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HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL
LANDLORD & TENANT ACT 1985 SECTION 27A AND SECTION 20C

Case No. CHI/24UD/LSC/2012/0115
Premises: 24 Crestwood View, Eastleigh, Hampshire, SO50 4NF
Hearing: 27 November 2012

B E T W E E N:-

Applicant (tenant): Mr Jason Osborn
Represented by: In person

Respondent
(manager): Trinity (Estates) Property Management Limited
Represented by: Mr Mathew Shaw (of the Respondent)

Members of tribunal: Mr Paul Letman Chairman
Mr Donald Agnew BA LLB LLM
Mr Derek Lintott FRICS

The Application

1. By application dated 26 August 2012 Mr Jason Osborn (the Applicant) the lessee under a lease dated 15 February 2008 (the Lease) of 24 Crestwood View, Eastleigh, Hampshire, SO50 4NF ("the Premises") applied for a determination of liability to pay and the reasonableness of service charges under section 27A (and 19) of the Landlord and Tenant Act 1985 (the 1985 Act).
2. The application requests the tribunal to consider a number of different heads of estimated expenditure (see below) in respect of interim service charges for the years 01/10/2011 to 30/09/12 and 01/10/12 to 30/09/13, as well as the electricity charges incurred and charged in the year end account for the earlier year 01/10/10 to 30/09/11.

3. Further the application includes an application under section 20C of the 1985 Act, to prevent the landlord from seeking to recover any of its legal costs by adding them to the service charges claimed.

The Premises

4. The tribunal inspected the estate comprising 24 Crestwood View on 27 November 2012. The same is a mixed development comprising 3 blocks of flats, each of 3 storeys, a number of town houses of varying types, and a block of affordable housing units. The development is built of facing brick and rendered block under pitched roofs covered in a variety of reconstituted roofing tiles providing colour and design variety. The groups of houses and the flat blocks are linked by estate roads and footpaths with moderate to low maintenance landscaping, predominantly shrubs and pavements. Car parking is provided in localised groups adjacent to the houses and blocks.
5. The management responsibility for the estate is split (according to the terms of the lease referred to below and the plan annexed thereto) between the Respondent and another company (Meadfleet Limited), that is not party to the lease. Although no issue arises in this regard, the tenant's obligation to contribute towards the costs of the parts of the estate maintained by Meadfleet are understood to be secured by a separate deed of covenant (the recitals to the lease refer).

The Lease

6. By the said lease dated 15 February 2008 ('the Lease') between Bellway Homes Limited as landlord of the first part, Trinity (Estates) Property Management Limited (the Respondent) as manager of the second part and one Yvette Marie Hum as tenant of the third part, in consideration of the premium then paid by the tenant and the covenants contained therein the landlord demised to the tenant all that first floor flat known as Plot 61 (now 24 Crestwood View) for a term of 125 years from and including 01 July 2007. The Applicant is the successor in title of Ms Hum.

7. The lease follows a familiar form employed by Bellway Homes. It provides for the grant of a Management Lease to the Respondent of all the external and internal parts of the block, defined to mean the Building containing the Demised Premises. It defines The Maintained Property under the Second Schedule, as expressly comprising amongst other parts (at clause 1.4) 'All doors and window frames not forming part of the demise of any of the Dwellings.'

8. 'The Maintenance Expenses' are defined to mean the money actually expended or reserved for periodical expenditure by or on behalf of the Manager or the Landlord at all times during the term in carrying out the obligations specified in the Sixth Schedule. Under The Sixth Schedule, The Maintenance Expenses are divided into 3 parts:
 - (1) Part A covers the Block Costs, including (at clause 2) 'keeping the Communal Areas of the Maintained Property generally in a neat and tidy condition,' (at clause 3) 'repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations,' and (at clause 6) 'insuring and keeping insured the Block and other structures at all times.'
 - (2) Part B covers the Internal Block Costs, including (at clause 1) keeping the internal common parts of the Block comprised in the Maintained Property and every part thereof in good and substantial repair,' and (at clause 3) 'Inspecting maintaining renting renewing reinstating replacing and insuring the fire fighting appliances the electronic door entry system.'
 - (3) Part C covers the costs applicable to any or all of the Part A or Part B costs, so as to include, for example, (at clause 3) 'all rates taxes duties charges assessments and outgoings whatsoever ... payable in respect of the Maintained Property..', (at clause 13) 'such sum as shall be considered necessary by the Manager ... to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Maintained Property', and (at clause 15.3) '...legal or other costs reasonably and properly incurred by the Manager or and otherwise not recovered in taking or defending proceedings...'

