

**LEASEHOLD VALUATION TRIBUNAL**

**SOUTHERN RENT ASSESSMENT PANEL**

Case Number: CHI/29/UN/LAM/2009/004

**BETWEEN**

Mr Ronald Greene and Mr John Moss and others  
(Applicants/Lessees)

and

Metropolitan Property Realizations Ltd (Respondent/Landlord)

**Premises:** Arlington House All Saints Avenue Margate Kent CT9 1XS  
("The Premises")

**Hearing:** 7 8 and 9 September 2009

**Appearances:** Mr R Greene and Mr J Moss in person for the Applicants and  
Mr E Peters of Counsel for the Respondent

**Tribunal:** Mr D Agnew BA LLB LLM (Chairman)  
Mr C White FRICS  
Mr P A Gammon MBE BA

**DETERMINATION AND REASONS**

1. Background

- 1.1 On 18 February 2009 the Applicants made an application to the Tribunal for the appointment of a manager under Section 24 of the Landlord and Tenant Act 1987 and on 13 March 2009 an application was made under Section 27A of the Landlord and Tenant Act 1985 for the Tribunal to consider the liability for and reasonableness of certain service charges levied by the Landlord for each of the service charge years 2002/2008 inclusive in respect of the Premises.
- 1.2 A pre trial review was held on 24 April 2009 at which it was directed that the two applications would be dealt with together.
- 1.3 The manager that the Applicants wished to appoint was Mr Roger Southam BSc (Hons) FRICS MIRBM of Chainbow 16<sup>th</sup> Floor Tower Building 11 York Road Waterloo London. However, on 1 September 2009 the Respondent appointed Mr Southam's firm, Chainbow, as its

Managing Agent not only for Arlington House but also for its adjacent commercial properties.

- 1.4 The Applicants were happy with this development and at the outset of the hearing on 7 September 2009 decided that they would withdraw their application for the appointment of manager leaving only the Section 27A application for the Tribunal to determine.

## 2. The Premises

- 2.1 Arlington House is a purpose built high-rise block of flats, eighteen storeys high, situated in a prominent position on the seafront in Margate. There are spectacular views out to sea and over the surrounding countryside particularly from the upper floors. The building is clad in concrete and there are aluminium window frames to the flat windows. The building comprises 142 flats in all. There is an entrance hall on the ground floor containing a small porter's office. On the ground floor at the front of Arlington House there is a row of commercial retail units of a secondary nature the roofs of which are attached to Arlington House by a number of short concrete pillars. Only a few of those units are occupied and open for business, the remainder being empty and shuttered. These and other retail units, together with Arlington House, form a square which has now been closed to the public by metal gates. There is a considerable amount of graffiti on the shutters and walls of the closed shop premises. A former amusement park called Dreamlands is situated next to the Arlington House site. This was partially destroyed by fire some years ago and is closed to the public. One of the damaged rides is a listed structure. The rest of the Dreamlands site is a public car park. There is also a disused car park attached to Arlington House. The whole area gives the impression that it is run down and in a state of some dereliction. The good news for the residents of Arlington House is that a large well known supermarket has apparently been attracted to the site and the hope is that the area will be redeveloped and regenerated although this may take some years to come to fruition.
- 2.2 Also on the ground floor of Arlington House there is a pump room from which water is pumped from the mains to large storage tanks in the roof. This water then services all the flats.
- 2.3 The Landlord has permitted a number of companies to install on the roof of Arlington House a number of telecommunication aerials. The roof is accessed from the 18<sup>th</sup> floor by means of a metal ladder and a trap door which is kept locked by the Landlord. From there the outside of the roof area is accessed via two doors which will feature later in this decision.
- 2.4 The Tribunal were shown electricity meters and noted that although there was one meter for both the residential block and the commercial premises there was a further check meter for the commercial premises

only so that electricity costs could be apportioned between the two. It was not possible for the Tribunal to establish from a visual inspection as to whether the telecommunication aerials were serviced by separate meters or not.

- 2.5 Adjacent to Arlington House is a concrete ramp leading to a considerable number of parking spaces at first floor level for the use of the Lessees. There is a second entrance to the block from the car park.
- 2.6 The interior common areas of Arlington House have been designed to be low maintenance. The floors are not carpeted but are covered with thermoplastic tiles. The stairs are of bare concrete and the walls of the staircases are of unplastered brickwork. The windows in the stair cases on each floor have wooden cills which are rotten in places and require repair. The areas immediately below these windows show signs of damp penetration. The communal entrance hall, hallways and stairs were in an adequate state of cleanliness for a building of this type but they were by no means in pristine condition. There was a layer of dust on some surfaces which had evidently been accumulating for some considerable time. Some of the windows above head height in the entrance hall were in need of being cleaned and there was evidence of dead spiders and cobwebs in the hallways above eye level.
- 2.7 There are three sets of fire doors on each floor and the Tribunal saw that electric cabling had been installed as part of the fire alarm system. Some of this cabling still needed to be attached to an automatic magnetic closing system for the doors. The heavy duty cabling is currently affixed to the ceilings of the corridors. It is brightly coloured and not particularly attractive. The Tribunal was informed that it was intended to conceal this cabling by the installation of false ceilings in the corridors.
- 2.8 Two lifts serve all 18 floors of Arlington House. Both were operating on the day of the inspection.

### 3. The Leases

- 3.1 There are two standard type of leases for the flats in Arlington House. The majority, approximately 70 of them, are of the older type, granted in about 1979, contain a covenant in Clause 2(2)(a) to pay and contribute to the Lessor a service charge equal to 0.60% of the expenses of:-
  - (i) the cost of insuring and keeping insured throughout the term hereby created the said buildings against loss or damage by fire storm and tempest and (if possible) aircraft and explosion and against two years' loss of rent and public liability and such other risks normally covered under a comprehensive insurance as the Lessor shall determine ...
  - (iii) the cost of maintaining repairing decorating and renewing:-

- (a) the structure of the said buildings including the main drains foundations roofs chimney stacks external doors and windows (including frames) gutters and rainwater pipes
- (b) the gas and water pipes electric cables and wires in under or upon the said buildings
- (c) the passenger lifts (including the lift shafts) and the cost of running the same and
- (d) the entrance drive pathways entrance hall staircases and landings of the said buildings including the cleaning and lighting thereof
- (iv) the cost of employing and maintaining the service of a porter including the rent of a flat in the said buildings (should he occupy one)

...

