4927

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the

LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A & 20C

Ref :LON/00AC/LSC/2009/0066

Property:	**10 Yellowhammer Court, 26 Eagle Drive, London NW9 5AJ**
Applicant:	**Wellington Field Management Company Limited**
Represented by:	**Miss Scott of Conway Solicitors**
Respondent:	**Mr S J Sanders**
Date of hearing:	**14 January 2010**
Date of Tribunal's reconvene:	**11 February 2010**
Date of inspection:	**15 January 2010**
Date of decision:	**22 March 2010**
Leasehold Valuation Tribunal:	**Mrs S O'Sullivan** **Mr C Kane FRICS** **Mr E Goss**

Procedural Background

1. Proceedings were originally commenced in the Reading County Court on 18 July 2008 against the Respondent seeking the sum of £874.95 in respect of estimated service charges for the service charge year ending 31 March 2009. These were subsequently transferred to the Leasehold Valuation Tribunal by order dated 19 January 2009

2. An application was also made by the Applicant dated 24 February 2009 seeking a determination of the reasonableness of service charges under s.27A of the Landlord and Tenant Act 1985 ("the Act") in respect of the balancing payment for the year ending 31 March 2008 in the sum of £107.79 and the estimated cost of internal decoration in the total sum of £15,550 (the Respondent's share being £235.58) in the service charge year ending 31 March 2009.

3. The first pre trial review in relation to both matters was held on 17 March 2009. An order was made to consolidate both sets of proceedings.

4. The Respondent was not able to say at the first pre trial review, which items of service charge were in dispute and he thought he might challenge all the items. The Respondent also indicated that he wanted to challenge the service charges for the year ending 31 March 2008.

5. It became clear that very poor relations between the parties had developed over the past few years. Allegations of slander and libel were raised and the Tribunal made it clear that it did not have the jurisdiction to consider such matters and fully explained its jurisdiction under section 27A of the Act, which would be limited to considering the Respondent's liability in relation to and the reasonableness of the service charges in dispute.

6. The Applicant had helpfully prepared a Scott Schedule for completion by the Respondent in which he could indicate on an item by item basis which individual service charges were challenged. Directions were made providing among other things for the disclosure by the Applicant of copies of all receipts and invoices for the year ending 31 March 2008 and for the Respondent to complete the Scott Schedule.

7. After the pre trial review it soon became clear that the Respondent did not comply with the direction to serve his completed Scott Schedule as, although the Applicant had served the documents directed by recorded delivery, they had not been received by the Respondent. Accordingly a second pre trial review took place on 20 May 2009 at which the Respondent was handed a bundle of the disclosure. The directions timetable was revised and provided for the Respondent to complete the Scott Schedule setting out his grounds of dispute in relation to the service charges as the next step in the proceedings by 10 June 2009.

8. By an application dated 29 June 2009 the Respondent then asked for a variation of the timetable on the grounds that he wished to obtain legal advice. He had yet to file any statement of case. This was granted and the timetable was revised leaving the hearing date (then 3 September 2009) in place.

9. On 28 August 2009 a request for an adjournment of the hearing on 3 September 2009 was made by the Respondent on medical grounds, which was supported by medical evidence. This application was granted and a date set for a further case management conference.

10. A further case management conference took place on 7 October 2009 at which Mr Sanders was represented by BPP Law School. Revised directions were made on the same date. The Tribunal had been assured at this hearing that the Respondent had now prepared a draft statement of case and the Respondent agreed he would be in a position to serve his statement of case by 30 October 2009. A revised hearing date of 14 January 2010 (continuing on 15 January 2010 if necessary) was set. As at this date the Applicant and the Tribunal remained unaware of the basis upon which the service charges were disputed.

11. By letter dated 29 October 2009 BPP Law School confirmed that it had been agreed that the Respondent would be representing himself in the proceedings and that BPP were no longer acting on his behalf.

12. By letter dated 2 November 2009 the solicitors for the Applicant wrote to say that they had still not received the statement of case. The Respondent wrote to the Tribunal by letter dated 22 November 2009 but it remained unclear to the Tribunal from the contents of this letter whether the statement of case had been served. The Tribunal wrote to the Respondent in an attempt to clarify matters on 25 November 2009 and 8 January 2010. Although responses were received from the Respondent to this correspondence the position as to the service of the Respondent's statement of case remained unclear.

The Law

13. Section 18 (1) of the Act provides that for the purposes of the relevant parts of the Act, "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

    a) which is payable directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

    b) the whole or part of which varies or may vary according to the relevant costs.

14. Section 19 (1) of the Act provides that relevant costs shall be taken into account in determining he amount of a service charge payable for a period-

    a) only to the extent that they are reasonably incurred, and

    b) where they are reasonably 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 19 (2) of the Act provides that where a service charge is payable before the relevant costs have been incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or otherwise.

16. Section 27A (1) of the Act provides 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

17. Section 27A (3) of the Act provides that an application may be made to a leasehold valuation tribunal for a decision whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs, and if it would, as to-

    a) the person by whom it would be payable

    b) the person to whom it would be payable

    c) the amount which would be payable

    d) the date at or by which it would be payable, and

    e) the manner in which it would be payable.

The Hearing

18. The hearing of this matter took place on 14 January 2010. The Applicant was represented by Miss Scott of Conway Solicitors. Mr Starkl, director of the Applicant company also attended. Mr Sanders appeared in person and was not represented.