9. Pursuant to clause 4.1 of the Lease the tenant covenants, amongst other things, to observe and perform the obligations on the part of the tenant set out in Parts One and Two of the Eighth Schedule. Under the Eighth Schedule the covenants enforceable by

the Landlord and Manager include, at clause 2, the obligation to pay to the Manager or its authorised agent (or to the Landlord in the event that the Landlord is managing pursuant to paragraph 1 of the Ninth Schedule) the Tenant's Proportion at the times and in the manner provided in the Lease.

10. Under clause 1 of the Seventh Schedule the Tenant's Proportion means the Part A Proportion of the amount attributable to the costs in connection with the matters mentioned in Part A of the Sixth Schedule, and whatever of the matters referred to in Part C that are expenses properly incurred by the Manager which are relative to the matters mentioned in Part A, plus likewise the Part B Proportion of the Part B costs and related Part C costs, where the Part A Proportion is defined under the Particulars at the outset of the Lease as 4.0960% and the Part B Proportion as 4.3478%; save that the said proportions may be subject to variation in accordance with clause 7.15 (the Lease should correctly refer to clause 7.14 which gives the Manager a power to recalculate the proportion should it become necessary or equitable to do so).
11. Under clause 6 of the Seventh Schedule the tenant covenants to pay to the Manager the Tenant's Proportion of the Maintenance Expenses in the manner set out therein. The sub-clauses of clause 6 make provision (at clause 6.1) for payment by monthly standing order or as stipulated by the Manager, notably (at clause 6.2) for each Tenant's Proportion in respect of the Maintenance Year to be ascertained and certified by a Certificate or Certificates signed by an independent qualified accountant as soon after the end of such Maintenance Year as may be practicable, and (at clause 6.3) for the Certificate to contain a summary of Tenant's Proportion and for any balance to be paid or credited as the case may be.
12. The Respondent covenants with the tenant and landlord under clause 6 of the Lease to observe and perform the obligations on the part of the Manager set out in the Tenth Schedule. Under the Tenth Schedule Covenants on the part of the Manager (at clause 1) the Respondent covenants to carry out the works and do the acts and things set out in the Sixth Schedule (referred to above) as appropriate to each type of Dwelling (acting reasonably and properly in all matters in respect of which the Manager has a discretion).

The Applicable Statutory Framework

13. Under section 18 of the Landlord and Tenant Act 1985 (as amended) service charges are defined as amounts payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs. The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord (lessor), or a superior landlord, in connection with the matters for which the service charge is payable.

14. By section 19 entitled Limitation of service charges: reasonableness, it is provided at sub-section (1) that 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. Further, and most relevant to the present application, section 19(2) of the 1985 Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

16. Under section 27A of the 1985 Act the tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance, or management of any specified description, a service charge would be payable for those costs, and if so, the amount which would be payable.

17. In determining whether costs were reasonably incurred the LVT should consider whether the landlord's actions taken in incurring the relevant costs, and the amount of those costs, were both reasonable. The requirement that the costs be reasonably incurred

does not mean that the relevant expenditure must be cheapest available, although this does not give the landlord a licence to charge a sum which is out of line with the market norm. There is no presumption for or against a finding of reasonableness, rather a tribunal must reach a conclusion on the whole of the evidence.

The Evidence and Submissions

18. Further to the directions order made in this application on 30 August 2012, the Applicant provided a document headed 'Summary of Issues – 19-29 Crestwood View', which helpfully expanded upon the items of estimated and, in the one instance, incurred expenditure challenged in the application. At the hearing before this tribunal the Applicant went through this document and supplemented its contents with oral evidence, further detailing the matters relied upon in support of his application. He was assisted in this at the hearing by Mr Robert Williams and Ms Williams. The relevant evidence and submissions in respect of each item in dispute is considered below.