(vi) the cost of complying with all statutes bylaws regulations and any other requirements of any competent authority which are the legal responsibility of the Lessor in relation to the building and curtilage thereof

(vii) the cost of all other services which the Lessor may at its absolute discretion provide or install in the said buildings for the comfort and convenience of the Lessees

(viii) the fees of the Lessor's auditors and the fees of the Lessor's managing agents for collection of the rents of the flats in the said buildings and for the general management thereof

(b) (i) The amount of the service charge and the other charges hereinbefore covenanted to be paid shall be ascertained and certified by a certificate (hereinafter called "the Certificate") signed by the Lessor's auditors (at the discretion of the Lessor) acting as experts and not as arbitrators annually and so soon after the Lessor's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned ...

(iii) A copy of the Certificate for each such financial year shall be supplied by the Lessor to the Lessee on written request and without charge to the Lessee.

(iv) The Certificate shall contain a summary of the said Lessor's expenses and outgoings incurred by the Lessor during the Lessor's financial year to which it relates together with a summary of the relevant details of the figures forming the basis of the service charge and other charges hereinbefore covenanted to be paid and the Certificate ... shall be conclusive evidence for the purposes hereof of the matters which it purports to certify ..."

- 3.2 By Clause 2(9) of the aforesaid Lease the Lessee covenants "from time to time and at all times well and substantially to repair cleanse maintain and keep the flat (other than the parts comprised in and referred to in paragraph (i) and (ii) of Clause 5 hereof) and the fixtures thereon and the walls pipes cables wires and appurtenances thereof with all necessary reparations cleansings and amendments whatsoever ..."
- 3.3 By Clause 2(16) (ii) of the aforesaid Lease the Lessee covenants "Not to assign underlet or part with the possession of the flat without first obtaining from the assignee transferee underlessee or tenant a

covenant directly with the lessor to pay the contribution covenanted to be made under sub-clause (2) hereof and in the case of assignment or transfer a further covenant by the assignee or transferee with the Lessor to pay the rent hereinbefore reserved and to observe and perform all the covenants on the part of the Lessee and conditions herein contained”.

- 3.4 By Clause 2(16) (iv) of the aforesaid Lease the Lessee covenants “Upon every assignment transfer underlease mortgage charge or other document affecting this underlease to give to the Lessor one month thereafter notice in writing thereof and also if required by the Lessor to produce each such document to the Lessor’s solicitors and pay a fee of £5.00 for the registration of each such document.”
- 3.5 The terms of the later form of Lease are worded slightly differently. In this case the contribution by way of service charge is 0.76% of the expenses of insuring the building and of “maintaining repairing and redecorating and renewing :-
- (a) the structure of the buildings including the main drains roofs foundations chimney stacks gutters and rainwater pipes and the main water tanks (if any)
  - (b) the cost of decorating the exterior of the window frames and the exterior parts of the door or doors giving entry to the flat and of repairing the same before such decorating if the same shall not have been properly repaired by the Lessee in accordance with Clause 2(9) hereof
  - (c) the gas and water pipes electric cables and wires in under and upon the buildings and
  - (d) all entrance drives pathways entrance hall passages staircases and landings of the buildings and all parts of the buildings not included in this demise or in the demise of any other flats in the buildings including the cleaning and lighting (if the same be provided by the Lessor) thereof
  - (iv) The cost of employing from time to time and in the Lessor’s discretion all maintenance staff cleaners gardeners and porters and other staff including the cost of uniforms bonuses national insurance contributions pensions and gratuities and the cost of employing independent contractors if thought fit as alternative or in addition.
  - (v) The amount equal to the fair rental value of any accommodation provided by the Lessor for its staff and the amount of any rates payable thereon and the cost of decorating it and keeping it in repair and of all services provided thereto ...
  - (vi) The cost of providing a lift service ...
  - (vii) The cost of keeping any communal gardens and areas in and about the buildings in good order whilst the same shall be made available for use by the Lessee ...
  - (viii) The cost of maintaining and repairing boundary wall and fences and party structures and those whose use is common to occupiers of the buildings and others and of any garages included therewith ...
  - (x) The cost of any other services or facilities which the Lessor may in

its absolute discretion provide for the comfort or convenience of occupiers of the buildings or for their proper maintenance safety amenity and administration.

(xi) The cost of employing managing agents for the management of the buildings and collection of the rents and service charge or (if the Lessor does not employ managing agents) a fee for the Lessor based on the foregoing amounts ...”

- 3.6 By Clause 2(9) of this later form of Lease the Lessee covenants “from time to time and at all times well and substantially to repair cleanse and maintain and keep the flat (other than the parts which are comprised in the referred to paragraphs (1) and (2) of Clause 5 hereof) and all walls pipes drains conduits flues cables wires exclusively serving the flat and all mechanical electrical and heating apparatus within the flat and the appurtenances thereof and the window and window frames and the door or doors giving entry to the flat (excluding the exterior decoration of such window frames and exterior door or doors) and all necessary reparations cleansings and amendments whatsoever ...”

#### 4. The Law

- 4.1 By Section 27A of the 1985 Act it is provided that:-  
An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to –  
(a) the person by whom it is payable,  
(b) the person to whom it is payable,  
(c) the amount which is payable,  
(d) the date at or by which it is payable, and  
(e) the manner in which it is payable.
- 4.2 By Section 19(1) of the Act the amount payable in respect of service charges shall be limited to the extent that they are reasonably incurred.
5. The Tribunal received evidence in the form of witness statements from Mr Mosse (Flat 11B), Mr Greene (Flat 18G and chairman of Arlington House Residents' Association), Mr and Mrs Kirschner (Flat 14H), Mr R Ayres (Flat 16C), Mr N Martins (Flat 9G and Mr J Macallan (Flat 6F) for the Applicants and from the following for the Respondent namely:- Mr S Adams, Regional Controller of Freshwater Group of Companies, Mr R Gammon, Area Manager of Highdown Co. Ltd., the Landlord's own management company, Ms S Allaway, insurance supervisor employed by Kidington Properties Ltd., part of the Freshwater Group of Companies, Ms L Wardley, in-house electrical engineer employed by Highdown Co Ltd., and Metropolitan Property Realizations Limited, Mr C Jones, Landlord's building surveyor and Mr N Maloney, independent surveyor instructed by the Respondent.  
Oral evidence was given by Mr Mosse, Mr Green and Mr Macallan for the Applicants. The other witnesses for the Applicants who had made witness statements did not appear to give oral evidence to the Tribunal.

