide for either type of cost to be payable by way of service charge
 - b. in any event, the amounts were unreasonable in view of the standard of accounting
 - c. in any event the Respondent/Landlord had failed to supply the lessees with service charge statements, demands and year-end accounts
41. The Respondent/Landlord's statement in reply stated that :
- a. MAS Ltd charged a standard fee to all managed properties of £150 plus VAT "internal accounts charge" for the preparation of the reporting and collation of invoices for certification by the accountant
 - b. Richard Keen Accountants charged a fee of £300 plus VAT to prepare and certify the service charge accounts
 - c. the expenditure was reasonable
42. At the hearing, in answer to questions from the Tribunal, Mr Whybrow conceded that there was no specific provision in the lease for these items to be included in the service charge, but submitted that
- a. the Respondent/Landlord was obliged by the lease to prepare a certificate in order to obtain payment from the lessees, so it was reasonable for the Respondent/Landlord to incur those fees and to charge them to the lessees
 - b. in addition, section 21 of the 1985 Act obliged the Respondent/Landlord to supply an accountant's certificate, so, again, it was reasonable for the Respondent/Landlord to incur those fees and to charge them to the lessees
43. The Tribunal's findings
44. The Tribunal has taken account of all the submissions on behalf of the Respondent/Landlord
45. However, the Tribunal finds that :
- a. the lease does not provide for either type of cost to be payable by way of service charge
 - b. there is no implied entitlement for the Respondent/Landlord to include either type of cost in the service charge, irrespective of whether it might be reasonable for the Respondent/Landlord to incur the cost, either by virtue of the requirement in the lease to provide a certificate before being entitled to send a service charge demand to a lessee, or by virtue of the provisions of section 21 of the 1985 Act
 - c. neither item is payable by the lessees by way of service charge accordingly
46. ***Year 2001/2002 £352.50 surveyors fees***
47. The Applicant/Leaseholders' statement of case stated that :
- a. the invoices were at A37 to A48
 - b. the Applicant/Leaseholders were unaware of any need for surveyors fees

- c. in any event, the lease did not provide for this type of cost to be payable by way of service charge
48. The Respondent/Landlord's statement in reply stated that :
- a. the invoice was at page A78 and was for Equity Surveyors for the production of a health and safety plan to comply with CDM Regulations
 - b. it had not been possible to find a copy of the report
 - c. the expenditure was reasonable
49. At the hearing, Mr Ellis conceded that, having now seen the invoice, the only issue in relation to this item would be if it were not payable pursuant to section 20B of the 1985 Act
50. The Tribunal's findings
51. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
52. ***Year 2001/2002 £2,614.74 insurance premium***
53. The Applicant/Leaseholders' statement of case stated that :
- a. the Respondent/Landlord had not supplied a copy of the insurance certificate for that year
 - b. the premium for the year starting on the 30 January 2007, arranged by the Applicant/Leaseholders without any managing agent and without any preferential relationship with an insurance broker, was £1,767.81, less than 67% of the sum charged for the year ending June 2002
 - c. a reasonable sum would be the 2007 figure of £1,767.81 discounted for inflation back to 2002
54. The Respondent/Landlord's statement in reply stated that :
- a. the certificate was at A156
 - b. it was an "all risks" policy with Royal & Sun Alliance, which was an insurer of repute, in accordance with the lease
 - c. the expenditure was reasonable
55. At the hearing, the Tribunal referred the parties to the decisions in the following cases :
- a. **Viscount Tredegar v Harwood** [1929] AC 72, in which :
 - the tenant was obliged to insure her house in the Law Fire Office or in some other responsible insurance office to be approved by the landlord
 - the tenant insured instead with another company
 - the landlord had a very large number of other houses and insisted that for estate management reasons it was essential that all his tenants should insure in the same office
 - the House of Lords held that the primary obligation on the tenant was to insure with the Law Fire Office; that the landlord had an absolute right to withhold his approval of an alternative office without giving reasons; and that, in any event, the grounds of the landlord's disapproval were reasonable
 - Lord Shaw of Dunfermline stated that with so many properties the difficulty for the landlord was to check for failure of renewals, and the point would become very

complex if they were insured in many different offices, and that with a simple working arrangement with one office simplicity and accuracy were promptly secured

b. **Berrycroft Management Company Limited v Sinclair Gardens Investments (Kensington) Limited** [1996] EWHC Admin 50 in which

