IN THE LEASEHOLD VALUATION TRIBUNAL

REFUSAL OF PERMISSION TO APPEAL

Case No	CHI/00ML/LSC/2009/0043
Property	St Anne's Court Burlington Street Brighton
Applicants	Mr L Scott-Mackay (Flat 15) and other Tenants Represented by Dean Wilson Laing, Solicitors and by Mr E Lamb, Counsel
Respondent	Waterglen Limited (Landlord) Represented by Pier Management Ltd
Date of hearing	22 September 2009
Date of decision under appeal	22 September 2009
Date of refusal of permission	19 October 2009
Members of the Tribunal	Ms H Clarke (Chair) Mr B Simms FRICS MCIArb Ms J Davies FRICS

1. **The Applicants' request for permission to appeal the Tribunal's decision as to costs is refused.**

2. **REASONS FOR REFUSING PERMISSION**
The Tribunal considers that no substantial procedural defect occurred in the course of the Application, and no error of law is disclosed by the Applicants' proposed grounds of appeal.

3. The original hearing of June 2009 was adjourned primarily in order for documents to be fully considered which were not provided by the Respondent until the hearing. These included pages from the accounts as well as invoices and supporting documents. On 22 June 2009 the Tribunal investigated whether a discrete point of law raised by the Applicant could be dealt with. As it transpired that no copies of a relevant case-law decision had been brought by the Applicant, the Tribunal directed that that issue should also be dealt with at the adjourned hearing.

4. The reasons for further adjournment of the Application are set out in the Order dated 22 September 2009.

Signed Ms H Clarke Chair

Dated 22nd October 2009

IN THE LEASEHOLD VALUATION TRIBUNAL
UNDER S27A LANDLORD & TENANT ACT 1985

DECISION AND REASONS

Case No	CHI/00ML/LSC/2009/0043
Property	St Anne's Court Burlington Street Brighton
Applicants	Mr L Scott-Mackay (Flat 15) And other Lessees Represented by Mr E Lamb, Counsel, and Dean Wilson Laing, Solicitors
Respondent	Waterglen Limited (Landlord) Represented by Pier Management Ltd
Date of hearings	16 June 2009 22 September 2009 16 December 2009
Date of decision	31 January 2010
Members of the Tribunal	Ms H Clarke (Chair) Mr B Simms FRICS MCIArb (Ms J Davies FRICS was a member of the Tribunal on 16 June and on 22 September but did not participate in the decision made on 16 December 2009)

1. **APPLICATION**
   The Application asked the Tribunal to determine that certain sums demanded by the Respondent were not payable in respect of service charges years ending December 2007 and 2008. By written submissions the Applicants also raised challenges in respect of the year ending December 2006. The Tribunal agreed to determine sums in respect of all three years.

2. The Tribunal was also asked to make an order under s20C of the Landlord & Tenant Act 1985 that the Respondent's costs incurred in connection with the proceedings should not be treated as relevant costs for the purposes of future service charges and an order under the *Leasehold Valuation Tribunals (Fees)(England) Regulations 2003* that the Respondent shall reimburse to the Applicants the fee paid to the Tribunal for commencement of the Application.

3. **DECISIONS**
   For the year ending December 2006: The sums paid on account remain payable. No refund is due to the Applicants for sums already paid; and no further sums are payable for the year to December 2006.

4. **For the year ending December 2007:** The sum of £7,844.91 was payable for service

charges (other than insurance costs). The excess of payments on account over service charge costs (£11,278.17) should be apportioned between the tenants and the Applicants should be credited with their share of this excess.

5. **For the year ending December 2008**: The sum of £3,168.84 was payable for service charges (other than insurance costs). Any payments over this amount should be credited to the respective Applicants.

6. No sums are payable by the Applicants in respect of **insurance costs** for the years ending December 2007 and December 2008. It follows that any sums debited to the Applicants for those costs shall now be credited to the Applicants' accounts.

7. By a decision made on 22 September 2009 the Tribunal determined that the Respondent shall pay to the Applicants the sum of £500 in respect of their costs. The reasons for that decision are set out in the Directions and Notice of Decision issued on 22 September 2009.

8. The Tribunal made an order under *s20C Landlord & Tenant Act 1985* that all or any of the costs incurred by the Respondent in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any tenant.

