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HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00BD/LSC/2012/0454

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND
TENANT ACT 1985**

Premises: Flats 1, 2, 3 and 4 Onslow Court, Friars Stile
Road, Richmond-upon-Thames TW0 6NJ

Applicants: Oliver Goodier
David Jeffries
Richard Aboboto
Amanda Warren

Respondent: Nos 2 Limited

Date heard: 5 November 2012

Appearances: David Moore, solicitor, Rodgers and Burton,
solicitors, for the applicants

Adrian Dack BSc (Hons) MRICS, Eddisons
Commercial Limited, for the respondent

Tribunal: Margaret Wilson
Peter Roberts Dip Arch RIBA
Sue Wilby

Date of decision: 10 November 2012

Introduction

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") by Oliver Goodier, David Jeffries, Richard Aboboto and Amanda Warren ("the tenants") for a determination of their liability to pay service charges to the landlord, Nos 2 Limited, for the years ended 23 June 2010, 2011, 2012 and 2013. Each of the tenants holds a long lease of one of the four flats in a building with shop premises on the ground floor. The flats are accessed by a door at the side of the block leading to a communal staircase at the rear of the block, separate from the shop premises, and there is a terrace at the back of the block to which each flat has access. The landlord acquired the freehold reversion of the block as part of a large lot in about November 2007 and since that time the block has been managed by Eddisons Commercial Limited.

Background

2. By clause 1 of their leases, which are in common form, the tenants agree to pay a service charge to the landlord in the manner set out in the tenth schedule. Paragraph 2 of the tenth schedule provides that the service charge for each maintenance year is to be 25% of (a) all the expenditure relating to the roof and the first and second floors of the property and the staircase leading to the flats, (b) any other part of the maintenance expenditure which is in the reasonable opinion of the landlord for the benefit of one or more of the flats but not of the shops, and (c) for all other maintenance expenditure, the percentage which the rateable values of the four flats bears to the total rateable value of all the flats and shops combined.

3. By paragraph 4 of the tenth schedule, *as soon as possible after the commencement of each maintenance year the lessor shall prepare an estimate of the service charge for that year and on receiving a demand in writing for the same the lessee shall pay the said sum ... by equal quarterly instalments on the usual quarter days.* And, by paragraph 3, *as soon as*

possible after the end of a maintenance year the Lessor shall prepare accounts of its maintenance expenditure during the year and shall sign a certificate stating the amount of the maintenance expenditure for the ... year, and the tenant is to pay any shortfall within seven days of receiving the certificate and demand.

4. *By paragraph 4 of the tenth schedule, if the lessor shall at any time ... incur any expenditure to which the lessee is liable to contribute by way of a service charge and if in the opinion of the lessor such expenditure is a substantial sum and if there shall not be a sufficient reserve to meet such expenditure then the lessor may serve on the lessee a notice requiring the lessee to pay to the lessor within 14 days of such notice a percentage calculated in accordance with paragraph 2*

5. The costs to which the tenants must contribute by way of a service charge are set out in the eleventh schedule. They include the landlord's costs of performing the covenants in the eighth schedule, which include, at paragraph 2, that the landlord must *decorate maintain [etc] the reserved property*. The reserved property is defined in the second schedule as *the land and staircase and the walls roof and glass around the same and the first floor terrace to the rear of the property and the screen and railings (if any) on such terrace and all other parts of the building forming part of the property which either are used in common by the owners or occupiers of any two or more of the flats or are not exclusively included in the demise of any one flat or shop and the main structural parts of the building forming part of the property* "The property" is defined in the first schedule.

6. At the hearing of the application on 5 November 2012 the tenants were represented by David Moore, solicitor, of Rodgers and Burton, solicitors. The tenants of, respectively, Flats 1 and 2 attended the hearing and were tendered for cross-examination. The landlord was represented by Adrian Dack BA (Hons) MRICS of Eddisons Commercial, the landlord's managing agent, accompanied by Pamicos Loizides.

7. The disputed service charges and a summary of the parties' cases are set out in a Scott Schedule. We have completed it with our conclusions and attached it to this decision as appendix 1. In addition to the charges dealt with in the appendix there are some general questions which we will consider in the following paragraphs. The relevant parts of the Act are set out in appendix 2 to the decision.