- the landlord, by virtue of provisions in the lease, required the tenants' management company to insure a residential block of flats with Commercial Union, whose premium were about double that of another insurer
- the Court of Appeal held that the question was not whether the insurance was the cheapest available but whether the insurance was arranged in the normal course of business and whether the expenditure was reasonably incurred
- the Court of Appeal decided, on the facts of the case, that the amounts quoted by Commercial Union were neither unreasonable nor excessive and were negotiated in the ordinary course of business
- the Court of Appeal dismissed the tenant's appeal

c. **Forcelux v Sweetman** [2001] 2 EGLR 173 in which

- the landlord insured a house which had been converted into 2 flats
- the tenants were liable to pay the premiums by way of service charge
- the landlord used a broker, and insured all its properties under one policy
- the tenants produced quotes for similar cover at premiums which were about half the price
- the Lands Tribunal held that :
 - the relevant question under section 19 of the 1985 Act was not whether costs were "reasonable" or the expenditure the cheapest available, but whether the costs were "reasonably incurred"
 - in order to answer that question it had to be decided :
 - whether the landlord's actions were appropriate and properly effected in accordance with the lease, the RICS Code, and the 1985 Act, and
 - whether the amount charged was reasonable in the light of that evidence, because if that did not have to be considered it would be open to any landlord to plead justification for any particular figure on the ground that the steps taken by the landlord justified the expense without properly testing the market
 - cover for commercial landlords was more expensive than that available for owner-occupiers
 - however, the lease required the landlord to insure and the landlord's block policy was competitively obtained in accordance with market rates
 - the cost of the premiums was reasonably incurred
 - there was no evidence that the costs were excessive
 - the quotes obtained by the tenants were not on a like-for-like basis, and, while the cover might have been comparable, the tenants were in a different category from a commercial landlord, and a direct comparison was not appropriate

56. The parties further submissions were as follows :

- a. Mr Carey said that the premium for 2008/2009 was less than the 2001/2002 premium despite having made a claim, which was another indication that the 2001 premium was too high

- b. Mr Whybrow said that there could have been many reasons why the 2001 premium was higher, but that it had nevertheless been reasonably incurred and negotiated in the ordinary course of business

57. Tribunal's findings

58. The Tribunal finds, in accordance with the guidelines in the cases mentioned, that :
- a. the Tribunal is satisfied that the premium was negotiated in the ordinary course of business with a reputable insurer and reasonably incurred in accordance with the lease, despite being higher than the current premium negotiated by the Applicant/Leaseholders
 - b. however, this item is not payable by the lessees by virtue of section 20B of the 1985 Act, for reasons already given

59. ***Year 2002/2003 £2,115.00 management charge***

60. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002

61. The Respondent/Landlord's statement in reply stated that :
- a. the fee charged for the year was £1,800 plus VAT, which equated to £100 a flat
 - b. the cost was reasonably incurred for the same reasons as set out in relation to the similar item in the year 2001/2002

62. At the hearing, both Mr Ellis and Mr Whybrow conceded that :
- a. the amount chargeable to the lessees was 10% of the total maintenance costs excluding the management charge itself
 - b. the total maintenance costs in the accounts at page 33 were £8,227.68
 - c. the management fee was therefore £822.77 plus VAT of £143.97, namely £966.74
 - d. if the Tribunal were to find that any part of the total maintenance costs in the accounts of £8,227.68 were not to be payable by the lessees, then the management fee would be reduced accordingly

63. The Tribunal's findings

64. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons

65. ***Year 2002/2003 £239.70 external repairs***

66. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002

67. The Respondent/Landlord's statement in reply stated that :
- a. the sum comprised 2 invoices :
 - A82 : Westoaks remedial works £138.65
 - A92 : Westoaks leak repairs £101.05
 - b. the invoices appeared reasonable in both presentation and cost
 - c. the expenditure was reasonable