19. A preliminary point was raised in relation to the Respondent's statement of case. The Tribunal heard that the Respondent had posted this by recorded delivery on 30 October 2009. He had checked by telephone with Royal Mail whether it had been received and had been told that it may have been delayed due to the postal strike but had *"probably been received"*. He had not sought to confirm whether the statement of case had in fact been received. Miss Scott confirmed it had not been received. The clerk to the Tribunal obtained a print out of the item number from the Royal Mail website which showed that the item had not been delivered.

20. The Respondent had brought a copy of his statement of case with him. It totalled some 77 pages and 1153 paragraphs and included many references to exhibits. He had also completed the Scott Schedule. The Respondent had also brought one large volume of exhibits but did not produce copies for the Tribunal. He was asked by the Tribunal on several occasions during the course of the hearing whether he wished to provide any of the exhibits for photocopying to put before the Tribunal but he declined to do so. Miss Scott confirmed that the Applicant did not require an adjournment to consider the contents of the Respondent's statement of case and Scott Schedule and wished to proceed with the hearing. She did however request permission to submit any further documentation that might be required to answer any points raised by the Respondent which she was unable to deal with at the hearing having had no prior notice of such matters and the Tribunal agreed this was sensible.

21. It was noted by the Tribunal that the Respondent's statement of case included numerous allegations of dishonesty and fraud on the part of the solicitors, managing agents and directors of the Applicant company. These allegations were repeated frequently during the course of the hearing although no evidence was produced by the Respondent to support the allegations. Many of the Respondent's submissions related to these allegations rather than focussing on the issues before the Tribunal. In any event the Tribunal wish to make it clear that it saw no evidence of any dishonesty on the part of the Applicant company, its directors, the managing agents or Conways solicitors and it does not intend to deal with the many separate allegations made during the course of the hearing and contained in the Respondent's statement of case in this decision.

22. An additional preliminary point raised by the Respondent was whether Conways were in fact instructed to act on behalf of the Applicant in the proceedings. It appeared to be the Respondent's belief that Conways had in some way initiated the proceedings without proper instructions. Mr Starkl, a director of the Applicant, confirmed at the hearing that he became a director on 25 February 2009 and had not been a director when the proceedings had been issued. He was however able to confirm that Conways were instructed to act on behalf of the Applicant company at the time the proceedings were initiated and continued to be instructed. The Tribunal were satisfied that Conways were at all times properly instructed to act on behalf of the Applicant.

23. The amounts before the Tribunal were the service charges for the year ended 31 March 2008, the estimated charges for the year ended 31 March 2009 and a sum claimed in respect of the internal decorations in the sum of £235.58.

24. In his statement of case the Respondent also claimed that the service charges were not payable on the basis that the Property had been rendered uninhabitable by flooding and that no service charges were due for the period in question. This issue had not been raised previously at any of the pre trial reviews.

25. The Respondent holds the property known as Flat 10, Yellowhammer Court, 26 Eagle Drive, London NW9 5AJ (the "Property") pursuant to a lease dated 5 December 1991 made between Thameswey Homes Limited (1) the Respondent (2) and the Applicant (3) (the "Lease").

26. The Tribunal first considered the Respondent's preliminary point in relation to whether the service charges were payable as a result of the condition of the Property. The Tribunal then went on to consider the service charge items on a year by year basis taking each individual item in turn. A summary of the evidence heard and the Tribunal's decision is set out below. This decision contains only a summary of the most salient evidence.

Payability of service charges – Was the Property uninhabitable?

27. In his statement of case and in the Scott Schedule the Respondent made a preliminary point that during the relevant period he has been unable to live at the Property. He claims that the Property has been rendered uninhabitable as a result of the numerous floods which he says were caused by the Applicant's failure to fulfil its obligations to maintain and repair the common parts. He also relies on a letter from Barnet Council (which was not produced to the Tribunal) which he said granted exemption from the payment of Council Tax due to the Property being uninhabitable.

28. The Respondent complained of three separate flooding incidents at the Property.

29. First in September 2007 the Property was flooded as a result of a blocked main soil pipe. This is referred to in the Respondent's statement of case beginning at paragraph 28. A copy invoice was provided at page 186 of the bundle from PHD (Plumbing and Heating Direct) dated 13 September 2007 which sets out the work done. In addition to water jetting the blocked stack PHD include in the narrative *"to vac waste water on kitchen floor"*. There is no reference in this invoice to any other flooding to any other parts of the Property in the invoice and on inspection the Tribunal saw no evidence of any flooding from this incident to any other part of the Property such as the lounge, lobby or bedroom carpet (see notes on inspection below).

30. In his statement the Respondent refers to a report produced by Chemdry but this was not produced to the Tribunal.

31. On 12 October 2007 a further drains blockage occurred. The Tribunal were referred to an invoice at page 79 of the bundle from Mc Kenzie Wood Ltd which set out the work carried out as *"investigated fault to blocked toilet, traced to blockage on main waste stack to building, jetted through stack to remove blockage, left 100% free flowing"*. The Respondent produced no evidence of any flooding or damage occurring to the Property resulting from this incident.

32. On 17 October 2007 some flooding occurred from a leaking hot water cylinder at the Property. The Tribunal were referred to an invoice from PHD at page 188 which states that *"the cylinder in Flat 10 was leaking. This was drained down and made safe"*. The Respondent refers to this incident at paragraphs 55 and 58 of his statement of case. In particular at paragraph 58 he states that *"it is unclear whether the damage sustained by the boiler was sustained as a result of the blockage in the drains and the initial flooding"*.