Oral evidence was received from Ms Wardley, Mr Maloney, Ms Allaway and Mr Gammon for the Respondents.

6. The matters in contention

Attached hereto is a schedule showing the amount claimed for the various items of expenditure for the various years in question together with the amount sought by the Applicants as reductions from the amounts claimed.

6.1 The Applicants challenged the following categories of service charge:-

6.1.1 *Office rent and rates.*

This referred to the charge that had been levied to the Lessees representing the rent which the Landlord could have obtained if he had been able to rent out the rest room which was provided for the porter and the cleaning staff. This was a commercial unit which had been converted to use as a rest room. The Applicants objected to paying such a rent to the Landlord on the basis that there was no evidence of a letting or rent having been paid by the managing agent (a company in the same group as the Landlord). The Lessees were not liable to pay for this it was said, as no rent was being paid by anyone. The Landlord's response was that these costs are recoverable under the terms of the Leases (Clause 2(2)(a)(iv), (v), (vii) of the 1979 lease and Clause 2(2)(a)(v), (x) of the 1985 lease). Furthermore the cost is reasonable.

6.1.2 *Wages to be charged to the shops.*

6.1.2.1 It was the Lessees' case that the porter spent about 50% of his time undertaking work on the Landlord's commercial premises adjacent to Arlington House rather than to Arlington House itself. They therefore claim that an element of the porter's wages should be deducted from the service charge accordingly. Several of the Lessees including Mr Greene and Mr Moss gave evidence either orally to the Tribunal or in witness statements that the porter did little if no cleaning in Arlington House and that he spent much of his time gathering rubbish from the adjoining car park or commercial areas. The Landlord charges the commercial tenants considerably more for cleaning than the 5% of the porter's wages which have been deducted for the porter being deployed on the Landlord's other duties and it was the Applicants' case therefore that a greater deduction than 5% of the porter's wages should be made in the Arlington House service charges. They sought a deduction of £15,500 for the year 2002 rising to £17,000 for the year 2008.

6.1.2.2 Counsel for the Respondent, Mr Peters, submitted that the cost of cleaning and portorage charged to Arlington House was reasonable given the standard of the cleaning seen on inspection and the nature of

the building. Out of 112 flats on long leases there had been complaints from only about six Lessees and some of those witnesses did not turn up to the Tribunal hearing. The salaries of the porter and cleaners were modest and reasonable for what was carried out. The evidence was that not all the cleaning of the commercial part was carried out by the Arlington House staff. The suggestion that 50% of the porter's wages should be deducted for what he does for the commercial premises is fanciful. Most of the commercial premises are now unused and unoccupied and the square is sealed off by fences. The porter can only have nominal involvement with the commercial units and 5% is a more than adequate deduction from his wages to reflect this.

### 6.1.3 *Manned Security.*

6.1.3.1 The Applicants stated that the necessity for manned security was a requirement of the insurers going back to 2001 when there was a fire at Arlington House which, sadly, caused a fatality. This requirement is still in place today. The Applicants' case is that this requirement has been brought about by the number of empty units in the building which are owned by the Landlord of Arlington House and because of the uncontrolled sub-letting of flats. Consequently it was the Landlord's fault that 24 hour security was required. If security cameras were installed and were maintained in proper working order the need for people to be paid to be on site for 24 hours a day would be eliminated, it was claimed.

6.1.3.2 The Respondent's case was that the risks identified by successive insurers were not matters which the Landlord could influence. The empty shop units were a result of the general economic situation in that part of Margate. The proposed supermarket development would assist matters. The Respondent's insurance manager had through her brokers tried to persuade the insurers that 24 hour security was no longer required but the insurers were insistent. It was the Landlord's duty to insure and the costs were the best that could be obtained in the circumstances.

### 6.1.4 *Lift Items.*

6.1.4.1 The Applicants contended that the contract with the lift maintenance company provides for twelve visits a year and covers the renewal of certain specified items. The Applicants construe the contract to mean that only additional call outs and parts not specified were chargeable. However the Landlord had paid for parts which were not so chargeable and that this expenditure had therefore not been reasonably incurred.

6.1.4.2 The Respondent construed the contract as meaning that the parts were chargeable and in any event a reasonable person when construing the contract would have regarded the parts as chargeable.

The contract actually states as follows:

"Contract type A.



The contractors shall at regular intervals clean and lubricate the lift installation when necessary including the cleaning of motor groomers and lift pits.

He shall also include for the renewal of all incandescent lamps, new brushes for the electric motor and new contacts and springs for the controller as required.

Excluded in contract type A will be the draining and replenishing of sump oil, shortening of ropes and works arising from misuse and abuse of and power failure. These will be charged under a separate arrangement. The contractor shall submit a report at regular intervals as defined in paragraph 4 of the terms and condition.

Contract type B

The service will be as in contract type A but should include all call outs with parts chargeable.

The contract for these lifts is contract type B.

#### 6.1.5 *Works to flat windows.*

6.1.5.1 The Applicants' case was that the leases from 1985 were clear that repairs to windows and the replacing of glass in windows of the flats subject to those leases was the responsibility of the individual flat owner and was not a service charge item. The position was less clear with regard to the earlier leases but the Applicants maintained that in altering the leases the Landlord was clarifying its intention with regard to window repairs and that this intention was that window repairs should be the responsibility of the individual flat owners.