68. At the hearing, Mr Ellis conceded that, having now seen the invoices, the only issue in relation to these items would be if they were not payable pursuant to section 20B of the 1985 Act
69. The Tribunal's findings
70. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
71. ***Year 2002/2003 £176.25 internal accounts charge and £423.00 reporting accounts charge***
72. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
73. The Respondent/Landlord's statement in reply stated that :
- a. Equity Asset Management charged £360 plus VAT "internal accounts charge" for the preparation and collation of invoices for certification by the accountant
 - b. Maurice Lake & Co Accountants charged £150 plus VAT to prepare and certify the service charge accounts (A84)
 - c. if the agent had not prepared the reporting the accountant's invoice would have been higher
 - d. the expenditure was reasonable
74. At the hearing, both Mr Ellis and Mr Whybrow agreed that the issues were the same as in relation to the similar item in the account for 2001/2002
75. The Tribunal's findings
76. The Tribunal finds that this item is not payable by way of service charge for reasons already given
77. ***Year 2002/2003 £1,120.63 surveyors fees***
78. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
79. The Respondent/Landlord's statement in reply stated that :
- a. the sum comprised 4 invoices :

• A66 : Equity Surveyors 5-year plan	£235.00
• A64 : Equity Surveyors ramp works	£146.88
• A69 : Equity Surveyors inspect and report on lease breaches	£293.75
• A85 : T Taylor bridge survey	£445.00
 - b. the appointment of surveyors in certain matters was a reasonable action to protect the interests of both lessor and lessee
 - c. it had not been possible to find a copy of the reports
 - d. the costs were recoverable under clause 1(a) of the lease
 - e. the expenditure was reasonable
80. At the hearing :

- a. Mr Whybrow conceded that there was no provision in the lease for the Respondent/Landlord to recover by way of service charge surveyors fees for breaches of a lease, so that the figure of £293.75 would have to be deleted
- b. Mr Ellis conceded that, having now seen the invoices, the only issue in relation to the other 3 items would be if they were not payable pursuant to section 20B of the 1985 Act

81. The Tribunal's findings

82. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons

83. ***Year 2002/2003 £3,262.17 insurance premium***

84. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002

85. The Respondent/Landlord's statement in reply stated that the cost was reasonably incurred for the same reasons as set out in relation to the similar item in the year 2001/2002

86. At the hearing, both Mr Ellis and Mr Whybrow agreed that the issues were the same as in relation to the similar item in the account for 2001/2002

87. The Tribunal's findings

88. The Tribunal finds, in accordance with the guidelines in the cases mentioned, that :

- a. the Tribunal is satisfied that the premium was negotiated in the ordinary course of business with a reputable insurer and reasonably incurred in accordance with the lease, despite being higher than the current premium negotiated by the Applicant/Leaseholders
- b. however, this item is not payable by the lessees by virtue of section 20B of the 1985 Act, for reasons already given

89. ***Year 2003/2004 £2,036.25 management charge***

90. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002

91. The Respondent/Landlord's statement in reply stated that the cost was reasonably incurred for the same reasons as set out in relation to the similar item in the year 2001/2002

92. At the hearing, both Mr Ellis and Mr Whybrow conceded that :

- a. the amount chargeable to the lessees was 10% of the total maintenance costs excluding the management charge itself
- b. the total maintenance costs in the accounts at page 41 were £7,818.86
- c. the management fee was therefore £781.89 plus VAT of £136.83, namely £918.72
- d. if the Tribunal were to find that any part of the total maintenance costs in the accounts of £7,818.86 were not to be payable by the lessees, then the management fee would be reduced accordingly

93. The Tribunal's findings
94. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
95. ***Year 2003/2004 £822.50 external repairs***
96. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
97. The Respondent/Landlord's statement in reply stated that :
- a. the sum comprised 1 invoice :
 - A105 : Chores Cleaning Services repairs to parapet and lead work £822.50
 - b. the invoice appeared reasonable in both presentation (although it was erroneously addressed to another Regis Group subsidiary, Magnus Midland, it clearly stated that it was in relation to the Building)
 - c. the expenditure was reasonable
98. At the hearing, Mr Ellis conceded that, having now seen the invoice, there was no issue in relation to this item
99. The Tribunal's findings
100. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
101. ***Year 2003/2004 £176.25 reporting accounts charge***
102. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
103. The Respondent/Landlord's statement in reply stated that :
- a. Maurice Lake & Co Accountants charged £150 plus VAT to prepare and certify the service charge accounts (A84)
 - b. the expenditure was reasonable
104. At the hearing, both Mr Ellis and Mr Whybrow agreed that the issues were the same as in relation to the similar item in the account for 2001/2002
105. The Tribunal's findings
106. The Tribunal finds that this item is not payable by way of service charge for reasons already given
107. ***Year 2003/2004 £3,664.86 insurance premium***
108. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002