33. The Tribunal were not provided with any evidence of any connection between the blocked drain and the cylinder and in any event it is the Tribunal's view that these are totally different systems which would not impact on each other. In any event however any leaks from the hot water cylinder would of course be the Respondent's liability being part of his demise and the Applicant could in no way be held responsible for any resultant damage. Accordingly the extent of any damage resulting from the leaks from the hot water cylinder is not relevant to the issues before the Tribunal.

34. As a result of these flooding incidents the Respondent alleged that the Property had been rendered uninhabitable. He relied on paragraph 4 of the Sixth Schedule to the Lease which provides:

> *"In the event that the Premises or any part thereof are damaged or destroyed by any of the Insured Risks at any time during the Term so as to be unfit for occupation and if the Company's insurance shall not have been rendered void or voidable by any act or omission of the Lessee then the Rent and Service Charge or a fair proportion thereof according to the extent and nature of the damage sustained shall be suspended until the Premises shall be rendered fit for occupation and use"*.

35. The Tribunal considered that the Respondent had failed to produce any evidence that the Property had been at any time unfit for occupation. Although he relied on a report by Chemdry at the time of the first flooding incident in September 2007, he failed to produce it. In addition the Respondent failed to produce the copy correspondence from Barnet Council relating to his exemption to pay Council Tax on the basis that the Property was unfit for occupation. The only documentary evidence that the Tribunal had before it was the copy invoices in relation to the flooding referred to above. The first invoice relating to the first incident referred only to waste water being vacuumed from the kitchen floor. The

second flooding incident appeared to relate only to works to the common parts and the third incident was in the Tribunal's view a matter for the Respondent's liability. The Tribunal also inspected the Property very carefully on inspection (see the section on inspection below) and spent some time looking at any signs of damage from flooding. The Tribunal saw no evidence of any flooding to the living room carpet, the lobby area or the bedroom carpet. The damage which had occurred to the kitchen consisted of water damage to the sink, the worktop and the refrigerator and in the under sink cupboard. There was also some disturbance to the waste pipe to the sink. The Tribunal did not consider that any of this damage would result in the Property being unfit for occupation. On the basis of the evidence before it and the Tribunal's own inspection the Tribunal concluded that there was no evidence that the Property had been unfit for occupation at any time during the service charge period before the Tribunal. Accordingly the Tribunal concluded that the Respondent may not place any reliance on paragraph 4 of the Sixth Schedule in relation to the non payment of service charge.

36. Although the issue of counterclaim was not raised by the Respondent the Tribunal also considered whether the Respondent might have a counterclaim for damages for the Property being allegedly unfit for occupation. Again as the Tribunal had concluded that there was no evidence that the Property had been unfit for occupation no such claim in damages would succeed.

37. Another of the Respondent's more general complaints is the Applicant's alleged failure to process insurance claims in respect of the alleged damage resulting from the flooding incidents. The Tribunal were unable to clarify whether the Respondent was now in fact counterclaiming for damages as a result of the alleged failure to progress the insurance claims,(if this was the case no attempt was made to quantify these damages) or made the complaints more generally in relation to the management.

38. The Tribunal heard that in relation to the first flood in September 2007 Concept Solutions were instructed by the Applicant to progress the claim. The Tribunal were referred to a copy email at page 390 of the bundle in which they confirm to the managing agents that they are unable to progress the claim as *"the leaseholder's expectations are far in excess of our own recommendations for a claim".* The Applicant says that the Respondent was then told to make his own claim; this is denied by the Respondent who alleges that the managing agents failed to take any steps to progress his claim. The Tribunal saw references in email exchanges between the Respondent and Andy Mc Lay of the managing agents (at pages 395 onwards in the bundle) to a meeting in January 2008 in which the Respondent appears to have been provided with a claim form and an attempt was made to complete it at that meeting. Some confusion appears to have arisen in relation to whether it was necessary to make a second claim in respect of the hot water cylinder or whether it should form part of the first claim and as to who should initiate the

claim. The Tribunal understand that the first claim is now close to completion and a second claim has been made although the insurers are questioning why it was made late.

39. The Tribunal are satisfied that the managing agents did make an attempt to make a claim in relation to the first flood by instructing Concept Solutions and later attempting to complete a claim form at a meeting with the Respondent. The position is less clear in relation to the second claim. From the correspondence before the Tribunal it is clear that the Respondent was told that he should make a claim. However the Tribunal would regard the failure to make a claim as a management failure and would expect a landlord as policy holder to initiate and progress a claim even if there were elements to that claim which might not be recoverable. In any event however the Tribunal does not consider that the Respondent has any claim in damages for the alleged failure to progress the insurance claims.

YEAR ENDING 31 MARCH 2008

Accountancy Fees

40. Accountancy fees in the sum of £851.88 (the Respondent's share being £12.91) were challenged on the basis that the accounts were not audited although the Lease provides for audited accounts, no budget was prepared and that they were produced late. No challenge to the reasonableness of the amount charged was made.

41. A copy of the audited accounts for the year ending 31 March 2008 was produced after the hearing by letter dated 21st January 2010. The Tribunal were satisfied that the accounts had been properly audited and that the amount charged was reasonable. Accordingly the sum charged was allowed in full.

Cleaning

42. A total charge was made in the sum of £2,763.94 (the Respondent's share being £41.87) and the Tribunal were provided with copy invoices. The charges were disputed on the basis that the estate as a whole was not cleaned to a reasonable standard. The Tribunal heard that the cleaners have since been changed. The Respondent was unable to provide any evidence to substantiate his complaints and could not put forward any alternative figures. He did not have any photographs from the relevant period and had not obtained any witness statements. He did refer to a conversation with a Jan Hayman in which he said he had been told that as the cleaning was poor the contractors were being

replaced but as this was third party evidence this evidence was insufficient for the Tribunal to rely upon.