6.1.5.2 The Respondent recognised that the two leases were incompatible as far as window repairs is concerned. The construction of the earlier lease is clear in that window repairs throughout the building is the Landlord's responsibility and the cost thereof can be added to the service charges. It also makes sense in a difficult building such as this that one contractor who is used to the building should be employed to deal with such matters as window repairs. In the circumstances the Landlord has taken a practical and uniform approach by charging window repairs to all the service charges.

#### 6.1.6 *Unblocking flat wastes.*

6.1.6.1 The Applicants' case is that blocked waste pipes almost invariably occur in the pipework belonging to the individual flats and should therefore be the responsibility of the individual flat owners and not be placed on the service charge.

6.1.6.2 The Respondent's case was that it was almost impossible to tell in any individual case where the responsibility for a blockage lay. When it happens action has to be taken quickly otherwise there could be serious and unpleasant back-flowing of waste into flats. The Landlord has taken pragmatic action bringing in a contractor to deal with the problem when it has occurred and that it was properly charged to the

service charge account. The Landlord's managing agent did not appear to be aware of the fact that, according to Mr Greene greater care is being taken and the cost of unblocking sinks is now more regularly being charged to individual flat owners for the 2009 service charge year.

#### 6.1.7 *Building Insurance premium.*

6.1.7.1 The Applicants' case is that several factors have contributed to the insurance premiums for Arlington House being far higher than they could reasonably be expected to be. Following the fire in 2001 the then insurers, Zurich, reviewed the risk for Arlington House and declined cover. This meant that another insurer had to be found in difficult circumstances. Fire protection measures required by the Local Authority had not been completed, the property was affected by the Landlord's adjacent commercial property which was in a run-down state, there were a number of vacant units in Arlington House itself and there was a peerceived lack of control over sub-letting. This led to only one insurer being prepared to offer insurance. There was therefore a lack of competitive quotes for insurance cover and the Landlord had to accept whatever that one insurer offered. The Applicants considered that a reasonable increase in insurance premium resulting from the fire would have been 25% on top of the premium that existed prior to the fire. Thereafter the Applicants accepted that their proposed figures were something of a 'guesstimate' or 'plucked out of the air' but that they had done their best to estimate a reasonable figure for the insurance premium.

6.1.7.2 The Respondent's case was that the delay in complying with the fire precaution work had no impact whatsoever on the level of the premium and was not a reason for Zurich declining insurance and were able to point to letters from the insurers to that effect. As far as the reasonableness of the level of the premium is concerned, the Tribunal heard evidence from the Respondent's insurance manager, Miss Allaway, who described how she had enlisted the assistance of Lloyds brokers to obtain the best insurance premium in the circumstances. The insurance premiums have fallen significantly over the years. This reflects the fact that the risk of a fire such as that which occurred in 2001 happening again has diminished as time has gone by without there being any significant incident. Mr Peters pointed out that a previous LVT had already determined that the insurance costs for 2003 were reasonable and the Lessees are therefore now estopped from claiming that the insurance premium for that year is unreasonable and also for the previous year.

#### 6.1.8 *Accountants' fees.*

6.1.8.1 The amounts claimed here were as follows:-

2002	£2350.00
2003	£1100.00

2004	£3000.00
2005	£2700.00
2006	£3000.00
2007	£4000.00
2008	£4500.00

The Applicants consider that the amount charged for what was done was excessive. They thought that it was the managing agent's job to prepare the accounts and that the accountants' role was simply to check the figures and certify the accounts. It had been said that 100 hours had been spent by the accountants in performing the tasks that they were required to do. The Applicants thought that this was excessive if it was simply a certification exercise.

6.1.8.2 The Respondent's evidence was that the accountants prepared the accounts from scratch and that for a building of this nature and complexity the fees charged were reasonable.

6.1.9 *Cleaner's wages.*

6.1.9.1 The Applicants' case was that if the porter did his job properly there would be no need to employ an additional cleaner. Her wages could therefore be saved. They sought to exclude her wages altogether from the service charges.

6.1.9.2 The Respondent's case was that the Applicants' evidence had not contained any complaints about the part time cleaner herself. The complaints had been restricted to the porter. Their contention was that the overall cleaning bill for Arlington House was reasonable and that the cleaning was carried out to a reasonable standard.

6.1.10 *Night porter wages.*

6.1.10.1 The Applicants' case was that if CCTV were properly installed and maintained there would be no need for there to be a night porter. They therefore sought a reduction of £10,000 for each of the years 2002 to 2005 inclusive and of £11,000 for the year 2006, £12,500 for the year 2007 and £13,393 for 2008.

6.1.10.2 The Respondent's case was that it was necessary to have a night porter on duty when the night security firm and the Arlington House porter were not on site as a result of the insurance company's requirements and that therefore the expenditure was necessary and was of a reasonable amount.

6.1.11 The Applicants objected to a figure of £197 for repairs to the porter's rest room which had been incurred in 2004. The Applicants accepted that if the Tribunal thought they were liable to pay rent for the porter's rest room then the Tribunal would find this item to have been reasonably incurred.

#### 6.1.12 *Renewing door entry cable.*

The Applicants accepted that this item for which £999 had been charged to the service charge account for 2004 had not been put to the Respondent's witnesses but they were questioning the legitimacy of the charge.

#### 6.1.13 *Roof access door.*

6.1.13.1 The Applicants' case was that as they do not have access to the roof area, the trap door being kept locked by the Landlord, any damage to the said door must be caused by those who have reason to go onto the roof. This is mainly those companies who have telecommunication aerials on the roof. The Applicants considered it unfair that they should be asked to pay for damage caused by those companies. It is the Landlord and not they who receive any benefit from those telecommunication aerials. The Landlord's agent should ensure that any damage caused by those companies should be paid for by those companies. The Lessees have been charged £189 in 2005, £378 in 2006, £409 in 2007 and £2790 in 2008 for these items.

6.1.13.2 The Respondent's case was that the cost of repair to the roof doors is recoverable under the leases. The roof is necessary for everyone living below. There is no restriction in the leases on the Landlord's right to allow companies to install telecommunications aerials on the roof and the Lessees' liability for roof repairs has already been decided by the LVT decision in 2006. The question of damage from aerial users was not mentioned in the Lessees' application, their statement of case or witness statements. There is no evidence to suggest that if the doors need repair this is due to negligence or improper use by aerial users. The Tribunal has no evidence before it as to the reason for the expenditure in 2008 and is not in a position to form any view about it.