9. The Tribunal made an order under the *Leasehold Valuation Tribunals (Fees)(England) Regulations 2003* that the Respondent shall reimburse to the Applicants the fee paid to the Tribunal for commencement of the Application.

10. **INSPECTION**

The Tribunal inspected the property immediately prior to the hearing in June 2009. It comprised a block of 21 purpose built flats probably constructed in the late 20th century with parking below and a communal garden to the rear. The parking area had a boarded ceiling, which was loose, and showed signs of a pigeon infestation. Access to the parking area by car was through a stone arch which showed some deterioration. The exterior of the building was generally in good condition but showed some signs of slight weathering, and some vegetation was visible in the gutters. The entryphone system was not in operation. There was a lift, which was working. Decorations to the communal areas were quite worn, the windows were dirty, and there was rust in some of the light fittings. There appeared to be no smoke detectors, alarms, safety lighting, or other fire equipment.

11. **THE LEASE**

The Tribunal was shown a copy of the Lease for Flat 15 and was told that all the flats were let on the same terms. The Lease provided for the Tenant to pay a six-monthly interim payment on account, plus at the year end a balancing figure towards his due proportion of the annual costs and outgoings incurred by the Landlord in complying with its obligations. The Landlord's obligations included maintaining and cleaning the common parts, keeping the common parts lit, keeping the common facilities (including the entryphone) in good order, and keeping "proper books of account for all costs charges and expenses incurred by the Lessor in carrying out his obligations hereunder..". The Tenant was also liable to contribute his share of the Landlord's

managing agents and accountants' fees, cleaner, and a contribution towards a reserve fund.

12. The Lease also contained a provision that:
"The Lessor will use his best endeavours to maintain the annual maintenance cost at the lowest reasonable figure consistent with the due performance and observance of his obligations herein..."

13. **THE LAW**
Landlord & Tenant Act 1985:
Section 18. Meaning of "service charge" and "relevant costs".
(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
(a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.
(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

14. *Section 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.

15. *Section 20B:*
(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

16. *Section 20C:*
(1) A tenant may make an application for an order that all or any of the costs incurred,...by the landlord in connection with proceedings before a .. leasehold valuation tribunal, ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant ...

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

17. *Section 27A. Liability to pay service charges: jurisdiction*
(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

18. **HEARINGS**
Directions dated 20 March 2009 were issued by the Tribunal, and each party submitted a written witness statement, documents, and submissions. A hearing took place on 16 June 2009 at Brighton. The Applicant Tenants were represented by Mr Scott-Mackay of Flat 15, with assistance from Dean Wilson Laing, Solicitors. The Respondent Landlord was represented by Mr S Whybrow MIRPM of Pier Management Ltd, Managing Agents for the property. The hearing was adjourned to 22 September 2009 to allow consideration of documents lately produced by the Respondent, and further directions were given.

19. At the hearing on 22 September, the Applicants were represented by Mr E Lamb, Counsel. The Respondents were represented by Mr Trivett and Mr Bland, of Pier Management Ltd. At this hearing, the parties gave their submissions and evidence regarding the insurance costs. The balance of the hearing, relating to other service charge costs, was further adjourned to 16 December 2009 to allow consideration of more documents lately produced by the Respondent, and further directions were given.

20. A third hearing took place on 16 December 2009 at which the Applicants were represented by Mr E Lamb and Mr Scott-Mackay, and the Respondents were represented by Mr S Whybrow.

21. **SERVICE CHARGES: TO DECEMBER 2006**
The Applicants' primary submission was that the limitation period prescribed by s20B Landlord & Tenant Act 1985 applied, and no adequate notice of expenditure had been given during the relevant period, so that no service charges were payable for the year in question. Alternatively, the Applicants made detailed objections to the service charges said to have been incurred; these included a lack of documentation or evidence to show that the charges were incurred, poor quality service, some alleged duplication of expenses, and some items billed to the service charge account which ought to have been paid by individual tenants. The Applicants made reference to the obligation on the Respondent under the Lease to use its best endeavours to maintain the cost at the lowest reasonable figure.