43. In response Ms Scott submitted that the Respondent had not provided any evidence that the cleaning was carried out to a poor standard and that one might expect to see complaints where cleaning was substandard, no such letters of complaint had been produced. She also challenged the helpfulness of evidence from a third party who was not resident in Yellowhammer Court.

44. The Tribunal considered the cleaning charges and found them as a starting point to be reasonable for the size of the estate and the nature of the cleaning carried out. The Respondent had failed to produce any evidence that the cleaning was of a poor standard and on inspection the common parts of Yellowhammer Court were seen to be clean and hoovered although the carpet was noted to be badly stained. In addition the Respondent had failed to provide any alternative quotations although the directions had made it clear that alternative quotations must be produced where a challenge was made to the cost of an item. Accordingly the Tribunal saw no basis upon which to reduce the cleaning charges and allowed them in full.

Door entry system

45. Charges for the door entry system were challenged in the total sum of £410.31 (the Respondent's share being £6.22). The Tribunal were provided with copy invoices.

46. These were challenged on the basis that the door entry system was non functional *"a lot of the time"* although the Respondent acknowledged that when it was broken someone would be sent to fix it. Ms Scott pointed out that the invoices did not relate to the provision of the system but rather call out charges which the landlord was entitled to recover under the Lease. She also pointed to the fact that no letters of complaint had been received from the Respondent in relation to the system and that there were only four invoices for the whole of that year, only one of which related to Yellowhammer.

47. The Tribunal considered that the amounts charged in respect of call outs appeared reasonable for the size of the estate and the age of the system. No evidence had been produced by the Respondent to show that the system was unreliable or the amount of charge outs unreasonable and accordingly the Tribunal allowed the sum claimed in full.

Electricity Charges

48. Electricity charges to the common parts were also contested in the total sum of £1,403.92 (the Respondent's share being £21.27). These were challenged on the basis that the

readings all seemed to be estimated charges rather than actual readings and also as the Respondent alleged that lights in the common parts were left on unnecessarily sometimes for 24 hours and the charges were thus unreasonably high.

49. The Tribunal considered the invoices and noted that at page 85 of the bundle there appeared to be an actual reading rather than an estimate. The Tribunal would expect to see meters read at least once and preferably twice in each year. The charges equated to a charge of approximately £175 per annum per block (or approximately £3.37 per week) which in the Tribunal's view did not appear to be unnecessarily high. The Tribunal also inspected the lights carefully on inspection. It did note that some of the lights did appear to be left on for 24 hours each day. However it was the Tribunal's view that as the interior of the common parts was very dark in some sections it might be desirable that this should be the case. Accordingly all copy invoices having been provided the Tribunal allowed the sum claimed in respect of electricity in full.

Drain clearing

50. Sums claimed in respect of drain clearing were also disputed in the total sum of £4,107.25 (the Respondent's share being £62.22). Copy invoices in relation to these items were provided at pages 77-79 of the bundle which totalled the figure claimed.

51. In relation to the invoice in the sum of £3,231.25 at page 77 the Respondent accepted that the work had been carried out but submitted that it was too expensive. He did not however provide any alternative quotations although the directions had made specific provision for alternative quotations where the cost of any works was challenged.

52. As far as the invoice in the sum of £735 at page 78 was concerned the Respondent again accepted that the work had been done but submitted that it *"sounds a lot of money for jetting drains"*. Again he was unable to provide any alternative quotations.

53. The final invoice was at page 79 of the bundle in the sum of £141. The Respondent accepted that this work had been carried out satisfactorily but again thought it *"sounded a bit high"*. Again no alternative quotations were provided.

54. In the Scott Schedule the Respondent also submitted that much of the work done in Yellowhammer Court was to rectify the problem with the Respondent's flat due to a faulty drainage system. No evidence was produced to support this contention and in any event the Tribunal noted that only one of the invoices (in the sum of £141) in fact related to works carried out to drainage at Yellowhammer, the others in fact relating to works at Blackcap Court, and an estimate for the larger job had been obtained before the works were carried out.

55. The Tribunal considered the works carried out and the submissions made by the Respondent. It did not consider that the type of drainage works carried out indicated a fundamentally flawed drainage system but rather that they were typical of the works one might expect in a development of this nature. The Tribunal considered the cost of the works themselves as reasonable and allowed them in full.

Fire Risk Assessments

56. The Respondent challenged the cost of four Fire Risk Assessments in the total sum of £2,194.92 (the Respondent's share being £33.25). At the time of the hearing the Tribunal had only been provided with copies of the reports relating to two of the four courts (Bittern and Bunting) with the reports for Yellowhammer and Blackcap being provided under cover of the letter dated 31 January 2010.

57. The Respondent challenged the cost firstly on the basis that the reports were too expensive. He produced an exchange of email correspondence between himself and a Mr Maharajh of Infowire Limited and relied on this correspondence to say that he had obtained an alternative quotation of £467.50 for three of the blocks and a total of £935 for all four blocks rather than a cost of £467.50 for each block as was in fact charged.

58. Secondly, the reasonableness of the cost of the reports was challenged on the basis that none of the recommendations in the reports had been implemented and that as a result the charge was unreasonable.

59. The Tribunal considered the contents of the reports. It considered them to be comprehensive albeit in a rather standard form and note that it is a legal requirement to have fire risk assessments. As far as the alternative quotation from Infowire Limited was concerned the Tribunal found the exchange of email correspondence very confusing. It was not clear from that correspondence the exact quotation given and the Tribunal were not persuaded by this. As far as the failure to implement recommendations was concerned, the Tribunal considered this to be a matter for the managing agents to decide as to which and how any recommendations should be implemented. The failure to implement the recommendations was not a bar to recovery. Accordingly the Tribunal allowed the sums claimed in full.