19. For the Respondent, pursuant to the tribunal's directions a statement of case was served on 23 October 2012, together with 8 appendices containing relevant documents and information. Prior to the hearing the Respondent also served a witness statement dated 19 November 2012 of Mathew Shaw, Regional Estates Manager, with 7 exhibits containing further relevant documents. Mr Shaw represented the Respondent at the hearing and gave evidence and made submissions on its behalf, assisted by Ms Hayley Pitt, the Estate Manager for Crestwood View. The Respondent's case in relation to each of the matters in issue is also considered item by item below.

The Disputed Service Charges

1) Landscaping

20. The estimated costs of the landscape maintenance in the year 01/10/11-30/09/12 are in the sum of £1700, and for the current year they are the same. These costs are recoverable under the Sixth Schedule Part A Block Costs, at in particular paragraph 2. The Applicant's case is that the landscaping has not been performed in the relevant

years to a reasonable standard, that the plants are overgrown and have been left to grow onto the paving and that litter is not cleared. Further, the Applicant told the tribunal that one of the residents has taken to sweeping up the litter about the bins. The Applicant also points to an incident in 2011 when there was a sewage leak from one of the drains and no attempt apparently to clear up. The tribunal saw the relevant location on the site view. In the circumstances the Applicant asserts that the budgeted costs are too high, and estimated at the hearing that they should be reduced by a half.

21. In support of the estimated charges the Respondent's Mr Shaw explained that although the landscaping maintenance contract is not re-tendered every year, this did take place in 2010. The present contract is for a year and can be terminated on 1 month's notice. Mr Shaw referred the tribunal to the Landscaping –Specification, which although generic forms the basis of the present contract with Project 25. The nominal ledger and supporting invoices for the 2 years in question, confirm that Project 25 attend Crestwood View at least monthly, for the sum of £141.67 plus VAT. By way of confirmation that each visit actually takes place, the invoices are signed and countersigned. However, Mr Shaw conceded that when he had visited on 09 October 2012, an area of landscaping around the parking bays to plots 56, 57, 61 & 62 had not been attended to; the block paving required weeding and the shrubs to the corner of the parking area needed cutting back. He confirms in evidence that he had since raised this with the contractor.
22. As to the complaint about litter, Mr Shaw pointed out that picking up litter was part of the specification, and Ms Pitts the Respondent's Estate Manager, added that efforts are made to synchronise the contractor's visits with the bin emptying. As regards the sewage incident Mr Shaw had not personally seen any overflowing drains, but from the nominal ledger had found that on 22 November 2011 contractors (Drain Doctor) had attended the estate to clear a blocked main drain and secondary drains. This appeared to relate to the incident cited by the Applicant. Overall, Mr Shaw maintained that the contractors were performing their work to a reasonable standard, and that their rates and prices were competitive for the work involved. He volunteered nonetheless to re-tender the contract at the end of the contract to ensure that costs remained reasonable.
23. The issue for the tribunal is whether the budgeted figures referred to above are no greater in amount than is reasonable. Applying a broad, common sense standard to the assessment of what is reasonable, the tribunal are satisfied that the budgeted amounts

are reasonable. It is reasonable to allow for the employment of contractors on a fixed term contract. That the present contractor was selected as a result of a competitive re-tendering as recently as 2010 provides some comfort that their rates and prices are within the market norm and reasonable. Indeed the total annual costs even for the relatively modest extent of works (within the curtilage of the 3 blocks pointed out to the tribunal on the view) do not strike the tribunal as excessive. Moreover, in contrast to the evidence adduced by the Applicant on the issue of insurance costs (below), he has not provided any evidence from potential alternative contractors or of competing prices in respect of the landscape maintenance costs.

24. As to the scope and adequacy of the contracted services, the specification appears to be adequate rather than excessive. Further, the estate presented well on the inspection, with clear evidence that the bushes and shrubs are being maintained and signs of recent pruning. There was also no evidence of litter about the estate. In the circumstances the tribunal is satisfied that the estimated costs, which are of course prospective, are the reasonable amount for the purposes of section 19(2). It may be noted, however, that after relevant costs have been incurred and the year end accounts produced, it remains open to the Applicant should he so choose to challenge the actual costs as unreasonably incurred and/or on the basis that the relevant services have not been carried out to a reasonable standard.