22. The Respondent said that s20B did not apply, because payments had been made on account. Alternatively, it relied on 2 documents, a letter dated 20 June 2007 and a Summary of Costs dated 18 June 2007, which it said gave the Applicants proper and adequate notice of expenses sufficient to satisfy the requirements of s20B(2), with the effect that the limitation period would be disapplied. The Respondent then went on to make detailed responses to the individual challenges to expenses. The Respondent did not rely on any particular terms of the Lease in its submissions.

23. The Respondent relied primarily on a High Court decision in Gilje & Others v Charlegrove Securities Ltd [2003] EWHC 1284 in which Mr Justice Etherington decided:
"I accept...that section 20B has no application where a) payments on account are made to the lessor in respect of service charges, and b) the actual expenditure of the lessor does not exceed the payments on account, and c) no request by the lessor for any further payment by the lessor needs to be or is in fact made."
The Tribunal took the view that the Gilje decision had considerable persuasive force.

24. The first question, therefore, was whether s20B(1) applied to any of the costs incurred prior to June 2007. If it did, the question would then arise as to whether the documents sent in June 2007 were enough to disapply the limitation period under s20B(2). It was agreed between the parties that the documents dated 18 and 20 June 2007 were received by the tenants on or soon after 20 June 2007.

25. The Tribunal therefore examined the evidence regarding payments on account. An invoice dated 19 September 2006 was produced in relation to Flat 15. This demanded 3 sums, due for payment with effect from 25 June 2006: a sinking fund contribution of £30: half-yearly insurance contribution £84.45; and half-yearly service charge in advance £326.22. The evidence indicated that Flat 15's contribution represented 6% of the total, making the total half-yearly service charge £5,437. This figure was consistent with the total of £10,874.02 for service charge on account recorded in the accounts dated May 2009 for the year ending 2006 (not including building insurance). The Tribunal was therefore prepared to accept that payments on account totalling £10,874 were demanded and paid in the relevant year.

26. However, total expenditure for the year was certified in the accounts to have been £26,333.95. The situation therefore differed from that in Gilje, because payments on account had not exceeded expenditure and more needed to be demanded. The issues were therefore whether s20B(1) prevented recovery of all the expenditure in that year; or the excess over payments on account; or whether the Respondent had given sufficient notice to disapply the section.

27. The Tribunal took the view that the approach adopted in Gilje should also apply to a situation such as the present one, where a payment on account had been demanded and made, in respect of that part of the costs which were included in the payment on account and to that extent. There was no sensible reason to distinguish the two situations. The wording of s20B itself indicated that there could be a partial limitation, and the costs were not to be treated as one whole to stand or fall. On the facts therefore, the Tribunal determined that no limitation defence was available to the Applicants in respect of the amount of the payment on account. The payment on account remained subject to the Tribunal's scrutiny under ss19 and 27A of the Act, as to whether it was reasonable and/or the costs were reasonably incurred, and this point is dealt with below.

28. The Tribunal next considered whether the Respondent had served sufficient notice to disapply the limitation period in respect of the excess costs over payments on account. The documents relied upon consisted of a letter, which stated in terms "this notice does not represent a demand for payment" but indicated that a demand for payment would subsequently be issued, and a Summary of Costs which referred to

the 'year ended 25 December 2006'. The Tribunal noted that the Lease stated that the Accounting Period shall run from June to June each year, with payment to be made in June and December. This requirement had not been heeded by the Respondent's agents in preparing statements, or accounts. However, regardless of the Lease's requirements, the Tribunal accepted that the Summary of Costs referred to costs incurred since 25 December 2005. Consequently, if the documents themselves gave sufficient notice as required by s20B(2), limitation would be lifted in respect of costs incurred during the period from 25 December 2005 to 20 June 2007.