Gardening

60. The costs claimed for gardening were £5,708.32 (the Respondent's share being £86.48). Invoices were provided at pages 131-141 and at 222 of the bundle. The tribunal heard

that most of the gardening had been carried out by BJ Cooper and that the attendance varied according to what was required in the different seasons.

61. These costs were disputed on the basis that the gardens had not been maintained to a reasonable standard. The Respondent produced photographs which appeared to show the front of Yellowhammer Court which he said showed the poor standard of gardening. However these photographs were limited in that they showed only a small portion of the gardens and in any event the Respondent conceded that they had been taken after the relevant service charge year once proceedings had been commenced against him. The Respondent also informed the Tribunal that he had obtained an alternative quotation for gardening at the rate of £300 per month which was to a higher standard. However he did not produce this alternative quotation in evidence before the Tribunal.

62. The Tribunal considered the invoices and inspected the gardens (see below). The Tribunal considered the costs claimed as reasonable for gardens of this scope. It did not have any evidence to support the contention that the gardening was of a poor standard at this time and in the absence of such evidence allowed the cost claimed in full.

63. The Respondent also complained that the gardening contractor had also disposed of a car battery and a fridge freezer without having the necessary waste disposal licences. As no prior notice of this claim had been made the Applicant had been unable to answer this point. However the Tribunal considered that it was reasonable for the managing agents to instruct a contractor to dispose of such items. The sums involved were small and concerned the removal of only two items and the Tribunal considered they should be allowed.

64. Accordingly the sums claimed by way of gardening were allowed in full.

General Expenditure

65. The Respondent challenged the cost of £20 (his share being £0.30) which the Applicant explained was the cost of obtaining a copy lease from the Land Registry. The Respondent said he wished to see a copy of the receipt for this item. This was not available but in the absence of a receipt in view of the sum in question and the fact that items of this nature are recoverable under clause 16 of the Fifth Schedule of the Lease the Tribunal allowed this in full.

Insurance

66. The sum charged for insurance for this year was £11,448.13 (the Respondent's share being £173.44).

67. In the Scott Schedule the Respondent queried why the figure for insurance did not match the amount included in the insurance certificate. Ms Scott explained that the insurance year did not tally with the service charge year and that as a result apportionments were made to adjust the figure. The Tribunal agreed that such apportionments were not uncommon and noted that the insurance period has now been revised to tally with the service charge year. Ms Scott had no information on the amount of any commission paid.

68. The Respondent was not able to challenge the amount paid in respect of insurance with any alternative quotations and having regard to its expertise and experience the Tribunal considered the sum charged as reasonable.

69. The Respondent also alleged that the managing agents had failed to progress insurance claims and this is dealt with above.

Interest

70. The Respondent queried the amount credited by way of interest income as being too low and submitted that he would like to see bank statements to evidence this. The Tribunal did not consider that the Respondent had any entitlement to see bank statements in relation to the interest and considered that his complaints were unsubstantiated. The amounts credited appear reasonable and it should be noted that lessees' failure to pay service charges would affect the interest payable. In any event this is not an amount which the Respondent has been asked to pay and as such is not a matter before the Tribunal.

Abandoned vehicles

71. Charges had been made for vehicle searches with DVLA in relation to the removal of abandoned vehicles. The total sum charged was £25 (the Respondent's share was £0.38). Although the Respondent conceded that it was sometimes necessary to remove abandoned vehicles he said that he required proof of payment. The Applicant produced internal memorandums at pages 215 to 219 of the bundle detailing the requests for the cheques raised to pay the sum of £25 in charges. The Tribunal was satisfied that these charges had been raised legitimately and allowed them in full.

Management Fees

72. Management fees were charged at a total cost of £10,857 (the Respondent's share being £164.48). The managing agents at this time were BLR who were disinstructed in July 2009. The management charges per unit for this year are £140 plus VAT.

73. The Respondent disputed the management charges. He accepted that as a starting point the management charge was a reasonable one given the service provided if a good standard of management had been provided. However he submitted that the management charges were not reasonable and made the following complaints:

- The managing agents were evasive and did not answer queries or complaints
- Generally 20-30 emails would have to be sent before a response was received
- The quality of any repair and maintenance works was low
- Information which was requested was not provided
- They had failed to progress his insurance claims
- The failure of the agents to properly maintain the estate led to the flooding of he Property

74. In response Miss Scott pointed to the fact that the complaints made were generalised and that the number of emails sent by the Respondent was indicative of the problem in that the Respondent had made unrealistic demands of the managing agents. She submitted that the management charge was at the lower end of the scale considering the services provided. She also pointed to the number of invoices which she says is indicative of the extent of the services being provided.

75. The Tribunal considered the issue of the managing agent's charges carefully. The Tribunal agreed that as a starting point the management fee of £140 plus Vat was a reasonable fee. It considered the complaints made by the Respondent. It accepted that some of the works had been carried out to a low standard, the roofs to the bin stores were not effective and the replacement lead works were poor. However the estate was seen to be clean on inspection, basic maintenance was seen to be carried out responsibly and urgent repairs appeared to be progressed quickly. It does appear that the relationship with Mr Sanders was poor. Although there is some suggestion that the managing agents were at times evasive and failed to respond quickly to the Respondent's many complaints the Tribunal saw no evidence of any dishonesty. Looking at the situation on balance the Tribunal concluded that the managing agents fees at £140 plus Vat per unit on the low side and should be allowed.