#### 6.1.14 *Unpaid fire safety works.*

6.1.14.1 There had been much confusion as to whether an unpaid balance of approximately £36000 should be re-credited to the service charge account that had been previously charged for fire safety works. It transpired that this money apart from a 5% retention had been paid recently. There still remains some work to be done in connection with the magnetic fire closure mechanism for the doors. It seems that the bulk of this cost if not all of it may be covered by the retention. It was agreed that this was a matter which the new manager could look into and resolve.

6.1.15 There then followed a number of small items as follows:

- a) sweeping the roof £380 in 2006
- b) roof report £370 in 2006

c) door entry repairs £227 in 2006 and £329 in 2007

d) pest control £764 in 2006 and £423 in 2007

6.1.15.1 The Applicants did not know why it was necessary to sweep the roof or have a roof report. They said that pest control comprised traps for rodents which had been placed outside the rear of the commercial units. They claimed that they were receiving no benefit from pest control and therefore should not have to pay for it. They thought that the door entry repairs which comprised repairs to the push buttons at the side of each door were subject to a maintenance contract and were therefore unreasonably incurred.

6.1.15.2 The Respondent's case on these points was that they were all service charge items under the lease. That they were reasonably incurred and reasonable in amount.

6.1.16 *Management fees.*

6.1.16.1 These had remained at £100 per flat from 2002 until 2006. In 2006 the management fee for the block went up by £710 and in 2007 and 2008 the amount of management fees in each of those years was, for the block, £1157 higher than if £100 per flat had been charged. The Applicants considered that £100 per flat was a reasonable management fee but no more.

6.1.16.2 The Respondent's case was that the management of this block was complicated and the fees were in all the circumstances very reasonable. The Applicants' choice of new manager will be charging considerably more.

6.1.17 *Repairs to failed water supply.*

6.1.17.1 In 2008 expenditure of £2917 has been incurred in repairing a water pipe that had failed. This had been renewed two years earlier as part of the Local Authority's requirements. The Applicants' case was that this pipe should not have failed only two years after being installed and that the charge had therefore unreasonably been levied against the service charge account. The Landlords should have recovered the cost from the contractor who installed the pipe in the first place.

6.1.17.2 The Respondent's case was that there was no evidence that the pipe had been installed negligently and that it would have been extremely difficult if not impossible to have recovered this cost from the contractor.

6.1.18 *Defects to fire doors.*

The Applicants claim that there was poor workmanship in installing doors to rubbish chute areas. They pointed out to the Tribunal the poor fitting of handles to the doors, the fact that they did not close properly

and that they had been fitted with unsuitable closing mechanisms. The Applicants claim the sum of £4963 which was the total cost of this item.

#### 6.1.19 *Fire alarm items.*

6.1.19.1 The Applicants claimed £1908 in relation to costs which the Landlord had incurred in calling out a local firm to deal with the fire alarm responses. The total amount charged to the service charge accounts was £2333.

6.1.19.2 The Respondent's case is that these call outs were not covered by the service contract that the Landlord had for such circumstances and that they chose the cheaper option of calling out a local person who was capable of attending to such matters as opposed to incurring a call out charge under the maintenance contract which would have been more expensive.

### 7. The Determination

#### 7.1 *Office rent and rates.*

The Tribunal considered that it was reasonable and, indeed, it was probably a mandatory requirement of employment law, that the Landlord should provide a rest room and WC facilities for staff. The annual sum charged to the service charge accounts for the rent and rates for this facility were considered by the Tribunal to be reasonable. Having made this finding it follows, as the Applicant Mr Moss acknowledged, that the amount of £197 referable to repairs to this office in the service charge to December 2004 was also reasonably incurred.

#### 7.2 *Cleaners wages to be charged to the shops.*

The Tribunal considered that a certain amount of work done by the porter in tidying up the immediate environs of Arlington House enured to the benefit of the residents of Arlington House. There are now only a very few commercial units that are open and the amount of time that the porter can expend exclusively on matters to do with the shops must be very limited. The Tribunal considered that the deduction of 5% from the porter's wages to reflect the work done by the porter in the commercial areas was a reasonable deduction and that the Lessees had not made out their case in respect of this item.

#### 7.3 *Manned security.*

The Landlord has no option, as it is a requirement of the insurance company insuring the building, that there is 24 hour manned security. It was not the fault of the Landlord that the area in the vicinity of Arlington House has degenerated so that there is a heightened security

risk. The Tribunal did not accept that a CCTV camera system properly maintained would necessarily be an adequate substitute for 24 hour manned security. The Tribunal accepted the evidence of Mr Greene that there were occasions on which the security man cleaned his car in the area adjacent to the porters office when on duty. The Tribunal considered that there must be times when the risks that the security firm is there to guard against are low compared with other times. The Tribunal did not consider that the security firm employee cleaning his car necessarily meant that manned security was ineffective. There was still a presence on site. In any event the insurers had been asked but had refused to agree to substitute CCTV for 24 hour manned security. The reasonableness of the charge for manned security itself had not been challenged by the Lessees rather than the principle of requirement for manned security. Consequently the Tribunal finds that the costs applied to the service charge accounts for 24 hour manned security by the Landlord are reasonable.

#### 7.4 *Lift items.*

The wording of the maintenance contract for the lifts is very unclear and could be construed either in the way that the Lessees or the Landlord interpret it. On balance, the Tribunal favoured the Landlord's construction of the contract and thought that the contract did not cover the cost of parts which is what had been charged to the service charge accounts. In any event, it was not unreasonable for the Landlord to construe the contract in that way. The Tribunal recommends that the new managing agent seeks clarification of this contract so that both he and the Lessees will have a better understanding of what it covers going forward.