29. In respect of the costs set out under the Summary, it was the Applicants' case that none of the figures matched the amount actually expended as shown by the invoices, nor did they match the accounts. The difference in the totals as between the summary and the accounts for the same period, (which were not certified or produced until May 2009), was a difference of about £1500. The invoices for the relevant period were not provided by the Respondent until July 2009, after the proceedings were well under way. The total of invoices was also different both from the Summary and from the certified accounts. The Applicants argued that these discrepancies invalidated the 'notice'. They relied on the unreported decision of The Lord Mayor & Citizens of the City of Westminster v Brian John Hammond and others CL5/21431 (apparently made in the Central London County Court on or about 23 October 1995) in which Judge Martin Reynolds said:
"*...I consider that the notice in writing should be equivalent to the demand, save that it does not seek immediate payment, so that it should identify those matters which would need to be in a demand - the fact that relevant costs have been incurred; the nature of the works and the reason for the expenditure; the amount of the costs incurred and the proportion attributable to the individual tenant; and an indication that such amount will be demanded at some time in the future...*"

30. In response the Respondent argued that s20B notice figures may inevitably be imprecise, because the correct amount will not be known with exactitude until the final accounts are prepared. The position of the Respondent was that the 'summary of costs' dated 20 June 2007 was an estimate based on the information to hand at the time. However, the Respondent, in the statement on its behalf by Mr Whybrow, also submitted that final accounts included 'accruals'. The exact definition of this term, much in use by the Respondent, was the subject of questioning by the Tribunal, but it was clear to the Tribunal that it referred to the accounting practice of making allowances for expenditure that had not been actually incurred or evidenced by the time of preparation of the account. As such, the Tribunal could not accept that the final accounts relied on by the Respondent provided a more exact guide to the costs incurred than the invoices themselves.

31. The Tribunal took the view that the statute required that tenants must be given notice of the amount actually incurred (as opposed to notice of a category of expenditure, or notice that work of a certain type had been done). The summary of costs dated 20 June 2007 did not give notice of the amounts actually incurred; despite the fact that those costs had in fact been incurred by the time it was prepared, it gave no more than an estimate and was little more than a budget. The extent of its unreliability was illustrated by the discrepancies between each individual sum itemised and the invoices subsequently produced. The Tribunal decided that the Summary of Costs and covering letter served in June 2007 did not comprise effective notice under s20B(2), and that the surplus of expenditure over

payment on account was not payable.

32. In respect of the sums paid on account, the Tribunal carefully examined the detailed challenges and responses to the individual items made by the Applicants. Taking into account certain concessions which the Applicants were prepared to make, and the evidence available in the form of invoices, the Tribunal determined that the sums paid on account were adequately supported by the evidence and were reasonably incurred and remained payable. No refund was therefore due to the tenants for sums already paid; and no further sums were payable for the year to December 2006.

33. **SERVICE CHARGES: TO DECEMBER 2007**
The Applicants' primary challenge here was again made under s20B, and it was common ground that no notice had been given under s20B(2) and the certified accounts were not produced until May 2009. The Respondent again relied on the Gilje case to say that s20B had no application, because payments on account were made which exceeded the sums expended. In the alternative, the Applicants again made detailed challenges to individual items of service charge, to which the Respondent responded individually.

34. For the reasons given above, the Tribunal accepted that the reasoning in Gilje applied to the present case. To the extent that payments on account were made to the lessor in respect of service charges, and the actual expenditure of the lessor did not exceed the payments on account, s20B did not apply.

35. The evidence available in respect of payments on account was unsatisfactory. The accounts dated May 2009 showed payments received of £19,123.08 plus insurance of £7,011.08. However, the accounts were prepared to the year ending 25 December 2007, whereas the accounting year under the Lease runs from June to June, and there was no indication that any apportionment had been made nor which were the payments relied upon for the relevant accounting year. Confusion readily arose, particularly in attempting to reconstruct the payments from the demands sent to Flat 15, with which the Tribunal was provided. The Applicants submitted that the amount shown in the accounts to have been received was substantially more than the amounts demanded, as extrapolated from the demands sent to Flat 15. The Tribunal rejected this submission; the difficulty seemed to have arisen by virtue of the accounting date that was chosen and the Applicants' figures spanned a different time period from those relied on by the Respondent. On balance, on the evidence, the Tribunal accepted the Respondent's submission that payments on account were received as set out in the accounts and exceeded the total sums expended in that year. The Applicants therefore did not succeed on a limitation defence.

36. The Tribunal considered the evidence of expenditure, and the submissions made by the parties. The Respondent relied on accounts and invoices. However, the Tribunal did not have confidence that the accounts accurately reflected the expenditure incurred. As noted above, the Respondent relied heavily on the practice of entering 'accruals' to allow for anticipated expenditure or for outgoings for which no record existed. The accounts themselves recorded at page 4 that:
"no demand for payment were received by the landlord at the year end but provision was made to the value of £5,421.42".
This was a very large proportion of the total. The accounts themselves were signed

off at the last moment, long after the Application had been made, and nearly 18 months after the period to which they referred. There was no evidence to explain why such large allowances had been made, months after the relevant time frame.