Pest control

76. Pest control was charged at a total cost of £951.77 (the Respondent's share being £14.42). This sum was not disputed by the Respondent and was allowed in full.

Professional fees

77. Professional fees of Threshhold surveyors were charged in the sum of £499.38 (the Respondent's share being £7.57). The Tribunal were provided with a copy of a report at page 270 of the bundle. Ms Scott explained that the survey had been commissioned to investigate cracks appearing in relation to possible damage to the foundations.

78. These charges were disputed on the basis that the recommendations put forward in the report had never been carried out and thus the survey was of no value. In response Ms Scott simply submitted that the freeholder had incurred these costs and that she had no further instructions as she had not known that the point was in contention.

79. The Tribunal had seen evidence of cracking on inspection (see below). It considered it reasonable to instruct surveyors to investigate the cause of the cracking and the costs incurred appeared reasonable. As far as the failure to carry out the works recommended the Tribunal was of the view that it was for the managing agents to make a decision as to if and when any works would be carried out. In any event the Tribunal noted that the report concluded that no obvious defects were found to the foundations and no urgent remedial works were recommended. The Tribunal therefore allowed this sum in full.

Asbestos survey

80. A sum for an asbestos survey had been included in the accounts but Ms Scott confirmed that this would now be removed and this item was not considered further.

Refuse collection

81. Charges were made for refuse collection in the sum of £3,315.00 (the Respondent's share being £50.22). These were disputed on the basis that the refuse collection had been carried out by an unsuitable contractor, namely a plumbing contractor who the Respondent alleged did not have the necessary waste management licences.

82. As this allegation was not known to the Applicant until the day of the hearing Ms Scott did not have any information in this regard. The Tribunal had insufficient evidence from the Respondent to support his claim. Accordingly the Tribunal allowed the sums claimed in full.

Window cleaning

83. Window cleaning was charged in the sum of £2,128.56 (the Respondent's share being £32.25). These charges were disputed the Respondent saying that the windows were often smeared and dirty and that *"everyone complained"*. No evidence was produced in support of this contention however and the Respondent admitted that this was *"not really one of my issues"*.

84. The windows were seen to be clean on inspection. The Tribunal was provided with no evidence to support any contention that the window cleaning was poor. The amount charged appeared a reasonable cost for the window cleaning on the estate. Accordingly the Tribunal allowed the sum claimed in full.

Residents' management company

85. A charge of £80 was made which represented a fee for late filing of annual accounts and a payment to registrars for the preparation of annual returns.

86. The Tribunal considered that both of these amounts should have formed part of BLR's charges and thus these charges were disallowed.

Repairs

87. Repairs and maintenance were charged at a total cost of £12,330.91 (the Respondent's share being £186.81). Invoices were provided in relation to these works at pages 153-200 and page 235 of the bundle.

88. The repairs to the bin stores were disputed on the basis that the Applicant had failed to obtain planning permission to build the bin stores and that the stores were not built to a reasonable standard. Various alternative quotations were referred to in the Scott Schedule but were not provided. In response Ms Scott informed the Tribunal that the bin stores had always been at the estate but that works had been carried out to build pillars upon which to install roofs and wire mesh screens to stop residents throwing in refuse.

89. In addition works to repair the stolen lead flashings were criticised on the basis that the replacement works were of a poor standard and inferior.

90. The Tribunal considered the invoices on an item by item basis. It was satisfied that it was reasonable to erect a roof on the bin stores to deflect residents from throwing down rubbish. There appeared to be duplication at pages 184 and 185 and thus the invoice at page 185 was disallowed. Save for that invoice all other sums were allowed in full.

Lights

91. A charge was made for lights in the total sum of £129.66 (the Respondent's share being £1.96).

92. The Tribunal accepts that there will be a cost for the replacement of lights when necessary and as the charge appears reasonable allows the sum in full.

Postage and stationary

93. A charge for postage and stationary is made in the total sum of £25.91. The Respondent challenged this cost on the basis that the accountants are based in Hertford whereas if a local firm were used there would be no courier fees and also requested an invoice. The Tribunal's view was that the Applicant is entitled to choose an accountant of its choice and that it was not obliged to use a local firm. It considered the level of the fees charged as reasonable and allowed them in full.

YEAR ENDING 31 MARCH 2009

94. The Tribunal was also asked to consider the budget for the year ending 31 March 2009 at page 56 of the bundle and its decision in relation to each item is set out below.

95. The fees for accountancy are considered reasonable and allowed in full.

96. The provision for cleaning appears reasonable and is allowed in full.

97. The provision for future repairs to the door entry system is £500 which is only a slight increase on the actual sums incurred for the previous year and is allowed in full.

98. The provision for drain clearing at only £500 is allowed in full.

99. The provision for electricity charges of £700 is considered reasonable.

100. The provision for fire risk assessments at £1,052 is a lower provision than the previous year and is allowed in full.

101. The provision made for gardening represents only a slight increase on the previous year and is allowed in full.

102. It is noted that the sum included for insurance represents only a half years insurance and it is allowed in full.

103. The Lease makes provision for the collection of a reserve fund at paragraph 14 of the Fifth Schedule. The Tribunal agrees it is sensible to make provision for the accumulation of a reserve fund and considers the sum demanded as reasonable.

104. The provision for management charges of £11,632.50 (the Respondent's share being £176.23) is considered reasonable.

105. The provision for pest control is considered reasonable being based on the previous year's actual charges.

106. A provision for professional fees is considered sensible and the amount appears a reasonable provision and is therefore allowed.