2) Internal Lighting

25. The costs of maintaining the internal block services such as common parts lighting is covered by The Sixth Schedule Part B (Internal Block Costs), most obviously under paragraph 2, whilst the associated electricity charges themselves are recoverable under paragraph 3 of Part C (Costs applicable to any or all of the previous parts of this [Sixth] Schedule). The estimated electricity charges in question are £1,250 (for the year end 30/09/2012) and £1,500 (for the year end 30/09/2013). However, at the hearing and as referred to above, the real focus of complaint is the repeated call outs to contractors, to attend to the lighting installation.
26. Thus the Applicant's Summary of Issues states that there have been a number of issues with the internal lighting during 2011 and 2012, with repeated reports to the Respondent about the common parts lighting not working due to sensors and timers failing to function

properly. In this regard the Applicant referred the tribunal to an email dated 27 July 2012 from Mr Paul Bradbury (of 26 Crestwood View) to the Respondent, and the following emails. In the light of these matters the Applicant asserted that estimated charges should not be as high as they are, suggesting that they should be no more than a few hundred pounds.

27. Further, the Applicant (and those with him) expressed concern that charges for general repairs and maintenance would be excessive because they would include multiple visits by contractors to the estate to resolve the lighting issues, when some of those visits failed to sort out the problem and should not, therefore, be recharged to lessees. The Applicant was also concerned that the Respondent was using the services of electrical contractors based in Basingstoke, namely NH Electrical, and that this may result in unreasonably high costs being incurred.
28. The Respondent acknowledged that there had been some problems with the internal lighting sensors and timers. In particular it was accepted that there had been a number of call outs in 2011 and 2012, as a result of the cleaners replacing bulbs with the wrong type of bulb. However, it was confirmed that this problem was now resolved. Mr Shaw had inspected the 3 buildings in question on 09 October 2012 and said that he found all the common parts lights were activated properly by the sensors when entering the blocks and appeared to be working properly. He found that some emergency lights were not working, but the relevant bulbs were duly replaced and these were now in working order. As regards the use of NH Electricals, Mr Shaw accepted that these were sub-contractors to Able2 Services, the Southampton based contractors actually employed by the Respondent, but had confirmed with Able2 that there were no additional costs resulting from the use of these sub-contractors and their distance from the estate.
29. The tribunal accept that there have been some difficulties with the common parts lighting over the relevant period. Indeed on the inspection, the first floor sensor near to the Applicant's apartment did not seem to be responding properly, so as to switch on the light. However, the Applicant does not advance any specific or accurate way in which any actual or estimated electricity charges should be adjusted to take these matters into account. This is no criticism of him or his case, but simply reflects the obvious difficulties in this regard of monitoring and measurement, and thus of any realistic attempt to quantify an adjustment.

30. Moreover, logically there is no apparent connection between the complaints made and the estimated electricity consumption charges for the years in question. Certainly, there was no challenge to the 2009/10 electricity charges, upon which the estimates for subsequent years are based (the 2010/11 electricity charges are conceded to be mistaken, see below). The tribunal accept, therefore, that the actual charges for that year are a sensible base for estimating the 2 most recent years. In the light of this charge and the concession made by the Respondent that the 2010/11 charges should not be more than about £1,200 (see below), therefore, the tribunal are satisfied that the estimated charges of £1,250 and £1,500 are neither excessive nor unreasonable.

31. As for the number of call outs, it is again not apparent that the history of repeat visits relied upon by the Applicant has actually inflated the internal block element of the general repairs budget of £3,000 in each year under consideration, or if somehow it has by how much. With regard to the query over NH Electrical's rates, the tribunal are also not persuaded on the evidence that the use of this sub-contractor leads to excessive charges. The tribunal are not, therefore, satisfied that either of these matters affords a sufficient basis for saying the estimated general repairs charges are excessive. On the contrary, and bearing in mind that the estimate was only completed relatively recently in about 2008, the budgeted figures in this regard also appear reasonable and the tribunal so determines.

3) Internal Redecoration

32. The costs in issue here are the reserve Redecoration Fund amounts of £1,200 claimed in both years to 30/09/2012 and 30/09/2013. The costs of carrying out internal redecorations are obviously within the scope of paragraph 1 of The Sixth Schedule to the Lease, and their recoverability and the power of the Respondent to provide a reserve fund in this regard are not in issue. Rather the Applicant asserts that the internal redecorations are beginning to look untidy and worn, and he is concerned to know when the claimed monies will be spent.

33. In reply the Respondent's Mr Shaw has made it clear before this tribunal, that it is presently the Respondent's intention to undertake the internal redecoration works for

which these monies are collected in the next calendar year (2013), subject of course to all due statutory consultation.