The issues

Section 20B of the Act

8. It is not disputed that the accounts for the service charge year ended 23 June 2010 were not provided to the tenants until 29 March 2012 and that the accounts for the year ended 23 June 2011 were not provided until 25 June 2012. Mr Moore submitted that in those circumstances all service charges based on costs incurred prior to 25 December 2010, namely the whole of the service charges for the year ended 23 June 2010 and approximately half of the costs incurred in respect of the year ended 30 June 2011, were time-barred under section 20B of the Act. He accepted that, on the authority of *Gilje v Charlegrove Securities* [2004] 1 All ER 91, section 20B had no application to payments on account and that where the actual expenditure does not exceed the payments demanded on account, as was so in the present case, section 20B does not apply, and he did not dispute that demands for advance service charges were made at the commencement of each of those service charge years. He submitted, however, that the demands for advance service charges were invalid because they were not accompanied by an estimate of the service charges as, he submitted, the lease required.

9. Mr Dack submitted that the demands for advance service charges were valid and that section 20B was therefore of no application. During the course of the hearing he arranged for a budget for the year ended 30 June 2010 to be faxed to the tribunal. In the hearing bundle there was a mail merge

document to the then leaseholder of Flat 1, purporting to enclose a copy of the budget for that year, but no copies of actual letters to any other leaseholder enclosing copies of the budget were provided. He said that Eddisons could not locate a budget for the year ended June 2011 but that on account charges were demanded at the same level as those for the previous year.

10. We are satisfied, on balance, that the service charges in question are not time-barred under section 20B. Paragraph 4 of the tenth schedule to the lease requires the landlord to prepare an estimate but does not in our view require it to serve the estimate on the tenants, although the landlord must be prepared, if asked, to defend the estimated charges in order to establish that they are reasonable as the Act requires. We are not satisfied that a budget for the years ended June 2010 or June 2011 was served on any leaseholder and we do not accept that the mail merge document which the landlord produced proves otherwise, but, as we have explained, we do not regard that as a breach of the lease.

Adequacy of demands

11. Mr Dack said, and we accept, that when the present managing agent took over the management in about November 2007 it received little or no documentation from the previous owner who managed the block. In the years 2008 and 2009 it rendered several invoices to the tenants on an *ad hoc* basis and the tenants, or some of them, duly paid the sums demanded. These *ad hoc* charges are the first four entries in the Scott Schedule.

12. Mr Moore submitted that since the landlord's only entitlement to make *ad hoc* demands was under paragraph 4 of the tenth schedule, which applies only to charges which *in the opinion of the lessor* are *substantial*, the landlord was not entitled to recover any of these costs because they could not possibly be regarded as *substantial* and were thus not properly demanded.

13. Mr Dack submitted that the first cost in the Scott Schedule (£3450.50, of which it was agreed that half was potentially payable by the residential tenants), was *substantial*. He also submitted that the other costs demanded *ad hoc* were also substantial, and he said that the tenants had been asked to pay the electricity bills on an *ad hoc* basis as an emergency measure to prevent the electricity supply to the common parts from being cut off.

14. We are satisfied that the first cost in the Scott Schedule could reasonably be regarded as *substantial* and was thus validly demanded in accordance with paragraph 4 of the tenth schedule to the lease. We consider, however, that the following three charges listed in the schedule, two for electricity and one for a risk assessment, could not reasonably be considered to be *substantial* and therefore were not validly demanded. Had we been satisfied that the tenants had accepted their liability to pay these bills despite their not having been validly demanded we might well have concluded that they had waived their right to object to their liability to pay. However, we have on balance come to the conclusion that the tenants did not agree to waive their rights under the lease and that they are not liable to pay for the electricity charges and risk assessment listed on pages 1 and 2 of the Scott Schedule because they were not demanded in accordance with the requirements of the lease.

15. We would add that Mr Dack candidly admitted that Eddisons had made a number of mistakes in the early days of this management, and he said that they had now put matters on a proper footing. We accept that such mistakes as were made (and there were several) were made through ignorance of the proper procedures for residential management and were not dishonestly intended; and we accept Mr Dack's assurance that from now on the managing agent will do its utmost to comply with procedures appropriate to residential tenants.

Contract with the managing agent - qualifying long term agreement?

16. The management contract between Eddisons and the landlord was not produced at or before the hearing although Mr Moore had asked for it. Mr Dack said that there is a written contract in existence but that it provides for the management of the landlord's entire portfolio and had not been produced because it was confidential. Asked by the tribunal, he said that the contract was as initially for a three year period commencing April 2008 and that since the initial three year period expired it had continued from year to year. Mr Moore submitted that the agreement was, certainly during the first three years, a qualifying long term agreement which required but had not received consultation under the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations") and that each tenant's contribution to the costs of management was therefore capped at £100 a year. Mr Dack did not apply for dispensation from the relevant consultation requirements, which are contained in Schedule 1 to the Consultation Regulations.