107. The budget for repairs and maintenance is based on the previous year's charges and appears reasonable and is therefore allowed in full.

108. The budget for refuse collection is based on the previous year's actual charges and is allowed in full.

109. Paragraph 11 of the Fifth Schedule makes provision for the payment of a contribution towards the cost of the provision and maintenance of common facilities for television reception. The charges budgeted appear reasonable and are allowed.

110. The amount budgeted for window cleaning is based on the previous year's actual charges and is allowed.

111. A small allowance of £100 is budged for lights and this is considered reasonable.

112. A small allowance of £25 is made for postage and stationery and it is considered reasonable to make provision for this.

Cost of Internal decorations - 2009

113. The cost of internal decorations in the sum of £15,550 (the Respondent's share being £235.58) was challenged. This related to works to the common parts completed in 2009 and a copy of the invoice was at page 60 of the bundle.

114. In the Scott schedule the Respondent raised the issue of whether proper consultation had taken place. This was not an issue which had been raised previously. However the sum charged to the Respondent of £235.58 was less than the statutory consultation limit and thus the Applicant was not obliged to consult under section 20.

115. The Respondent also alleges in the Scott Schedule at page 79 that the works were not carried out to a reasonable standard and that they were only carried out in part

(although the Respondent did not say which part of the works were not allegedly carried out).

116. On inspection the interior of the common parts were seen to be in good condition. From the Tribunal's inspection it appeared that all of the works identified on the invoice had been carried out. Although it would have been good practice for the Applicant to have shown the alternative quotations to the lessees the Tribunal accepts that the Applicant would not have entered into the contract unless it was satisfied that it was for a reasonable price. The Tribunal therefore allowed the sum claimed in full.

Lead works - 2009

117. The Respondent also raised an issue in relation to works to replace stolen lead works at the estate. He was unhappy at the cost and standard of the replacement lead works. The Tribunal heard from Miss Scott that the sum of £7,250 was noted in the company accounts as being received from the insurers in August 2008 which related to a claim for the stolen lead works. Works had now taken place by CP Roofing in the sum of £7990.00. The balancing charge of £750 would be charged to the lessees and appear in the 2009 accounts. When this balancing charge has been invoiced to the lessees at that point a challenge can be made in respect of those works under section 27A.

Inspection

The Property

118. The Tribunal inspected the Property and the estate on the morning of Friday 15th January, in the company of Mr Sanders the Respondent, Mr M Starkl of the Applicant and Messrs Wilkinson and Doughty of MCS, the current Managing agents. The weather was cold and wet and there was a residue of the recent heavy snowfall around the grounds. The inspection lasted one hour and twenty minutes.

119. The Property is situated on the ground floor of Yellowhammer Court, one of four blocks of flats within the ownership of the Applicant management company. The other blocks being Blackcap Court, Bunting Court and Bittern Court, these four are part of a larger estate built on the site of Hendon Aerodrome in or about 1990.

120. All four blocks are of similar design and construction, being brick built to three storeys with some rendered panels up to first floor level, with single storey entrance porches, tiled roofs, softwood painted doors and windows and upvc rainwater goods. Lead flashings

cover the joints between Porch roofs and main walls and the joint between the brickwork and rendered panels.

121. Access is by way of private estate roads and concrete paving slab paths, and entry to the blocks is controlled by entry phones at each entrance.

122. Gardens are generally laid to lawn with some planted beds and low hedges separating the gardens from the car parks, some of which are shared with adjoining properties. There are a number of small manhole covers, gullies and drainage access covers in the grassed areas. A chain link fence with screen planting marks the rear boundary. There are numerous small trees around the gardens and car park areas. Separate brick built dustbin stores have been adapted by the construction of a flat felt covered roof on brick piers and with wire mesh infill panels.

123. The interior common parts of Yellowhammer Court are of fair-faced brickwork with a plastered painted ceiling. Woodwork to doors and hall windows is painted softwood. Floors and staircase are carpeted with non-slip nosings on the stairs. Internal lighting is provided by surface mounted low energy light fittings controlled by time delay switches.

The condition.

124. The exterior of the blocks generally appeared to be poorly maintained. External decorations are overdue and paintwork to doors and windows is peeling leaving many areas of bare and decaying woodwork. There are a number of broken overflow pipes and some disconnected rainwater pipes. Vegetation growth was noted in some gutters. External mail boxes had been damaged probably by vandalism.

125. Lead flashing to the porch roofs had been removed, apparently stolen, and replaced with an inferior material, which was itself in a state of disrepair. Some flashings to the walls had also been removed and not yet replaced. It is understood that this had been the subject of an insurance claim.

126. The gardens appeared to have been well maintained. Grass was cut, hedges were trimmed and the beds were free of weeds and litter. An exception to this was one of the beds in the car park area where little or no gardening appeared to have been carried out.

127. There were number of loose paving slabs to the entrance paths, and manholes and drainage access plates protruded above the garden level as a result of ground having settled since the original construction. Some of the external dustbin stores were in need attention. The door to the Yellowhammer store did not close, one store had no door at all and the roof to the store at Bunting Court was leaking.

128. The decorative condition of the common parts was good having been redecorated in the winter of 2008/9. Some damage was evident to window fastenings and some fittings need refixing to ensure security. Lighting appears to be on continuously in some areas as switches have been damaged causing them to malfunction, however as the internal corridors are so dark with no external light source this is not necessarily a problem and may even be considered to be an advantage. One stair nosing was missing near the bottom of the staircase at the rear entrance. Carpets were generally clean and hoovered but badly stained. There was a considerable amount of unwanted equipment such as boxes, furniture and bicycles in the common parts, which could cause an obstruction.