109. The Respondent/Landlord's statement in reply stated that the cost was reasonably incurred for the same reasons as set out in relation to the similar item in the year 2001/2002
110. At the hearing, both Mr Ellis and Mr Whybrow agreed that the issues were the same as in relation to the similar item in the account for 2001/2002
111. The Tribunal's findings
112. The Tribunal finds, in accordance with the guidelines in the cases mentioned, that :
- a. the Tribunal is satisfied that the premium was negotiated in the ordinary course of business with a reputable insurer and reasonably incurred in accordance with the lease, despite being higher than the current premium negotiated by the Applicant/Leaseholders
 - b. this item is payable by way of service charge
113. ***Year 2004/2005 £2,115.00 management charge***
114. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
115. The Respondent/Landlord's statement in reply stated that the cost was reasonably incurred for the same reasons as set out in relation to the similar item in the year 2001/2002
116. At the hearing, both Mr Ellis and Mr Whybrow conceded that :
- a. the amount chargeable to the lessees was 10% of the total maintenance costs excluding the management charge itself
 - b. the total maintenance costs in the accounts at page 45 were £5,248.75
 - c. the management fee was therefore £524.88 plus VAT of £91.88, namely £616.73
 - d. if the Tribunal were to find that any part of the total maintenance costs in the accounts of £5,248.75 were not to be payable by the lessees, then the management fee would be reduced accordingly
117. The Tribunal's findings
118. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
119. ***Year 2004/2005 £235.00 internal accounts charge and reporting accounts charge***
120. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
121. The Respondent/Landlord's statement in reply stated that :
- a. Lake Bushell Accountants charged £200 plus VAT (invoice A85) for preparation of the service charge account (A22)
 - b. the expenditure was reasonable
122. At the hearing, both Mr Ellis and Mr Whybrow agreed that the issues were the same as in relation to the similar item in the account for 2001/2002

123. The Tribunal's findings
124. The Tribunal finds that this item is not payable by way of service charge for reasons already given
125. ***Year 2004/2005 £973.75 surveyors fees***
126. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
127. The Respondent/Landlord's statement in reply stated that :
- a. the sum comprised 1 invoices and one pre-payment:
 - A114 : Equity Surveyors aborted s20 external decorations project £528.75
 - T Taylor duplicate invoice in year ended 2003 £445.00
 - b. the s20 project was aborted at the request of the lessees
 - c. the contractor T Taylor was paid twice; the positive book entry recovered the expenditure from the lessees pending a refund from the contractor; the contractor sent a subsequent invoice for payment in the sum of £436 (PM5) and appeared to have offset
128. At the hearing :
- a. Mr Ellis conceded that, having now seen the Equity Surveyors invoice, there was no issue in relation to this item
 - b. Mr Whybrow conceded that :
 - there was no copy of the invoice from T Taylor for £436 before the Tribunal
 - there was no evidence before the Tribunal about what that invoice was for, or even whether it related to the Building
 - there was no evidence before the Tribunal that the difference of £9 between the 2 invoices had been credited to the lessees
 - the £445 would have to be deleted
129. The Tribunal's findings
130. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
131. ***Year 2005/2006 £2,115 management charge***
132. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
133. The Respondent/Landlord's statement in reply stated that the cost was reasonably incurred for the same reasons as set out in relation to the similar item in the year 2001/2002
134. At the hearing, both Mr Ellis and Mr Whybrow conceded that :
- a. the amount chargeable to the lessees was 10% of the total maintenance costs excluding the management charge itself