#### 7.5 *Works to flat windows.*

The position with regard to repair and maintenance of the windows in the flats is most unsatisfactory because the two different types of leases are incompatible. The Tribunal can understand that the lessee of a flat under the later lease may well feel aggrieved at having to pay a contribution towards the cost of replacing the glass in the windows of another such flat when those later leases make it clear that the replacement of glass in windows is the responsibility of the individual leaseholder. On the other hand, it is clear that the earlier leases do enable the Landlord to charge to the service charge account the cost of replacing the glass in flat windows wherever they are in the building. The Landlords have taken the view that the most pragmatic way of dealing with the matter is to have one contractor who is used to the building and who applies a uniform approach to window repairs to effect the necessary repairs and the cost is charged to the service charge account and shared between all 142 flats. It has to be remembered that many of those flats are empty and so the Landlord ends up paying this contribution towards window repairs for all the flats it owns and which are vacant no matter what type of lease they are

held under and no matter where they are in the building. In all the circumstances the Tribunal did not consider that the Landlord had acted unreasonably in adopting this practice. This had been the Landlord's practice for a number of years and until recently was accepted by the Lessees without challenge. The Applicants are estopped from challenging this custom and practice for the past. If they wish to change the arrangement for the future they will no doubt discuss this with the new managing agent. It was the principle of charging window repairs to the service charge account that the Lessees objected to. They were not claiming that the actual cost of repairs was unreasonable. In all the circumstances, the Tribunal allows the service charge for this item in each of the service charge years as claimed by the Landlord.

#### 7.6 *Unblocking flat wastes.*

The Tribunal considered that in the past the Landlord could have adopted a more inquisitorial approach to ascertain the cause of blockages as they occurred and, if it was clear that the fault lay with an individual lessee causing a blockage in the pipework between the sink or lavatory and the downstack then the individual lessee should have been charged. The Tribunal thinks that it is more likely than not that such blockages would be within the pipework to individual flats rather than in the downstack. There was some evidence of this and in all of the circumstances and doing the best it could with the evidence before it the Tribunal considered that 50% only of the sums charged to the service charge account for unblocking flat waste should have been applied to the service charge account.

#### 7.7 *Building Insurance Premium*

7.7.1 The Tribunal did not agree with the Applicants that the high building insurance premiums charged to the service charge account since the fire in 2001 had at any time been inflated due to the fact that the Landlord had delayed in putting into effect some of the fire precaution measures required by the Local Authority. If it was the case as the Applicants alleged that the Landlords had delayed carrying out this work until such a time as a Section 72 notice was served upon it whereupon it became an expense chargeable to the service charge account rather than payable by the Landlord personally this would have been reprehensible because lives were being put at risk during the period of delay. However, the Tribunal does not have to decide whether in fact this was the case because there is evidence in the form of a letter from the insurance company stating that the level of the premium had not been affected in any way by the delay in implementing the Local Authority's requirements. This letter, from Zurich to Mr Beasley, the then secretary of the Arlington House Residents' Association dated 15 June 2002, states as follows: "Following the survey in 2001 the risk was reviewed and found not to meet our minimum underwriting criteria." When the property was



subsequently pulled out of a proposed auction and the insurers were advised of this they "felt it necessary to advise that the Freshwater Group of Companies look for an alternative market to place this risk. This was done on 21 December 2001 and our cover on the shops and this block of flats ceased." The letter concludes: "We trust this explains the position and that a list of risk improvements did not exist that had not been implemented".

7.7.2 On 22 October 2004 the Landlord's brokers wrote to the Landlord setting out the difficulties they had experienced in obtaining insurance due to the difficulty caused by Zurich Insurance having declined insurance mid-term, the number of vacant flats, the short term lets, the fact that a significant fire had occurred resulting in death, the fact that the property is located in a district which attracts groups of unruly youths and its exposure to high winds. In addition to the foregoing the insurance market was significantly affected by the events at the twin towers in New York in September 2001.

7.7.3 The Tribunal finds that all these factors combined to result in the premium that was charged and that this premium was in all probability the best that could have been obtained in the circumstances. It is clear that the premiums have come down significantly in recent years reflecting a softening in the insurance market and the fact that a time has elapsed without any significant claim on the insurance.

7.7.4 The Tribunal considered that, as at the Leasehold Valuation Tribunal hearing in 2006, there was a lack of hard evidence from the Applicants that the insurance premiums had been unreasonably incurred or that the premiums were at an unreasonable level and therefore finds the premiums are reasonable and payable. The Tribunal also finds that the question of the insurance premiums was considered by the Tribunal in 2006 specifically in respect of the 2003 service charge year. That Tribunal found that the premium charged was reasonable for that year. Mr Beasley gave evidence to that tribunal and he was in receipt of the correspondence referred to above relating to the premium for 2002. He could have challenged the premium for 2002 had he so wished but he chose not to do so. This Tribunal finds that the Applicants are estopped from challenging further the finding of the Tribunal in 2006 that the 2003 year premium was unreasonable and is also estopped from challenging the premium charged for 2002 for the reasons already stated.

#### 7.8 *Accountant's fees.*

The Tribunal considered that the fees charged by the Accountants for preparing and certifying the accounts for this complex building were not unreasonable and sees no reason to require a reduction from the service charge accounts in respect of that item.

#### 7.9 *Cleaner's wages.*

The Tribunal considered that it was reasonable for a part-time cleaner to be employed in addition to the porter. It was unreasonable to expect

the porter of an 18 storey block to be able to carry out his porter's duties and carry out much of the cleaning in addition. The standard of cleaning is remarked upon under paragraph 2.6 above. The amount charged for cleaning is modest and the Tribunal does not require that there should be any deduction from the amount charged to the service charge account in respect of this item for any of the years in question.

7.10 *Night porter wages.*

For the reasons already given in respect of manned security at paragraph 6.3 above the Tribunal considers that the night porter costs were reasonably incurred and the amounts charged are not unreasonable.

7.10 *Renewing door entry cables charged during the year ending 31 December 2004.*

This item was not put to any of the Respondent's witnesses. There was no evidence that this figure was not justified and the Tribunal finds no reason to disallow any part of the amount claimed of £999 charged.