34. On the basis of this assurance, the Applicant has not pursued any further or other challenge to the amounts claimed. Nonetheless, for completeness the tribunal confirms that the amounts claimed in each year do not appear to be excessive or unreasonable having regard to the extent of the common parts and scope of works concerned, and accordingly in so far as necessary determines that the amounts claimed are reasonable for the purposes of section 19(2) of the 1985 Act.

4) Window Cleaning

35. The estimated window cleaning costs in issue appear in the relevant service charge budgets as £420 in each year. It emerged at the hearing, however, that this cost had been wrongly allocated by the Respondent in the budget; the Respondent having mistakenly divided the full annual cleaning estimate of £420 between 7 owners, whereas £160 of the total is for cleaning the communal windows and should be divided between all lessees, whilst it is only the balance of £260 which should be divided 7 ways (as further explained below).
36. The costs of cleaning the common parts windows forming part, as they do, of the Maintained Property as defined under The Second Schedule, are plainly within the scope of paragraph 4 Part A of The Sixth Schedule Part. In addition though the Respondent incurs the cost of having 7 large bay windows that belong to individual lessees washed and cleaned. This was the subject so it seems of a separate arrangement between the original developers Bellway and the relevant leasehold owners, under which the Manager would, presumably for convenience and economy, arrange the cleaning of the bay windows and the relevant lessees would each meet their share of the relevant part of the incurred costs. On taking over as Manager the Respondent has inherited and perpetuated this arrangement.
37. The relevant estimated service charge cost in issue, therefore, is only the sum of £160 per annum for the common parts windows in all 3 blocks. In the light of this revised figure, the Applicant did not appear to pursue his challenge to the common parts window cleaning costs with any great conviction. In any event he produced no alternative

quotation, nor other evidence to show that this cost was unreasonable. Given the extent of the cleaning work involved the tribunal are in no doubt that this is a competitive rate for the work, and determine accordingly that the sum of £160 is the reasonable amount recoverable in advance in each year by way of estimated service charge for the block communal window cleaning.

38. As to the bay window costs, given that these are not recoverable under the Lease but pursuant to a personal collateral agreement, these costs are not properly regarded as service charge costs and are outside the jurisdiction of this tribunal. The tribunal observes, however, that these works would appear to have been done to date. The Applicant, although he commented that he had not seen the cleaners at work, was prepared to accept that the invoices for work done to date were not fictitious on the basis that he would ordinarily be away from the estate at work himself when the contractors would attend. As to the future it is up to the Respondent whether it continues to provide this service, and for the Applicant whether he chooses to determine the existing bay window cleaning arrangement, but this is a matter for the parties.

5) The Bin Store Cleaning

39. The Applicant's case in this regard was put as part of his challenge to the landscaping costs (above), given that the cleaning of the bin store (which the tribunal visited on its inspection) is covered by the Respondent's contract with the landscaping contractors. As noted above the Applicant says that the store is not regularly cleaned or maintained. The tribunal is satisfied, however, that the arrangements for cleaning and the rates and prices upon which the estimated costs are based are reasonable. The price does not strike the tribunal as outwith normal market prices, and the Applicant has not presented any evidence of competing alternative prices. For these reasons, already discussed above, the tribunal determine that the budgeted Landscape Maintenance costs of £1,700 in each of the years in question are the reasonable amount to be charged.

6) The y/e 2011 Electricity Charge

40. The Applicant's challenge to the electricity charge in the sum of £5,778.00 for the year ended 30/09/2011 is conceded by the Respondent to be well founded. The Respondent has been in correspondence with the relevant supplier British Gas, and Mr Shaw

informed the tribunal at the hearing that a credit of £2,335.16 has been secured to date. As regards the balance of £3,442.84 Mr Shaw also accepted when questioned by the tribunal that this was excessive, and that the charge should not be more than about £1,200.

41. On behalf of the Respondent, Mr Shaw confirmed that the Respondent would pursue matters with the supplier, and seek to obtain a further credit, in so far as possible so as to arrive at a charge equivalent to the true metered consumption of electricity. Provided this figure can be accurately determined with the supplier, the Respondent should then prepare a revised certificate for each lessee ascertaining and certifying that Tenant's Proportion in accordance with paragraph 6 of The Seventh Schedule (above) showing the corrected final amount.