The subject flat.

129. The Tribunal was invited by the Respondent, Mr Sanders, to inspect the Property in order to see the extent of damage that had been reported. The flat comprises a living room with a kitchenette recess, one bedroom, a bathroom with WC and a small entrance hallway.

130. Access was only availabie through the French doors at the rear of the property into the living room, as the front door was obstructed by shelves and goods stored in the hallway.

131. The living room was dark as there was limited lighting and the curtains were kept closed for security purposes. In addition the room was overcrowded with a large quantity of furniture and equipment belonging to the Respondent. The Respondent showed the Tribunal the kitchen area where water had overflowed from the sink in September 2007. There was evidence of water damage to the sink, the worktop and the refrigerator and in the under sink cupboard. There was also some disturbance to the waste pipe to the sink. The Tribunal could see no evidence of water damage to the carpet or the decorations in the living room.

132. There were a number of water stains to the ceiling in the bathroom indicating more than one incident of leakage from the flat above, There was also staining on the bathroom floor apparently caused by flooding of the WC which had occurred in 2009.

133. In the bedroom the Tribunal was shown the lessee's hot water cylinder in a cupboard in the corner, which had leaked in 2008 and has not been repaired. Slight watermarks were seen on the bedroom carpet.

134. Overall there was little evidence that the Property was uninhabitable due to the minor damage that had occurred.

Summary of rights and obligations

135. The Tribunal would also mention that at paragraph 742 of his statement of case the Respondent raised an issue as to whether the service charge demands had been accompanied by a summary of tenant's rights and obligations which must accompany service charge demands pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002. This point was not raised by the Respondent during the course of the hearing and due to the format of the Respondent's statement of case was not identified until the panel reconvened to make its decision. The Tribunal therefore wrote to the Applicant's solicitors by letter dated 3 March 2010 to clarify if the service charge demands had been accompanied by the required statutory summary. By letter dated 8 March 2010 the Applicant's solicitors replied that *"we have enclosed the agent's covering email which confirms that it is the agent's standard procedure to produce the summary of rights and obligations with every demand that is sent to the Respondent including copies sent on multiple occasions. The Applicant would ask the panel to consider that at all relevant times the property has been managed by a professional managing agent who is by indication, aware of the requirements of the legislation in the service of demands and has incorporated the provision of the summary as standard procedure."*

136. Copies of the relevant demands and the summary of right and obligations were provided under cover of the same letter which was also served on the Respondent. The Applicant's solicitors therefore went on to say that "as a copy of the correspondence including the summary is being provided to the Respondent this is no longer an issue with respect to the Respondent's liability to pay service charges demanded".

137. The Tribunal considered the copy letter dated 26 March 2008 to the Respondent enclosing the service charge invoices. It noted the email from the managing agents dated 5 March 2010 which confirmed that the summary of rights and obligations would be served as standard procedure. In any event the Tribunal notes that the Respondent has now been served with copies of the relevant invoices which are accompanied by the summary of rights and obligations and that concludes that there is in any event no longer any issue in relation to the Respondent's liability in this regard.

Costs applications

138. The Respondent made an application under section 20C for an order that the Applicant be prevented from recovering its costs of the proceedings through the service charge, which was received on 5 February 2010. The grounds for that application were set out in a lengthy document, which made various references to exhibits attached although no such exhibits were in fact received. The Tribunal does not propose to set out

the grounds relied upon in detail as they are contained in the application dated 5 February 2010. The particular grounds relied upon are that the Respondent had made offers to settle which had not been accepted, the difficulties he had encountered acting as a litigant in person and that the service charge was not in fact due as the Applicant was in breach of covenant for its failure to keep the Property in repair.

139. The Tribunal considered the application carefully. The Tribunal has the discretion to make such an order under section 20C if it considers it *"reasonable to do so in all the circumstances"*. The Applicant had been entirely successful in its application. The Tribunal saw no grounds upon which it would be reasonable to make an order under section 20C and therefore declined to do so.

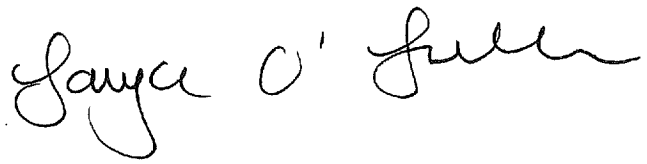
140. The Respondent made two applications for costs, an application under paragraph 10 Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and an application for the reimbursement of its fees.

141. The Tribunal may make an order for that a party to proceedings shall pay the costs up to a maximum of £500 incurred by another party in connection with the proceedings where he has in the opinion of the leasehold valuation tribunal *"acted frivolously,vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings"*.

142. The Tribunal considered that the Respondent had acted unreasonably in connection with the proceedings. The Respondent had consistently failed to comply with the directions made by the Tribunal despite having attended at three pre trial reviews at which the timetable had been agreed. He was not able to substantiate any of his allegations. The Applicant had been put to great cost both in terms of time and money in dealing with these proceedings. In the circumstances the Tribunal considered it appropriate that an order be made under paragraph 10 Schedule 12 and hereby orders that the Respondent pay the sum of £500 to the Applicant within 14 days of the date of this decision.

143. The Tribunal also considers it appropriate to order the reimbursement of fees paid to the Applicant. It therefore orders that the Respondent do pay the sum of £25 in respect of the application fee and £150 in respect of the hearing fee to the Applicant, the total sum of £175 to be paid within 14 days of the date of this decision.

Chairman: Sonya O'Sullivan



Date: 22 March 2010