7.11 *Repairs to roof access doors.*

The Tribunal accepted the Applicants' evidence that all sorts of people connected with the roof aerials were going up onto the roof area through the roof access door with equipment and materials. The frequency with which repairs were required to the roof access door and the significant charge of £2917 in 2008 when £409 had been charged for a similar item the year before were unlikely to be items of maintenance rather than repair. The Tribunal appreciates that the 2008 expenditure came up only during the course of the hearing as the 2008 certified service charge account had not long been received and Mr Greene had only recently been able to inspect invoices at the Landlord's offices. The Tribunal considered that on the balance of probability this expenditure was caused by those who had reason to go onto the roof, namely those connected with the telecommunication aerials causing damage rather than it being fair wear and tear. The Landlord's managing agent, Mr Gammon, had no knowledge as to the reason for that expenditure being incurred. One would have expected him to have known as he is the manager of the building. Again doing the best it could in the circumstances the Tribunal considered that 90% of the cost of works to the roof access door for each of the years 2005, 2006, 2007 and 2008 should be deducted from the service charge account. The Tribunal recommends that the new managing agent looks into the contracts with the owners of the aerials to ascertain what the position is with regard to liability for damage caused in accessing the equipment and that a tighter system of supervision is implemented so that if damage is caused by those connected with the telecommunication aerial companies those companies are if possible charged for the cost of repairing the damage in future.

7.12 *The sweeping of roof and roof report charged in year ended 31 December 2006.*

The Tribunal heard no evidence that the amounts concerned for these two amounts were unreasonable and they would therefore be allowed.

7.13 *Door entry repairs £227 charged in the period ended 31 December 2006.*

The Tribunal in its experience considered that the cost of parts to repair the buttons controlling the door entry system would not be likely to be included in the service contract. The amount seemed reasonable and would be allowed.

7.14 *Pest control costs in 2006 and 2007.*

The Tribunal considered that these measures did benefit Arlington House. The traps were placed in an area near to the bin store and pump room for the residential premises. The evidence from Mr Gammon was that these were put in place as a rodent had been found in Arlington House itself. The Tribunal considered that the expenditure had been reasonably incurred and was of a reasonable amount. There would therefore be no deduction for this item.

7.15 *Management fee.*

The Tribunal had some concerns about what it heard about the management of Arlington House over the years. There seemed to be little communication with the Lessees emanating from the Landlord or the managing agents. There were no regular meetings, no budgets discussed and agreed. There appeared to be no-one with any comprehensive knowledge of every aspect of the block. The Landlord's division of its areas of responsibility into different departments made it all too easy for someone from the Landlord or managing agents to say that a certain matter was not his or her responsibility. Having said this, however, Arlington House is a complex building to manage and the management fee that has been levied per flat over the whole of the period from 2002 to date has been very low. As was pointed out at the hearing, the new managing agent will be charging considerably more. In all the circumstances the Tribunal found that the charges for the management fees were reasonable and would not disallow any of them. In any event, the Applicants were only seeking a reduction in the last three years where the amount of the management fee exceeded £100 per flat. The actual charges represented a modest increase over that £100 per flat figure and were not unreasonable.

7.16 *Fire doors.*

The Tribunal saw the defects in these doors on inspection. It was unreasonable for the Applicants to expect the whole of the cost of the fire doors to be removed from the service charge accounts. The Tribunal considered that a reduction of 20% of the £4963 charged in the service charge year to 31 December 2007 would be appropriate and so determines.

7.17 *Unpaid element of fire precautions and management fees thereon.*

This is an item which the parties agreed should be resolved by the new managing agent. It would appear that the monies have now been paid less a 5% retention. The retention may or may not be sufficient to cover the cost of installation of magnetic closures to fire doors. This is not a matter upon which the Tribunal needs to make a determination, as agreed by the parties at the hearing.

7.18 *Repairs to failed water supply.*

This is a high pressure system and it had been working satisfactorily for two years since it had been installed. No expert evidence was adduced by the Applicants as to the cause of the failure. Neither Mr Moss nor Mr Greene professed to be expert plumbers. The Tribunal considered it unreasonable to expect the Landlord to seek to recover the cost of this item from contractors who had installed the water supply two years previously.

7.19 There is one further item on which the Tribunal wished to comment. Although it did not involve a specific claim for a reduction in an amount charged to the service charge account, there was evidence from the Applicants that they were concerned that the various telecommunication aerials situated on the roof did not have their own metered electricity supply. Although the Landlord's witnesses assured the Tribunal that the aerials were separately metered there was evidence from Mr Greene that on one occasion when a fire alarm went off this also turned some or all of the aerials off. This would tend to suggest that perhaps these aerials did not have an independent supply. Mr Gammon, the Landlord's managing agent could not give an explanation as to why this might have happened. The Tribunal recommends that the new managing agent should investigate this particular point to satisfy himself that the telecommunication aerials are separately metered and that no cost attributable to those aerials is charged to the service charge account going forward.

8. Conclusions

8.1 The Tribunal's determination as set out in paragraph 6 above results in very few deductions from the service charge account for the years in question. 50% of the amounts charged for unblocking flat wastes amounts to £1079 for the year ended 31 December 2002, £1230.50 for

the year ended 31 December 2003, £1438 for the year ended 31 December 2004, £734.50 for the year ended 31 December 2005, £1087.50 for the year ended 31 December 2006, £2796.50 for the year ended 31 December 2007 and £1025 for the year ended 31 December 2008. This totals £ 9391.00. The amount to be deducted for the roof access door is £171 for 2005, £333 for 2006, £368.10 for 2007 and £2511 for 2008 making a total of £3383.10. The 20% deduction for cost of fire doors in 2007 results in a deduction of £992.60 in that year. The foregoing makes a total deduction for the six years in question of £13766.70. It will be necessary for the managing agent to rework the service charge demands in the light of the Tribunal's determination above.

- 8.2. The Tribunal is aware that there has been a considerable amount of contention between the Landlord, its managing agents and the Lessees, in particular the Residents' Association, for a number of years now. The Tribunal sincerely hopes that matters will improve with the appointment of a managing agent who was the Lessees' own choice of manager had the application to the Tribunal for appointment of manager proceeded. The Tribunal also hopes that the plans for redevelopment of the adjoining commercial area will have a beneficial effect on the environment in which Arlington House is situated and that an improvement in the environment will have a knock on effect on the amount of expenditure on such items as 24 hour security and the insurance premium. With goodwill all round it is hoped that the Lessees will not need to have recourse to the Tribunal in the future.