17. It would be helpful to have seen the contract, and if confidentiality was an issue the names of the parties to it could have been redacted. We have no reason to disbelieve Mr Dack's candid admission that the agreement was for the first three years of its existence, namely, we assume, from April 2008 to April 2011, an agreement for more than a year and thus, unarguably, a qualifying long term agreement within the meaning of the Consultation Regulations. We have not been asked to dispense with compliance with the consultation requirements and do not do so. On the facts of this case, that conclusion does not produce an unjust result because we are satisfied that the management functions carried out during those three years was very limited. We accept, on balance and in the absence of detailed argument on the point, that since April 2011 the agreement has been from year to year, and we are prepared to assume that it has since that time been capable of determination on notice of no more than one year and that it has thus since that date been no longer a qualifying long term agreement.

Section 21B - summaries of rights and obligations

18. It was not disputed that the summaries of the rights and obligations of tenants which have since 1 October 2007 been required by section 21B of the Act to accompany demands for service charges were not given in respect of the years ended June 2010 and June 2011. Strictly, therefore, those charges will not be payable until such a notice is served. It was agreed that the service of such notices at this stage would be a pointless exercise. The relevance of the failure to serve the notices at the time is only that interest on any unpaid charges does not begin to run until notices are served.

Costs

19. It was agreed that the leases in principle permit recovery as service charges of the landlord's costs of these proceedings. Mr Dack said that the application and hearing were not necessary because the landlord had been prepared to negotiate and that he was under the impression that the parties were making good progress in negotiations before the application was issued. Mr Moore said that the operation of the service charges was a shambles and that the tenants had to come to the tribunal in order to ensure that all the issues were addressed. He therefore asked for an order under section 20C of the Act to prevent the landlord from placing any of its costs in connection with the proceedings on any service charge. He also asked for reimbursement under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 of the application fee of £350 and of the hearing fee of £150 which the tenants have paid.

20. It may be that this case could have been settled if further efforts had been made to settle it, but we cannot be sure that that would have been the result and it was notable that a number of concessions were made by the landlord at the hearing rather than in the Scott Schedule prepared at the pre-hearing stage. We are satisfied that this application and hearing were necessary. The tenants have succeeded in a number of the issues they raised, although

not in all of them. They themselves have been put to considerable expense in bringing this case. In our view it is just and reasonable in the circumstances to make an order under section 20C of the Act and to require the landlord to reimburse the fees of £500 which the tenants have paid.

CHAIRMAN.....

DATE: 10 November 2012

APPENDIX TWO: RELEVANT LEGISLATION

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions 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.
- (2) 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.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,

- (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

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

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.

- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

FLATS 1 - 4 ONSLOW HOUSE, FRIARS STILE ROAD, RICHMOND-UPON-THAMES

APPENDIX ONE TO THE TRIBUNAL'S DECISION

SCHEDULE TO STATEMENT OF CASE

Disputed Service Charges

Case Reference: LON/OOBD/LSC/2012/0454
Surrey TW10 6NJ

Premises: Flats 1, 2, 3 & 4 Onslow House, Friars Stile Road, Richmond

ITEM	COST	APPLICANT'S COMMENTS	AMOUNT OFFERED	RESPONDENT'S COMMENTS	AGREED Y/N	DETERMINATION BY TRIBUNAL
Ad-hoc Invoice 11/09/08 Shop Paving Slab and Shop Drainage [29]	£3454.50	<p>This has been allocated to the flats in the sum of £1990.45. No notice of rights under s.21B Landlord & Tenant Act 1985 was served with it.</p> <p>The invoice relates solely to the shops and therefore should not have been allocated to the flats at all. To that extent the invoice is unreasonably incurred.</p> <p>It is not accepted that this is a substantial amount which should have been charged otherwise than in the annual service charge and it as therefore been improperly demanded under the terms of the lease.</p>	£0.00	<p>The works related to the rain water goods serving the property which under the terms of the lease the tenants are liable to contribute to.</p> <p>While the cost is £3454.50 including VAT the long leaseholders were only charged 50% of this cost. As the s.20 notice procedure was not followed as these were emergency works the</p>	Y	<p>The landlord accepted that the element of this cost which was incurred for paving was not payable by the residential tenants. The landlord also accepted that half of the rainwater pipe re-routing costs , namely £1727.25, was attributable to the shop premises and was not payable by the residential tenants and that the balance should have been consulted upon under section 20 of the Act so that the contribution of</p>