- b. the total maintenance costs in the accounts were £189.86 (taking account of a credit of £1,308.35 for electricity, which Mr Whybrow conceded had been charged in a previous year, and had accordingly boosted the management charge for that previous year)
 - c. the management fee was therefore £18.99 plus VAT of £3.32, namely £22.31
 - d. if the Tribunal were to find that any part of the total maintenance costs in the accounts of £9,383.62 were not to be payable by the lessees, then the management fee would be reduced accordingly
135. The Tribunal's findings
136. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
137. ***Year 2005/2006 £235 internal accounts charge and reporting accounts charge***
138. The Applicant/Leaseholders' statement of case stated that this was unreasonable and irrecoverable for the same reasons as set out in relation to the similar item in the year 2001/2002
139. The Respondent/Landlord's statement in reply stated that :
- a. Lake Bushell Accountants charged £200 plus VAT (invoice missing) for preparation of the service charge account (A29)
 - b. the expenditure was reasonable
140. At the hearing, both Mr Ellis and Mr Whybrow agreed that the issues were the same as in relation to the similar item in the account for 2001/2002
141. The Tribunal's findings
142. The Tribunal finds that this item is not payable by way of service charge for reasons already given
143. ***Year 2005/2006 £646.25 asbestos***
144. The Applicant/Leaseholders' statement of case stated that :
- a. there was no explanation for this sum
 - b. it was unreasonable and excessive
145. The Respondent/Landlord's statement in reply stated that :
- a. the sum comprised 2 invoices :
 - A111 : Johnson Cooper asbestos survey £578.50
 - A110 : Johnson Cooper 5 asbestos samples tested £58.75
 - b. Johnson Cooper acted in accordance with advice from the Health & Safety Executive and pursuant to the Control of Asbestos at Work Regulations 2002 and properly and sensibly arranged a survey conducted by their employee Dean Davidson ACIOB
 - c. the Respondent/Landlord's bundle contained copies of the survey (PM7), letter to Mr Carey (PM8), Mr Davidson's CV (PM9), and confirmation of qualifications (PM10)
 - d. the expenditure was reasonable

146. At the hearing, Mr Ellis conceded that, having now seen the invoices, there was no issue in relation to this item
147. The Tribunal's findings
148. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
149. *Year 2005/2006 £436.96 lift repairs*
150. The Applicant/Leaseholders' statement of case stated that :
- a. the expense related to the invoice of Swift Lift Limited
 - b. it arose only because the Respondent/Landlord's agent had failed to pay the invoices of the previous lift maintenance contractor, Stenna [sic] Lifts
151. The Respondent/Landlord's statement in reply stated that :
- a. the sum comprised 1 invoice :
 - A195 : Swift Lifts lift repairs, adjusted guide shoes £436.96
 - b. the invoice appeared reasonable both in presentation and cost
 - c. any failure to pay the previous contractor was a result of substantial debtors of service charges at the time
 - d. the expenditure was reasonable
152. At the hearing, Mr Ellis conceded that, having now seen from the internal ledger entries at pages 37 48, and 54, there had been no charge to the lessees in the 2005/2006 accounts for any invoices to Stannah Lifts, and accordingly there was no issue in relation to this item
153. The Tribunal's findings
154. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that the amount payable in relation to this item is as set out in the Appendix to these reasons
155. *Year 2005/2006 a credit against service charge in the sum of £1,308.35 for electricity*
156. The Applicant/Leaseholders' statement of case stated that the Applicant/Leaseholders sought clarification that this adjustment represented a reimbursement of an overpayment to Powergen
157. The Respondent/Landlord's statement in reply stated that :
- a. the entry in the accounts was a credit
 - b. it resulted from a direct debit to Seeboard Energy of £120 a month
 - c. the copy invoices (A304 to A361) suggested that the account for one of the supplies changed from Seeboard to Powergen in about September 2005
 - d. the £120 a month direct debit continued until March 2006
 - e. the accountant identified this as an error
 - f. the account was prepared in October 2006
 - g. the right to manage was acquired in November 2006
 - h. it was unlikely that the Respondent/Landlord would have obtained the refund prior to the handover