Dated this 24<sup>th</sup> day of September 2009



.....  
D Agnew BA LLB LLM  
Chairman

<u>Period ended 31 December 2002</u>	<u>Service charge expenditure</u>	<u>Sum claimed by applicants</u>
Office rent and rates	1,460.00	1,460.00
Wages to be charged to shops	(estimated) 15,500.00	15,500.00
Manned security	1,419.00	31,419.00
Lift items	1,698.00	1,313.00
Works to flat windows	6,366.00	5,000.00
Unblocking flat wastes	2,158.00	1,800.00
Building insurance premium	59,194.00	25,000.00
Accountants fee	4,700.00	2,350.00
Cleaners wages	(estimated) 10,000.00	10,000.00
Night porter wages	(estimated) 10,000.00	10,000.00
	(Total wages 49,369.00)	

<u>Period ended 31 December 2003</u>	<u>Service charge expenditure</u>	<u>Sum claimed by applicants</u>
Office rent and rates	1,548.00	1,548.00
Wages to be charged to shops	(per commercial) 15,383.33	15,383.33
Manned security	38,700.00	38,700.00
Lift items	1,827.00	1,551.00
Works to flat windows	5,511.00	4,500.00
Unblocking flat wastes	2,461.00	2,000.00
Building insurance premium	74,208.00	35,000.00
		now withdrawn
Accountants fee	3,478.00	1,100.00
Cleaners wages	(estimate) 10,000.00	10,000.00
Night porter wages	(estimate) 10,000.00	10,000.00
	(Total wages 48,361.00)	

<u>Period ended 31 December 2004</u>	<u>Service charge expenditure</u>	<u>Sum claimed by applicants</u>
Office rent and rates	1,563.00	1,563.00
Wages to be charged to shops	(estimated) 15,500.00	15,500.00
Manned security	39,069.00	39,065.00
		error on application
Lift items	6,362.00	3,957.00
Works to flat windows	6,276.00	6,000.00
Unblocking flat wastes	2,876.00	2,500.00
Building insurance premium	71,399.00	35,000.00
Accountants fee	5,899.00	3,000.00
Cleaners wages	(estimated) 10,000.00	10,000.00
Night porter wages	(estimated) 10,000.00	10,000.00
Repairs to office	197.00	197.00
Renewing door entry cable	999.00	999.00
	(Total wages 45,073.00)	

<u>Period ended 31 December 2005</u>	<u>Service charge expenditure</u>	<u>Sum claimed by applicants</u>
Office rent and rates	1,596.00	1,596.00
Wages to be charged to shops	(commercial) 16,111.00	16,111.00
Manned security	40,041.00	40,041.00
Lift items	2,584.00	1,509.00
Works to flat windows	4,290.00	4,000.00
Unblocking flat wastes	1,469.00	1,000.00
Building insurance premium	42,735.00	10,000.00
Accountants fee	5,405.00	2,700.00
Cleaners wages	(estimated) 10,000.00	10,000.00
Night porter wages	(estimated) 10,000.00	10,000.00
Roof access door	189.00	189.00
	(Total wages 46,952.00)	

<u>Period ended 31 December 2006</u>	<u>Service charge expenditure</u>	<u>Sum claimed by applicants</u>
Office rent and rates	1,623.00	1,623.00
Wages to be charged to shops	(estimated) 16,500.00	16,500.00
Manned security	46,961.00	46,961.00
Lift items	3,283.00	2,137.00
Works to flat windows	3,447.00	3,000.00
Unblocking flat wastes	2,375.00	1,500.00
Building insurance premium	31,858.00	5,000.00
Accountants fee	5,969.00	3,000.00
Cleaners wages	(estimated) 11,000.00	11,000.00
Night porter wages	(estimated) 11,000.00	11,000.00
Roof access door	378.00	378.00
Sweeping roof	380.00	380.00
Roof report	370.00	370.00
Door entry repairs	227.00	227.00
Pest control	764.00	764.00
Management fee	710.00	710.00
Non-existent fault to phone	135.00	135.00
		withdrawn
	(Total wages 49,215.00)	

<u>Period ended 31 December 2007</u>	<u>Service charge expenditure</u>	<u>Sum claimed by applicants</u>
Office rent and rates	1,646.00	1,646.00
Wages to be charged to shops	(estimated) 17,000.00	17,000.00
Manned security	46,488.00	46,488.00
Lift items	1,983.00	949.00
Works to flat windows	5,326.00	5,000.00
Unblocking flat wastes	5,593.00	5,000.00
Building insurance premium	34,088.00	5,000.00
Accountants fee	6,956.00	4,000.00
Cleaners wages	8,198.40	8,000.00
Night porter wages	14,453.00	12,500.00
Roof access door	409.00	409.00
Door entry repairs	329.00	329.00
Pest control	423.00	423.00
Management fee	15,357.00	1,157.00
Fire doors	4,963.00	4,963.00
Water ingress	1,000.00	1,000.00
Fire alarm items	2,333.00	1,908.00
Unpaid element of fire precautions	36,248.00	36,248.00
Management fees on above	362.00	362.00
	(Total wages 47,175.00)	

<u>Period ended 31 December 2008</u>	<u>Service charge expenditure</u>	<u>Sum claimed by applicants</u>
Office rent and rates	1,674.00	1,674.00
Wages to be charged to shops	(commercial) 17,621.77	17,000.00
Manned security	48,230.00	48,230.00
Lift items	420.00	251.00
Works to flat windows	2,015.00	1,500.00
Unblocking flat wastes	2,050.00	1,500.00
Building insurance premium	29,315.00	5,000.00
Accountants fee	7,015.00	4,500.00
Cleaners wages	8,782.30	8,000.00
Night porter wages	15,317.82	13,393.00
Roof access door	2,790.00	2,790.00
Management fee	1,157.00	1,157.00
Repairs to failed water supply	2,917.00	2,917.00
	Total wages 41,560.00	
	Less credit <u>3,095.00</u>	
	Net wages 38,525.00	