ITEM	COST	APPLICANT'S COMENTS	AMOUNT OFFERED	RESPONDENT'S COMMENTS	AGREED Y/N	DETERMINATION BY TRIBUNAL
				landlord is prepared to accept £250 per flat.		each of them should be limited to £250. The tenants accepted that each of them was liable to pay £250 towards this cost and the landlord agreed.
Ad-hoc Electricity Invoice 06/07/09 [37]	£47.31	It is not clear whether this is included in the electricity item for the year ended 23.6.10. It is not accepted that this a substantial amount which might be demanded between service charge demands and it is therefore not accepted that this demand is properly made under the terms of the lease. It should have been included in the end of year service charge demand.	£0.00	It is not included within the service charge year end 23 June 2010. No service charge was in place at the time so it was recharged as an adhoc recoverable amount.	N	Disallowed for the reasons set out in the decision.
Ad-hoc Electricity Invoice 06/07/09 [37]	£21.95	This invoice is rejected for the same reasons set out above. It is in any event excessive for simply lighting the staircase and it would appear that other use has been made of the electricity supply.	£0.00	It is not included within the service charge year end 23 June 2010. No service charge was in place at the time so it was recharged as an adhoc recoverable amount. This is the cost of supplying electricity to the communal areas of the residential including lighting and intercom.	N	Disallowed for the reasons set out in the decision.
Ad-hoc Risk	£381.88	It is not clear whether this invoice was part of the total service charges or is in addition to them. In	£0.00	It is not part of the service charges. It was received	N	Disallowed for the reasons set out in the decision.

ITEM	COST	APPLICANT'S COMENTS	AMOUNT OFFERED	RESPONDENT'S COMMENTS	AGREED Y/N	DETERMINATION BY TRIBUNAL
Assessment Invoice 30/06/08[27]		<p>any event it is stamped as having been received on 1st September 2007 and is therefore out of time under s.20B Landlord & Tenant Act 1985 and again the invoice is not "substantial" and should have been demanded within the service charge provision and not on an ad-hoc basis.</p> <p>It appears that the risk assessment relates to the whole building but as no copies of the risk assessment have been received it is difficult to tell. It appears only to have been charged to the flats.</p>		<p>1st September 2007 and demanded within 18 months and as such due.</p> <p>No service charge was in place at the time so it was recharged as an adhoc recoverable amount.</p> <p>In error the invoice was only charge to the four flats and as such each is due a credit of £47.74</p>		
Service Charge [61-64] Y/E 30.06.10 (Demanded on 29.3.12)	£6397.42	<p>This service charge statement was served on 29th March 2012. Although the covering letter refers to a budget no such budget was ever provided. The service charge statement was not accompanied by Notice under s.21B and consequently at best these service charges may be owing but not due.</p> <p>The service charges related to costs incurred up 23rd June 2010 and accordingly fall foul of s.20B Landlord & Tenant 1985 and by reason of that section no sums are payable. There was no previous information on the expenditure incurred and the service charges are not therefore recoverable by s.20B(2).</p> <p>The following analysis of the breakdown of the service charges is given without prejudice to the points referred to in this section.</p>	(See Below)	<p>Letter sent dated 27 November 2009 issuing budget (Appendix 1).</p> <p>While the final accounts were issued beyond the 18 month rule the budget was issued as were on accounts and as such the on accounts are due less the balancing credit for the year end.</p> <p>We did receive a letter from A Warren in January 10 (enclosed in Appendix 2) which we can only presume was prompted by receipt of the budget.</p>	N	See decision.

ITEM	COST	APPLICANT'S COMMENTS	AMOUNT OFFERED	RESPONDENT'S COMMENTS	AGREED Y/N	DETERMINATION BY TRIBUNAL
		Despite requests for supporting documentation none has been forthcoming.		Copy of letter received attached. Please find attached copy invoices (Appendix 3) some of which have already been provided as per letter dated 25 June 2012 (attached in Appendix 4)		
Management Fee Y/E 23.6.10	£1000.38	<p>The management fee is applied to the whole building and accordingly the management fee should be calculated by reference to the whole building.</p> <p>No details of management fees have been provided and nor has a copy of any management contract been provided.</p> <p>This block of 4 flats requires little day to day management. At best an annual review of the state of repair, lighting, and cleaning (if it was done) would represent a total management of the upstairs part of the block. It is anticipated that if major works were required that an additional supervision fee would be charged.</p> <p>The terms of the management contract might give rise to other issues.</p> <p>Accordingly this item is rejected because it unreasonable in its amount having regard to the</p>	£400.00	<p>We would refer to our letter of 25 June 2012 to Mr Aboboto as attached in Appendix 4.</p> <p>Attached within Appendix 5 is a matrix of costs and charges raised and budgeted from which it will be noted that the actual cost of management to Eddisons is higher than the fees received.</p> <p>The matrix details everything that is undertaken including operating bank accounts and the administration of the services to the property which are primarily to the residential flats.</p>	N	<p>Management agreement was a qualifying long-term agreement (see decision). The quality of management was poor and the extent of management very limited. Only £100 per tenant is payable because of non-compliance with the Consultation Regulations</p> <p>In any event the total charged for management and incidental expenses of management in this year was £2024.27 (management fee of £1000.38, staff costs of £1023.89) which was excessive for a minimally serviced block such as this.</p>