- i. the account with Seeboard (now EDF) now had a nil balance
 - j. presumably the Applicant/Leaseholders obtained a refund
158. At the hearing, Mr Ellis conceded that, having now considered Mr Whybrow's explanation, there was no issue in relation to this item
159. The Tribunal's findings
160. The Tribunal finds, in accordance with the concessions made by the parties at the hearing, that this item should be credited against the relevant service charge
161. ***Section 20C application***
162. The Applicant/Leaseholders applied to limit the amount of any costs sought to be charged by the Respondent/Landlord as a consequence of this application
163. The Respondent/Landlord's statement in reply stated that :
- a. the Respondent/Landlord had no staff of its own to represent it in these proceedings
 - b. the Respondent/Landlord had accordingly instructed Pier Management
 - c. there was an entitlement to costs
 - d. however, the Respondent/Landlord would not be submitting any invoices for costs incurred
164. At the hearing the parties made no additional submissions
165. The Tribunal's findings
166. The Tribunal, in reliance on the statement on behalf of the Respondent/Landlord that the Respondent/Landlord would not be submitting an invoices for costs incurred, the Tribunal makes no order under section 20C
167. ***Application for order for costs***
168. At the hearing on the 18 July 2008 Mr Powell of Gaby Hardwicke made an application for the costs of the Applicant/Leaseholders to be paid by the Respondent/Landlord pursuant to paragraph 10 of schedule 12 to the Commonhold and Leasehold Reform Act 2002
169. The Respondent/Landlord's statement in reply stated that :
- a. the Respondent/Landlord denied acting vexatiously
 - b. the Respondent/Landlord's agent had not been aware of these proceedings, and did not receive the Tribunal's directions until the 7 August 2008
 - c. Johnson Cooper had previously assisted Gaby Hardwicke by producing the documents included in the Applicant/Leaseholders bundle on the understanding that the Applicant/Leaseholders would use the information to narrow the issues and resolve them outside the Tribunal
 - d. the actions by the Respondent/Landlord's agents in the past had been reasonable and helpful
 - e. the expenditure challenged was accounted for and supported, and dated back, in some cases, some 7 years

- f. the Respondent/Landlord wondered why the Applicant/Leaseholders had waited until now (when negotiating the purchase of the freehold) to challenge the expenditure
- g. it had required substantial time and investigation by Pier Management

170. At the hearing :

- a. Mr Ellis said that the Respondent/Landlord had been obstructive in claiming that the application had not been served properly upon the Respondent/Landlord, when it was perfectly clear that the Respondent/Landlord or its agents were fully aware of the application, and, indeed, one of the Respondent/Landlord's agents, Mr Meagher, had been present at the previous hearing on the 18 July 2008
- b. Mr Whybrow said that :
 - the Respondent/Landlord was perfectly entitled to instruct different agents for different purposes at the same time
 - Mr Meagher had been instructed only in relation to the other application before the Tribunal on the 18 July 2008, namely the application under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993
 - it was right to keep the 2 applications separate
 - as soon as the directions order dated the 18 July in this application had been served on the Respondent/Landlord the Respondent/Landlord had instructed Mr Whybrow to represent them
 - Mr Whybrow had then responded with the Respondent/Landlord's statement of case immediately
 - concessions had been made at the hearing today on behalf of the Respondent/Landlord
 - the Respondent/Landlord had not acted vexatiously

171. The Tribunal's findings

172. The Tribunal has taken account of all the submissions on behalf of the Applicant/Leaseholders

173. However, the Tribunal :

- a. is not satisfied that the Respondent/Landlord had, before the 18 July 2008, been served direct with the application, the Applicant/Leaseholders' statement of case, the Applicant/Leaseholders' bundle of documents, or notice of the time, date or venue of the hearing, for reasons given at the hearing on the 18 July 2008
- b. accepts as persuasive Mr Whybrow's submissions
- c. declines, in all the circumstances, to make an order for costs against the Respondent/Landlord

Dated the 26 September 2008



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/21UG/LSC/2008/0005

St Peter's Court, 24 De La Warr Road, Bexhill on Sea, East Sussex, TN40 2JD

Appendix

Sums payable by way of service charge

St Peters Court 24 De La Warr Road Bexhill

Date	Description	Page	Amount claimed	Amount allowed	Amount disallowed s20B	Other amounts disallowed
2001/2002		24				
	Electricity	24	221.17	221.17		
25 June 2001	JL Gardner	25	140.00		140.00	
	Other garden maintenance	24	1,540.00	1,540.00		
02 July 2001	SA Services	25	65.00		65.00	
	Other cleaning	24	621.00	621.00		
	Window cleaning	24	60.00	60.00		
	External repairs	24	1,795.40	1,795.40		
03 July 2001	Stannah	26	84.98		84.98	
	Other lift repairs	24	772.58	772.58		
	Reporting accounts charge	24	940.00			940.00
	Internal accounts charge	24	176.25			176.25
	Surveyors fees	26	352.50	352.50		
01 July 2001	Insurance	26	2,614.74		2,614.74	
	Total		9,383.62	5,362.65	2,904.72	1,116.25
23 June 2002	Management charge	24	1,102.57			472.46
	10% amount allowed			536.27		
	VAT 17.5%			93.84		
	Total		10,486.19	5,992.76	2,904.72	1,588.71