42. If, however, all that can be achieved with the supplier is a compromise (rather than an accurately metered) figure, then in accordance with Mr Shaw's concession above, the revised certificate under The Seventh Schedule will have to be prepared on the basis that the reasonable incurred cost to be included in the accounts is not more than the sum of about £1,200.

7) Communal Water Charges

43. The estimated charges in issue under this head are £120 per annum in both year end 30/09/12 and 30/09/13. These are the estimated standing charges for 3 external cold water taps (the tribunal were shown the tap for the Applicant's block within the bin store). The estimates are predicated on the basis of the actual incurred charges for years ended 30/09/10 and 30/09/11, which were £72 and £79 respectively. As a matter of contract (under the Lease) the charges are within the scope and recoverable under paragraph 3 of Part C of The Sixth Schedule.

44. The Applicant objected to the charges, however, in his Summary of Issues on the basis that the charge is excessive for a single tap that at least at present is never used. Although at the hearing the Applicant accepted that the charge in fact relates to 3 taps, nonetheless he maintained his objection on the latter ground. Mr Shaw sought to justify the charges on the ground that the taps are an existing amenity, the actual charges as

found in the nominal ledger are in line with the estimates, and that if the taps were to be disconnected it would cost £120 per tap.

45. The tribunal accepts that the taps are original features, and accordingly are part of the Services Installation (as defined under Clause 1 Interpretation) that the Respondent is required to maintain under paragraph 3 of Part A of The Sixth Schedule. Thus there can be no 'in principle' objection to the charges and outgoings for the taps, which are recoverable under paragraph 3 of Part C of The Sixth Schedule.
46. The only material challenge, therefore, can be to the level of charges. In this regard there is no evidence before the tribunal to support the allegation that the charges are excessive. The charges are simply those of an established utility company, and appear to be in accordance with market norms. In the circumstances the tribunal are satisfied that the charges are no more than the reasonable amount chargeable in advance, and determine accordingly.
47. Furthermore, there appears to the tribunal to be a good practical case for retaining the taps, which serves also to justify the charges. Although the taps are not currently put to much if any use, it is common ground between the parties that the current window cleaners do not make use of this water supply, the tribunal accept that they are a potentially useful amenity, and that even if decommissioning the taps were permissible, to do so would be short-sighted and probably inadvisable. The tribunal are only fortified in this view by the substantial disconnection costs that would have to be incurred

8) Buildings Insurance

48. There is no issue that the costs of insuring and keeping insured the building containing the demised premises is covered by paragraph 6 of Part A of The Sixth Schedule. The Applicant's challenge is rather to the reasonableness of the estimated charges in the sum of £3,900 for the year ending 30/09/2012 and the slightly lesser sum of £3,785 for the current year ending 30/09/2013. In particular the Applicant has queried whether the Respondent receives any commission in respect of the insurance. Further the Applicant relied upon 3 competitive insurance quotations (see below), indicating premiums in the range of £2,000 to £2,300.

49. The Applicant produced the said competing insurance quotations for the first time at the hearing. Mr Shaw on behalf of the Respondent accepted, nonetheless, that he would be able to deal with them in his evidence and was not prejudiced by the late production, and accordingly the tribunal allowed these into evidence. The material comprised the following; a quotation from Aviva in the sum of £1,995.61 inclusive of IPT with a schedule of key policy details and premium breakdown, an email dated 12 November 2012 from 'fp property' insurance brokers, noting 2 further quotations, one from Allianz in the sum of £2,309.32 inclusive of 6% IPT and the other from LV Insurance in the sum of £2,170.00 inclusive.
50. These quotations were closely scrutinised at the hearing by all parties and the tribunal, in particular to establish whether or not they were on a like for like basis with the existing insurance for the 3 blocks. The Applicant asserted that they were, and said that the brokers he used had been provided with and obtained the quotations on the basis of D Barnett Brokers' Summary of Insurance appended to the Respondent's written case.
51. On examination it does indeed appear to be the case that the relevant cover is essentially the same, and Mr Shaw accepted as much in his evidence. Mr Shaw was also able to confirm, and the tribunal accept his evidence in this regard, that the Respondent did not receive any commission in respect of this insurance. Therefore on the face of things each quotation is equally based on zero commission (though see the comments below on the role of the freeholder).
52. One point of departure, however, appeared to be the fact that in accordance with paragraph 6.6 of Part A of The Sixth Schedule, the existing policy noted under Additional Interests, 'The interest of all leaseholders, mortgagees or other interested parties are automatically noted, the nature and extent of such interest to be disclosed in the event of making a claim.' There was no information before the tribunal as to the possible effect upon premium of this added cover. It may be, therefore, that this or indeed some other matter which was not discovered at the hearing before this tribunal properly explains the substantial difference between the quotations obtained by the Applicant and the insurance presently obtained by the freeholder (it is to be noted that the name of the insured requires updating, and that under the Lease it is actually the Respondent as Manager not the freeholder who bears the obligation of obtaining the insurance).