37. The Tribunal also did not have confidence in the Respondent's record keeping. Directions had been made on several occasions in the course of the proceedings for the production of documents, which were not fully complied with. Twice, hearings were adjourned as a result of the last-minute production of documents by the Respondent. There had been a change of managing agents, and the Respondent said that there had been difficulties in retrieving documents, but this explanation was only given in response to the Tribunal's questions about the lack of documents. The Tribunal decided that it would only be satisfied (on the balance of probability) that expenditure had been incurred where it was evidenced by an invoice which had been produced and shown to the Applicants in accordance with the directions given in the proceedings.

38. On the evidence available, the Tribunal made the following determinations:

- Accountant fees: work was evidently done, and the fact that another firm might have charged a lower fee did not make the costs unreasonably incurred; in any event no like-for-like evidence of alternative charges was produced. Allowed in full £759.00

- Management fees: there was ample evidence of management activity; the rate charged did not fall outside the normal range; but some deduction should be made for the poor record keeping and confusion over payments in and out. 90% of the fees charged would be payable - £4,293 x 90% = £3,863.70. No VAT may be added to this figure, if VAT is payable then it is assumed to have been included in the sum reported to the accountant.

- Electricity as invoiced £310.26.

- General maintenance as invoiced £1504.03.

- Lift maintenance as invoiced for one contract only - £214.21.

- Lift repair as invoiced £88.71

- Cleaning/gardening as invoiced £655 (deducting invoice dated October 2007, unchallenged evidence was that cleaning stopped in August 2007).

- Rubbish removal as invoiced £450 (the Tribunal was satisfied with invoices despite not being numbered).

- Engineering insurance - disallowed because no satisfactory evidence of why this expenditure was incurred when a lift maintenance contract was in place and the building itself was insured; no schedule, certificate or policy produced.

- Water rates - disallowed because no invoices or other satisfactory evidence of expenditure supporting this amount or anything like it. Current charges year on year appeared to be in the region of £600 (invoice dated 6 June 2006). No invoices or statements dated after 6 June 2006 were produced.

- Door entry, lighting & alarm tests, lift telephone, pest control - disallowed because no invoices or other satisfactory evidence of expenditure relating to the year in question.

These figures make a total of £7,844.91. The payments on account were found to have been £19,123.08. The Tribunal determined that the difference of £11,278.17 was not payable and a credit should be given to the Applicants in respect of their share of this amount.

39. SERVICE CHARGES: TO DECEMBER 2008
For the reasons given above the Tribunal decided that it would only be satisfied (on the balance of probability) that expenditure had been incurred where it was evidenced by an invoice which had been produced and shown to the Applicants in accordance with the directions given in the proceedings, or by similar evidence that work had been carried out and costs had been incurred in a specific amount.

40. Despite directions having been given on three previous occasions, and hearings having twice been adjourned for consideration of late documents, the Respondent still attempted to rely on further documents which had not been shown to the Applicants in sufficient time as directed by the Tribunal. The Tribunal accordingly disregarded any document which had not been produced in accordance with the directions.

41. Moreover there was unchallenged evidence from the Applicants that there was no alarm at the property, yet an entry for alarm testing costs appeared in the accounts; the lift was out of action for the entire year, and the only telephone was in the lift, yet an item for lift maintenance and for a telephone charge appeared; the tenants removed rubbish themselves, as it was not being done, yet an item for rubbish removal appeared; the entryphone was still not functioning, yet an item for entryphone appeared (without details). The accountants' report again described the accounts as having been prepared on an accruals basis. On the balance of the evidence the Tribunal did not find that the accounts could be relied upon in determining costs that had actually been incurred, nor whether they were reasonably incurred.

42. On the evidence which was taken into consideration the Tribunal determined that the following amounts were payable:

- Electricity £161.46.

- Cleaning and gardening - -£1,110.00

- Accountant fees: work was evidently done, and it seemed more likely that any discrepancies between figures could be attributed to the information provided to the accountant, rather than inadequate performance by the accountant - £287.50.