ITEM	COST	APPLICANT'S COMMENTS	AMOUNT OFFERED	RESPONDENT'S COMMENTS	AGREED Y/N	DETERMINATION BY TRIBUNAL
		extent of the management required. A limited management fee is offered.		The landlord is prepared to assign to the long leaseholders the right to manage the residential communal areas only though will require all relevant insurances to be in place and we would be surprised if this could be done for £400.00		
Staff Costs Y/E 23.6.10	£1023.89	There are no on site staff and no staff are provided over ordinary occasional management. Normally it would be expected that staff costs would be incorporated into the management fee. This is rejected as unreasonably incurred and unreasonable in amount.	£0.00	As per RICS Guidance the cost of the Facility Management is budgeted separately to that of the Property Management.	N	We are satisfied that staff costs ought properly to be included in the management fee as is the usual practice with residential management and that that this charge is excessive and not payable.
Audit Y/E 23.6.10	£300.00	The accounts show that no audit has been done. Accordingly no audit fee is payable.	£0.00	The accounts were audited as evidenced by audit certificate attached in Appendix 6	Y	Disallowed. No audit was carried out because the accounts were prepared by a member of staff of Eddisons and was not independent. We consider that an "audit" requires a degree of independence in the auditor. No evidence was provided that the accounts were prepared by a chartered accountant or that they were carried out by a person independent of the landlord or

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						that the cost of doing preparing them was £300 or any other sum. The landlord in the end agreed that this charge was not recoverable.
Risk Assessment Y/E 23.6.10	£920.00	<p>An identical risk assessment was carried out in the previous year (at a third of the cost). By reason of this the costs were not reasonably incurred and the amounts are unreasonable in the circumstances. If there is a long term contract associated with the risk assessment then the lessees however reserve the right to raise an issue relating to consultation.</p> <p>It is accepted that an annual asbestos of inspection was required to ensure that all asbestos remained encapsulated and undisturbed. However this could have been done easily within the management fee.</p>	£0.00	<p>The cost of £920 was for the asbestos survey of £546.25 and the combined Health & Safety & Fire Risk Assessment £373.75.</p> <p>The guidance at the time was the Risk Assessments should be undertaken annually.</p> <p>The asbestos survey is not part of the management fee and is undertaken by a specialist consultant.</p>	N	<p>The landlord said that the advice it received at the time was that risk assessments should be carried out annually but that it was subsequently advised by its consultants that it was sufficient to carry them out every two or three years. Mr Moore said that annual risk assessments were unnecessary, although he agreed that they might be justified from time to time. Mr Dack agreed that that in any event this cost should have been shared with the commercial premises and that the maximum recoverable from the tenants of the residential flats was 50% of the cost.</p> <p>We accept that the tenants are liable to pay one half of this cost, namely £460, towards this cost. We are satisfied that it was</p>

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						reasonable for the landlord to carry out an asbestos survey and health and safety and fire risk assessment from time to time and that the cost was reasonable.
Electricity Y/E 23.6.10	£241.60	The only electricity is for the part of the building occupied by the flats and is for communal staircase lighting consisting of 2 bulbs which are alight at night. £241.60 is excessive and the Respondent is put to strict proof that that amount was incurred during the year in question and for the communal areas of the part of the building in which the flats are situated.	£75.00	As advised previously this serves the lighting and the intercom. Copies of the bills are attached in Appendix 3. We have checked with the electricity company and the account is up to date.		Mr Lozides said that the actual meter readings showed that electricity to the common parts was actually charged by the supplier at a rate of approximately £100 a year over a three year period, plus a standing charge of 13.15 pence a day equivalent to £47.99 a year. Doing the best we consider that it is reasonable to average the cost of electricity, producing £147.99, say £150 (including VAT) which we accept as a reasonable charge for the year.
Security System Y/E 23.6.10	£649.19	The residential part of the building is equipped with a very basic intercom and door release system which does not require regular servicing. Part of the amount claimed seems to be for a regular service contract but no copy of the contract has been provided. The Applicants accept that some charge might be reasonable.	£100.00	Attached in Appendix 3 are the invoices for the works undertaken. There is no contract in place for servicing	N	The relevant invoices are at pages 217 to 219 of the hearing bundle. Mr Dack agreed that the invoices at pages 218 and 219 could be duplicate invoices for the same work, and we agree. This reduces the total to £439.16. Mr Moore said that