53. However, unless and until this disparity is explained, if it can be, the tribunal is satisfied that the quotations obtained by the Applicant should be taken into account in assessing the budget figures for insurance in the years in question. Certainly, in the light of those quotations the current estimates do appear to be too high.

54. Taking these quotations in to account, along with the costs of the insurance actually obtained by the freeholder through apparently independent brokers (£3,422 for the year ended 30/09/10, £3,605 for the year ended 30/09/11, £3,670.44 for the insurance year to 24/02/12 and £3,762 for the year to 24/03/13), the tribunal is of the view and duly determine that the reasonable amount payable in advance is no greater than £2,750 in each of the years ended 30/09/12 and 30/09/13.

9) Costs of Maintaining the Entry Phone System

55. The costs of maintaining the entry phone system are specifically provided for as a service charge cost under paragraph 3 of Part B of The Sixth Schedule. There are, as described in the Respondent's case and Mr Shaw's evidence, 4 door entry systems; one to block 1-7, one to block 75-81 and two to block 19-29 (the Applicant's block). There is a maintenance contract in place until 10 February 2013 between the Respondent and NACD at a cost of £1,176 plus VAT. The contract price for the preceding year, according to the NACD documentation appended to the Respondent's case, was in the sum of £1,125 plus VAT (subject to a 2.5% discount for prompt payment). The estimated costs of £1,325 and £1,345 in the service charge budgets for the years ended 30/09/12 and 30/09/13 allow for this contract. It is to these estimates that the Applicant objects, on the basis that they are unreasonable in amount.

56. The tribunal does not accept the Applicant's challenge to these estimated sums. The Applicant has not produced (in contrast to his case in respect of insurance, above) any alternative quotation for the maintenance of the 4 entryphones. Further, although the current maintenance contractor is the original supplier, and the Respondent has not been able to provide details of any competitive re-tendering of the contract, the current prices do not appear to the tribunal to be excessive or unreasonable for the number of properties served (25) and level of service, including as it does out of hours cover. In the

premises the tribunal determines that the estimated sums under this head of expenditure are the reasonable amounts payable in advance in each year.

10) Fire Equipment Maintenance

57. During the course of the hearing, although the sums estimated in respect of this head of expenditure had not been the subject of prior challenge, the Applicant raised concerns about the reasonableness of the £500 demanded in advance by the Respondent in each of the relevant years in respect of the Fire Maintenance.

58. In response Mr Shaw for the Respondent explained that the £500 allowed £300 for the cost of testing the emergency lighting twice each year (a 1 hour and a 3 hour test) and another £200 for replacement bulbs and parts. The tribunal are satisfied on the basis of this evidence and in the absence of any relevant countervailing evidence, that the sums estimated and claimed by the Respondent in this regard are the reasonable amounts payable in advance in each year.

11) Apportionment of Charges

59. In his Summary of Issues the Applicant stated that he was unclear how the service charges are allocated to each block. Subsequently, aided by a closer consideration of the Lease and further information from the Respondent such as the helpful 'Individual Service Charge Matrix' produced as an appendix to its written case, as well as Mr Shaw's explanation in evidence of the division of total costs in the service charge budget (to Block Charge and Internal Block Charge), the Applicant conceded that the way in which the service charge is allocated has been clarified.

60. The tribunal is also satisfied with Mr Shaw's explanation, and that (subject to the correction conceded over the window cleaning costs) the Respondent is properly dividing costs between the different Parts (A, B and C) of the Sixth Schedule and charging the correct percentages (carefully defined by the original developers and written in to the leases) for each to arrive at the Tenant's Proportion payable under the Lease. In the result, at the hearing the Applicant confirmed that he was content with the

allocation of charges, and confirmed that there is no point in this regard requiring decision by this tribunal.