- Management fees: It was not disputed by the Respondents that managing agents were in place during the period in question, nor was it disputed by the Applicant that the former agents did not provide any services from October 2008. Many of the difficulties arising in this case may have been connected with record keeping by the former managing agents. The Applicant's point was well made, that even irrespective of the Tribunal's decision to exclude late evidence, there were no invoices for the managing agents' services. On the evidence the Tribunal determined that some allowance should be made for managing agents' fees, and determined that 50% of the sum claimed up to September 2008 would be payable - £1609.88.

These gave a total for payable costs of £3,168.84. The Respondent did not contend that payments on account had been made in this year.

43. **BUILDING INSURANCE**
The evidence showed that the insurance premiums demanded increased year on year as follows: y/e 2006 £3,107.29: y/e 2007 £7,010.22; y/e 2008 £7,298.31; y/e 2009 £7,947.08.

44. The First Applicant, Mr Scott-Mackay, said that in 2009 he obtained an alternative quote for insurance on a like-for-like basis and presented it to the Respondent, who revised the sum being sought and produced a certificate of insurance bearing on its face a lower figure of £4,224.37. This represented a reduction of about 47% in the premium price. Both the higher and the lower figure appeared on certificates issued by the same insurer for the same period of time and level of cover. The Applicant became suspicious about the costs charged in 2007 and 2008 and asked the Respondent to review those costs, but no reduction was made. He referred to a threat of proceedings in the County Court in relation to a charge for insurance but was unclear about what the outcome had been. He relied on the Lease to assert that the Respondent was in breach of its duty to use its best endeavours to secure the lowest reasonable price for the insurance.

45. The representatives for the Respondent at the hearing on 22 September 2009 did not know whether there had been a County Court claim or judgment against the Applicant, and no relevant documentation was shown to the Tribunal. They were unable to say whether any investigation had been undertaken into the insurance prices for 2007 and 2008 as a result of the Applicant's challenge. In respect of 2006 they relied upon a letter written by previous managing agents which asserted that the premium for 2006 was charged at too low a price, due to a mistake made by the broker. It was the practice of Pier Management to charge the tenants directly for insurance, separately from items of service charge which were now dealt with by Countrywide managing agents (who were instructed from about the middle of 2009 and were not responsible for dealing with the service charges in dispute in this Application).

46. The written evidence filed on behalf of the Respondent stated that in early 2008 the portfolio was put out to tender to several brokers, and a new broker was appointed in May 2008. A letter was exhibited from the new broker referring to the competitive

approach used in placing the insurance. The Respondent renegotiated the 2009 premium by virtue of its large volume of business. It had offered to discount the First Applicant's share of the 2008 premium by 50% but this was rejected.

47. The Tribunal determined on the evidence before it that it had jurisdiction to deal with the insurance premiums in respect of each of the years ending 2006, 2007 and 2008, there being no evidence of a judgment by any court.

48. The Tribunal determined that on a proper construction of the Lease, the cost of insurance was recoverable as part of the service charge (and service charges were reserved as rent). There was no contractual basis for the Respondent's agents to charge tenants for insurance separately; however, the Applicant had not challenged this practice, and the Tribunal accepted the Respondent's uncontradicted evidence that the demands for insurance were given in the proper form for service charge demands. There was therefore no issue on payability arising from the form of the demands. The Applicants through counsel conceded that the evidence showed that the landlord had incurred costs for insurance in the relevant years.

49. The Tribunal directed itself that the burden of proof was on the Applicants to establish that some suspicion should attach to the premiums incurred by the landlord. If the Applicants proved on the evidence that the same cover could have been obtained more cheaply, the question would arise as to whether this raised the suspicion that the transaction fell outside the normal course of business and whether it raised a *prima facie* case that the Respondent had not complied with its covenant to maintain the price at the lowest reasonable figure. If so, then the burden of proof would pass to the Respondent to prove that there was no special feature of the transaction which took it outside the normal course of business, and that it had used its best endeavours to keep the price to a reasonable level. The mere fact that the landlord might have obtained a lower premium elsewhere would not raise such suspicion, nor prevent him from recovering the premium which he had paid, nor would it permit the Applicants to resist payment by showing what other insurers might have charged.