St Peters Court 24 De La Warr Road Bexhill

Date	Description	Page	Amount claimed	Amount allowed	Amount disallowed s20B	Other amounts disallowed
2002/2003		33				
27 May 2003	Seeboard	34	12.50	12.50		
27 May 2003	Seeboard	34	13.00	13.00		
23 June 2003	Accrual	34	23.06	23.06		
	Other electricity	33	173.82		173.82	
16 June 2003	JL Gardner	34	140.00	140.00		
	Other garden maintenance	33	1,600.00		1,600.00	
23 June 2003	SA Services	35	52.00	52.00		
	Other cleaning	33	585.00		585.00	
23 June 2003	SA Services	37	5.00	5.00		
	Other window cleaning	33	55.00		55.00	
	External repairs	33	239.70		239.70	
	Lift repairs	33	346.55		346.55	
	Reporting accounts charge	33	176.25			176.25
	Internal accounts charge	33	423.00			423.00
	Surveyors fees	33	1,120.63		1,120.63	
01 July 2002	Insurance	38	3,262.17		3,262.17	
	Total		8,227.68	245.56	7,382.87	599.25
23 June 2002	Management charge	33	2,115.00			2,086.14
	10% amount allowed			24.56		
	VAT 17.5%			4.30		
	Total		10,342.68	274.42	7,382.87	2,685.39

St Peters Court 24 De La Warr Road Bexhill

Date	Description	Page	Amount claimed	Amount allowed	Amount disallowed s20B	Other amounts disallowed
2003/2004		PM3				
	Electricity	PM3	175.44	175.44		
	Garden maintenance	PM3	1,760.00	1,760.00		
	Cleaning	PM3	604.50	604.50		
	Window cleaning	PM3	45.00	45.00		
	External repairs	PM3	822.50	822.50		
	Lift repairs	PM3	189.31	189.31		
	Reporting accounts charge	PM3	176.25			176.25
	Internal accounts charge	PM3	0.00	0.00		
	Surveyors fees	PM3	0.00	0.00		
	Insurance	PM3	3,664.86	3,664.86		
	Electricity	PM3	381.00	381.00		
	Total	PM3	7,818.86	7,642.61		176.25
	Management charge	PM3	2,115.00			1,216.99
	10% amount allowed			764.26		
	VAT 17.5%			133.75		
	Total		9,933.86	8,540.62		1,393.24

St Peters Court 24 De La Warr Road Bexhill

Date	Description	Page	Amount claimed	Amount allowed	Amount disallowed s20B	Other amounts disallowed
2004/2005		45				
	Electricity	45	1,739.15	1,739.15		
	Garden maintenance	45	1,025.00	1,025.00		
	Cleaning	45	599.50	599.50		
	Window cleaning	45	30.00	30.00		
	External repairs	n/a	0.00	0.00		
	Lift repairs	45	576.14	576.14		
	Reporting accounts charge	45	235.00			235.00
	Internal accounts charge	n/a	0.00	0.00		
	T Taylor surveyors fees	48	445.00			445.00
	Equity surveyors fees	48	528.75	528.75		
	Insurance	45	70.21	70.21		
	Total	45	5,248.75	4,568.75		680.00
	Management charge	45	2,115.00			1,578.17
	10% amount allowed			456.88		
	VAT 17.5%			79.95		
	Total		7,363.75	5,105.58		2,258.17

St Peters Court 24 De La Warr Road Bexhill

Date	Description	Page	Amount claimed	Amount allowed	Amount disallowed s20B	Other amounts disallowed
2005/2006		52				
	Electricity	52	-1,308.35	-1,308.35		
	Garden maintenance	n/a	0.00	0.00		
	Cleaning	n/a	0.00	0.00		
	Window cleaning	n/a	0.00	0.00		
	External repairs	n/a	0.00	0.00		
	Lift repairs	45	436.96	436.96		
	Reporting accounts charge	45	235.00			235.00
	Internal accounts charge	n/a	0.00	0.00		
	Asbestos surveyors fees	45	646.25	646.25		
	Insurance	n/a	0.00	0.00		
	Bank charges	45	180.00	180.00		
	Bank interest received	45	-0.28	-0.28		
	Total	45	189.58	-45.42		235.00
	Management charge	45	2,115.00			2,115.00
	10% amount allowed			0.00		
	VAT 17.5%			0.00		
	Total		2,304.58	-45.42		2,350.00