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						this was an excessive sum to repair a very basic security system. We accept that charges amounting to £439.16 were incurred and reasonably so.
Internal Cleaning Y/E 23.6.10	£1263.40	Until the service charge statement was served in March 2012 the Applicants were completely unaware that any cleaning was taking place. In fact the Applicants take it in turns to do the minimum amount of cleaning that is required. This charge equates to about £25 per week. The Applicants have not seen any evidence of any kind of cleaning during the year in question to justify the payment sought. (In fact the only time the cleaner has been seen in the building was in the week immediately prior to the pre-trial review).	£0.00	This was detailed in the budget issued and was instigated because it was clear that no cleaning was taking place. Going forward we will stop the cleaning contract if the long leaseholders so wish but if so they will need to provide indemnities to the freeholder if they are going to undertake themselves.	N	The tenants said that virtually no cleaning took place. They said that they had never seen a cleaner on the premises until the day before the pre-trial review and that there was never any sign that the common parts were cleaned by anyone except themselves. The landlord produced some invoices for cleaning services provided by Endersham Ltd suggesting that cleaning was carried out twice a month at a cost of £20 plus VAT for each visit. Mr Dack could not produce a contract for the work but he said that he was aware that Endersham was a reliable company which did a considerable amount of work for the landlord. On balance we accept that some cleaning was carried out although the common

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						<p>parts did not look very clean because they required redecoration.</p> <p>Mr Moore agreed that the cost would have been reasonable if the work had been done and done properly.</p> <p>We accept on balance that some cleaning was done, although it was not witnessed by the tenants, and that a charge of £20 plus VAT per visit was reasonable. Because of the poor standard of the management at the time we are not prepared to allow charges unsupported by invoices. Nine monthly invoices were produced for the year, showing a total of £420 including VAT. We allow this sum as reasonably incurred.</p>
Sinking Fund	£1000.00	In previous years it has not been considered necessary to accumulate a reserve fund. In fact the only item that might attract a reserve fund is external painting and roof repairs. As both are in a good state of repair a £1000.00 reserve fund is simply not justified and is wholly unreasonable.	£0.00	It has already been agreed the sinking fund will be removed please see attached letter dated 25 June 2012 (Appendix 4) to the long leaseholders	Y	It was agreed that the tenants were not liable to make a contribution to the sinking fund.

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		<p>Because of the scope for major capital expenditure is very limited indeed the Applicants would prefer to meet such charges as and when they arise and not by means of building up an excessive reserve fund.</p> <p>In the circumstances it is the Applicants case that it is unreasonable to incur a reserve fund in these particular circumstances and/or that the amount of the reserve fund claimed is excessive.</p>		<p>confirming the same.</p> <p>Though it is permitted under clause 1 b of the Tenth Schedule.</p>		
Service Charge Demand for Y/E 23.6.11 [72-74]	£2875.41	<p>This demand was served on 25th June 2012. Accordingly and by virtue of s.20B Landlord & Tenant Act 1985 only those costs incurred after 25th December 2010 are recoverable.</p> <p>A detailed analysis of the charges is set out below.</p>	(See Below)	<p>We cannot locate a copy of the budget letter issued, but on accounts were demanded of the long leaseholders at the same level of the previous budget which as shown above was issued and as such the on accounts are payable less the balancing credit.</p> <p>Copies of invoices for the year end are attached in Appendix 7</p>	N	See decision.
Management Fee Y/E 23.6.11	£249.69	Although nothing appears to have been done to earn the management fee it is noticeable that this is significantly less than the previous year. Without seeing the management contract it is impossible to understand how the management fee is calculated. It seems to be completely ad-	£100	Please see comments above regarding management fees.	N	For the first nine months of the year we have determined that there was a qualifying long term agreement in place and the tenants' contribution for that period is therefore