50. The Tribunal considered that the evidence taken as a whole did raise a suspicion that the insurance had not been obtained in the normal course of business, and that the Respondent had not endeavoured to maintain the lowest reasonable figure. The Applicant's alternative quote for insurance in year ending 2009 was admitted by the Respondent's representatives to be like-for-like cover. The cost reflected approximately 53% of the sum initially charged. The differential was very substantial indeed. When presented with this quote, the Respondent made no resistance, but simply reissued a demand for the lower figure. An insurance certificate was produced from the same insurer (Brit) bearing the lower premium on its face. These circumstances raised suspicion over the premium that was initially charged for the year ending 2009. The Respondent said that the sum of £3,107.29 charged for 2006 was an artificially low figure, due to a mistake, and the correct figure for that year 'ought' to have been £6,107. However, when compared with the revised 2009 premium, there was no obvious reason to think that the 2006 figure was artificially low; indeed it was in line with what might have been expected allowing for some inflationary increase year on year. The documents before the Tribunal also included an insurance certificate for the year ending 2006 in the name of the Respondent for a premium of £2,637.88. The Respondent's submission that the figure charged was a

'mistake' therefore called for more explanation. It followed that the substantially larger premiums charged for the years ending 2007 and 2008 also needed some more explanation, in the light of the significant reduction in premium made in 2009. The Applicants had made out a case which the Respondent needed to meet on the evidence.

51. The Tribunal therefore considered whether the Respondent had discharged the burden of proving that it had used its best endeavours to maintain the price at the lowest reasonable figure and that there was no special feature of the insurance transactions for the years ending December 2007 and 2008 which took them outside the normal course of business. No evidence was provided to the Tribunal by the insurance broker at the time or by anyone else in relation to the premiums charged or as to the procedure for renewal, whether the broker went to the insurance market each year, whether any commission or other cost was included in the price, nor as to how it was that a 'mistake' had been made in relation to the 2006 premium. There was no evidence at all relating to the insurance transactions for 2007 and 2008 beyond the assertion that the Respondent had delegated the placement of its policies to its former managing agents, who had gone to a named broker of repute which had in turn placed the policies with an insurer of repute. The evidence of market testing related to the year ending 2009, not to any previous year. No explanation was offered as to why the Respondent had not been able to use the negotiating strength which it allegedly relied on in 2009 so as to reduce premiums in the previous years.

52. The Tribunal found on the evidence that the Respondent had not shown that it had used reasonable endeavours to maintain the insurance cost at the lowest reasonable figure for the disputed years ending December 2007 and 2008, nor had it demonstrated that the disputed insurance premiums were obtained in the normal course of business. The Tribunal determined that those costs were not reasonably incurred, and as such, they were not to be taken into account in determining the service charge payable for those periods.

53. COSTS
In the course of the proceedings the Tribunal made a costs order against the Respondent under Schedule 12 to the Commonhold Leasehold Reform Act 2002.

54. The Applicants sought an order under *s20C Landlord & Tenant Act 1985* that costs incurred by the landlord in connection with the proceedings were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal took the view that the task of the Applicants and the Tribunal itself had been made considerably more difficult than it needed to have been by the conduct of the Respondent not only in failing to disclose relevant documents until the last minute but also in failing to offer any proper explanation for its omissions, or for items in the accounts which demanded an explanation. Bearing in mind the extent to which the Application had been successful, the Tribunal made the order sought.

55. The Applicants also sought an order that the Respondent should reimburse to them the fee paid for the Application. The Tribunal considered that it had been wholly appropriate and necessary for the Application to have been made in order to clarify the sums due from the Applicants and to establish the true extent of the costs

incurred over the relevant years. The Tribunal therefore made the order sought.

Signed---------

Dated---------31-07-2020

Schedule of the other applicants

Ms A Lilley (Flat 3)
Mrs J B Whitburn (Flat 8)
Ms D Agoreyo & Ms M Egan (Flat 11)
Dr L A Tomlinson (Flat 13)
Mr P Bailey (Flat 16)
Beniot Guislain Canick (Flat 17)
Lucy Herman (Flat 18)
Mrs P Gee (Flat 19)
Mr and Mrs Jackson (Flat 21)
Ms C Brooks