Summary

61. For the detailed reasons set out above the tribunal determine accordingly that the year end 30/09/2011 electricity charge should be as referred to at paragraphs 40 to 42 above, and that the reasonable amounts payable in advance by the Applicant to the Respondent pursuant to the Service Charge Budgets in issue are as follows (items in bold are those determined by the tribunal as above, whilst those not in dispute or the subject of decision by the tribunal are shown in italics for completeness);

Service Charge Budget
Period 01/10/2011 – 30/09/2012

	Common Parts	Total Cost	Block Cost	Window Cleaning Charge
	<u>Common Parts</u>			
1	Landscape Maintenance	1700		
2	<i>Cleaning</i>	<i>1500</i>		
3	<i>Window Cleaning</i>	<i>420</i>	160	260*
4	Water Charges	120		
5	<i>Electricity</i>	<i>1250</i>		
	<u>Maintenance</u>			
6	General Repairs & Maintenance	5000		
7	Fire Equipment Maintenance	500		
8	Entry Phone System Maintenance	1325		
	<u>Insurance/Professional Costs</u>			
9	Building Insurance	2750		
10	<i>Insurance Valuation</i>	<i>300</i>		
11	<i>Accountancy Fee</i>	<i>400</i>		
12	<i>Banking Charges</i>	<i>102</i>		
13	<i>Health and Safety</i>	<i>450</i>		
14	<i>Out of Hours</i>	<i>90</i>		
15	<i>Management Fee</i>	<i>4476</i>		

16	VAT	3295
17	Redecoration Fund	1200
18	<i>Sinking Fund</i>	1200

* corrected by the Respondent

Service Charge Budget
Period 01/10/2012 – 30/09/2013

	Common Parts	Total Cost	Block Cost	Window Cleaning Charge
	<u>Common Parts</u>			
1	Landscape Maintenance	1700		
2	<i>Cleaning</i>	1500		
3	<i>Window Cleaning</i>	420	160	260*
4	Water Charges	120		
5	<i>Electricity</i>	1500		
	<u>Maintenance</u>			
6	General Repairs & Maintenance	5000		
7	Fire Equipment Maintenance	500		
8	Entry Phone System Maintenance	1345		
	<u>Insurance/Professional Costs</u>			
9	Building Insurance	2750		
10	<i>Insurance Valuation</i>	240		
11	<i>Accountancy Fee</i>	400		
12	<i>Banking Charges</i>	102		
13	<i>Health and Safety</i>	450		
14	<i>Out of Hours</i>	90		
15	<i>Management Fee</i>	4647		
16	VAT	3333		
17	Redecoration Fund	1200		
18	<i>Sinking Fund</i>	1200		

* corrected by the Respondent

Section 20C

62. In addition to the substantive application, the Applicant seeks a direction from the tribunal pursuant to section 20C of the 1985 Act so as to disentitle the Respondent from adding any of its costs in these proceedings before the LVT to the service charge under the Lease. In accordance with the terms of the said section the tribunal may make such an order where it considers it just and equitable to do so.
63. As to when it may be just and equitable, at the hearing of this matter the tribunal referred the parties to the guidance in this regard given by HHJ Rich in his decision (in the Lands Tribunal) in *Tenants of Langford Court v Doren Limited (LRX/37/2000)*. In essence the tribunal must be satisfied that there is some feature of the case, ordinarily beyond merely the outcome of the substantive application, that render it just and equitable to rewrite the lease and remove what would otherwise be the landlord's contractual entitlement to costs.
64. In this application the Respondent, by Mr Shaw, has stated that it does not intend to seek to recover its costs by way of service charge, despite its contractual entitlement to do so under paragraph 15 of Part C of The Sixth Schedule. Nonetheless, the tribunal retains and ought properly to exercise its jurisdiction under section 20C. Considering, therefore, the circumstances of this case, the tribunal does not find any particular feature, nor did the Applicant refer to any, that in its view render it just or equitable to order a departure from the contractual position under the Lease. The tribunal declines accordingly to make any order under section 20C of the 1985 Act in this case.



Paul Letman
Chairman

A member of the Tribunal
Appointed by the Lord Chancellor

Decision of the leasehold valuation tribunal dated 20 December 2012