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		<p>hoc.</p> <p>If the fee was incurred rateably over the whole period then a portion of it is not payable anyway by virtue of s.20B.</p>				<p>limited, <i>pro rata</i>, to £75 each, including VAT. For the remaining three months we consider that a reasonable fee for management would have been at the rate of £200 a year, including VAT, per tenant. We accordingly allow £125 for the year, including VAT, per tenant, on the basis that some management was done, but to a below average standard.</p>
Staff Costs Y/E 23.6.11	£391.96	This is in addition to the management fee. The Applicants would normally expect to see the management fee including all the staff costs. If these costs are incurred rateably over the whole period then a portion of it would not be payable anyway by virtue of s.20B.	£0.00	Please see explanation of Staff Costs as provided above.	N	Disallowed on the basis that staff costs should be included in the management fee.
Audit Y/E 23.6.11	£664.04	There was no audit and so the audit fee cannot be charged.	£0.00	There was an audit as per certificate issued and attached in Appendix 8. The cost of the audit was £300.00	Y	Disallowed.
Risk Assessment Y/E 23.6.11	£381.88	This has become an annual feature and as such appears to be an ongoing contract. In any event the Applicants say it is s.19 unreasonable to have a full risk assessment each year. They will accept that the asbestos in the building needs to be regularly examined.	£100.00	The guidance previously recommended annual audits though following changes for certain properties such as this type the period between audits can be lengthened and as such we are liaising	N	We agree that an annual risk assessment was not necessary and that this cost was not reasonably incurred. No invoice was produced and there was no evidence that any of the cost related to an asbestos survey.

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				with the specialist consultants when we will need to undertake the next inspection. While this may make a cost saving going forward the costs incurred to date are still due.		
Electricity Y/E 23.6.11	£109.22	It is clear from above there has been confusion with electricity bills. It may be that this is a payable electricity bill but the Applicants require a proper explanation of what is payable. The only electricity charges relate to 2 bulbs in the common parts.	£0.00	Based on actual costs. As stated above this supplies the residential communal lighting and intercom	N	We allow £150, as in the previous year.
Security Systems Y/E 23.6.11	£508.67	It is believed that this relates to repairs carried out more than 18 months before the costs were notified but no receipt has been provided for this despite requests. The Applicants believe that the work was only necessitated by damage caused by the gutter above in which case the amounts were unreasonably incurred. When the work to which it is believed it relates were completed the intercom panel was left without a tradesman's button. The work is therefore of inadequate quality.	£0.00	This is based on costs incurred.	N	This charge is based on documents at pages 262 - 265 of the bundle. It seems to us that the work that was actually charged for was a call-out on 15 October 2010 for which £330.47 including VAT was charged, and further work, authorised on 4 April 2011, for which £178.20 was charged. We accept that these costs were reasonably incurred and we have no evidence to suggest that it was not carried out to a reasonable standard.
Internal Cleaning Y/E 23.6.11	£570.00	The only internal cleaning was on the day before the PTR when someone actually turned up. As the Applicants were not aware that they were	£0.00	Actual costs and were notified as per budget and also would have been	N	As with the previous year, we accept that cleaning was carried out by Endersham

ITEM	COST	APPLICANT'S COMMENTS	AMOUNT OFFERED	RESPONDENT'S COMMENTS	AGREED Y/N	DETERMINATION BY TRIBUNAL
		being charged for internal cleaning until they received the service charge statement they were not able to object to it. It is noted that this is significantly less than the previous year without any explanation.		notified through the sale of the flats, please see replies in Appendix 9 and 10.		Limited at a cost of £40 per month plus VAT. A virtually full set of invoices was produced and we accept that this work was done and to an adequate standard and that the cost was reasonably incurred and allow the full sum of £570
Service Charge Y/E 23.6.12 (Demanded 25.6.12)	£6800.00	<p>Only a management sheet from the Managing Agents is available. Enquiries are being made as to whether this item has ever been formally demanded.</p> <p>This item is broken down below but it is generally unreasonable in amount. It relates to a budget statement which was issued on 25th June 2012 after the year end. The lease provides that the budget statement should be prepared "as soon as possible after commencement of each maintenance year". A budget statement prepared after the previous years end in respect of the previous year does not seem to comply with that requirement in the lease and in the Applicants submission is invalid. After the year end the Respondent should be considering preparing a service charge account based on actual expenditure.</p>	(See below)	<p>No demands have been issued for this period.</p> <p>The original letter issuing this budget cannot be traced.</p>	N	This is a budget figure and in the light of our decision in respect of earlier years we consider the amount demanded on account to be excessive and that a reasonable sum payable on account would be £2800, excluding insurance which, the tenants agree, could be charged separately at the time.
Management Fee Y/E 23.6.12	£1000.00	Frankly this fee seems to be going up and down like a yo yo without some additional evidence as to what it is for or what it is intended to cover the Applicants are not prepared to pay it. In fact	£400.00	Refer to previous explanation and Appendix 5.	N	For the reasons given in respect of the previous year we consider that a reasonable management fee

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		during the year the only thing done was the cleaning of a gutter and the installation of a new light bulb. The management fee is an unreasonable amount having regard to the service provided.				given the nature of the management and its standard would have been £200 per annum, including VAT, for each tenant.
Staff Costs Y/E 23.6.12	£750.00	The estimate of £750.00 it is not clear to what this refers. It should form part of the overall management fee.	£0.00	Refer to previous explanation and Appendix 5	N	Disallowed
Audit Y/E 23.6.12	£350.00	Again there is no evidence that any audit has taken place and accordingly the Applicants are not prepared to pay this fee.	£0.00	An audit is undertaken at year end and as such we have to budget for this charge.	N	Disallowed
Help Desk Y/E 23.6.12	£250.00	The Applicants were notified on 18 th May 2012 that a help desk had been set up. This service charge claim relates to the year up to 30 th June 2012 so that at best the Applicants would get just over a month of benefit. In any event the help desk seems to the Applicant to be something that ought to be included in the management fee and not put under a separate charge.	£0.00	Please find attached call log in Appendix 11 showing that the flats were using the helpdesk facility in 2010.	N	Mr Dack said that this sum was intended to cover a 24 hour telephone service covering the whole of the landlord's property portfolio, and that £250 was the managing agent's assessment of the proportion of the total cost which should be attributed to this property. It was based on the assumption that every tenant would make four telephone calls per year, each lasting 20 minutes. The landlord produced a log of telephone calls from the tenants of Onslow Court showing seven calls between October 2010 and July 2012, all apparently

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						in office hours. We do not regard this service as necessary. It is of minimal value to the tenants as is shown by the log of only seven calls over some 19 months, all apparently within office hours. The ability to contact the managing agent during normal office hours is a basic function of management. This charge is disallowed.
Risk Assessment Y/E 23.6.12	£750.00	For the reasons mentioned previously this charge is rejected except insofar as is necessary to inspect any asbestos.	£100.00	This is a budget we are in the process of closing	N	We disallow this budget figure because a risk assessment was carried out in 2010 and a further risk assessment in 2012 has not been shown to be necessary.
Electricity Y/E 23.6.12	£250.00	No security work was done during the period concerned because of the repair of the blocked gutter which was no longer damaging the security panel.	£0.00	The electricity is for the lights and intercom as previously stated.	N	£150 per year allowed for the reasons already given.
Maintenance Contract – Lamping Y/E 23.6.12	£350.00	It is not clear what this intended to cover but the only common electricity costs related to two light bulbs in the common parts. These can easily be dealt with by the applicants	£0.00	The correct description is M&E – Maintenance Contracts. An allowance has been budgeted for emergency lighting inspection and the replacement of bulbs where required. The long leaseholders are not	N	Bearing in mind that provision is made elsewhere for repairs in this year, we regard this item as unreasonable. There is no maintenance contract in place as far as we are aware.

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Cost Y/E 23.6.13	0	it was demanded on 25 th June 2012 and is in line with the service charge provisions in the lease.	Below)			charge as excessive for reasons similar to those given in respect of the previous year. A reasonable figure would have been £3688, say £3700, excluding insurance.
Management Fee Y/E 23.6.13	£697.00	Given that this is an estimate it is difficult to challenge it but the Applicants would like to have sight of the management contract showing how this is calculated. It seems to up and down every year without any rhyme or reason.	£400.00	See comments above.	N	£800 including VAT for the reasons given in relation to previous years.
Staff Costs Y/E 23.6.13	£750.00	The Applicants consider that this should be part of the management fee.	£0.00	See comments above.	N	Disallowed, for the reasons given in relation to previous years
Audit Y/E 23.6.13	£600.00	The amount of the so called audit fee. Insofar as this is an estimate based on previous year's expenditure it is plainly unreasonable. There is no justification for a £250.00 increase in the fee. Further no previous service charge has been audited anyway. The fee is unreasonably incurred and unreasonable in amount.	£0.00	The prior year service charges have been audited.	Y	Disallowed
Help Desk Y/E 23.6.13	£256.00	This appears to be just someone being available to answer the telephone. That should be part of the management charge. What it is intended to cover? This is incurred in a wholly unreasonable way and is unreasonable in amount. It appears to be just a means by which the Respondents can pay their telephone bills.	£0.00	This is a 24 hour helpdesk facility available 365 days and is charged separately as per RICS Guidance and used by the long leaseholders as evidenced by the print out in Appendix 11	N	Disallowed, for the reasons given in relation to the previous year
Risk Assessment Y/E 23.6.13	£288.00	See remarks above relating to risk assessments.	£0.00	See remarks relating to risk assessments	N	Allowed

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Electricity Y/E 23.6.13	£250.00	For running two light bulbs in the common parts this charge is excessive.	£50.00	This is the cost of supply to the light bulbs and intercom and is based on previous expenditure.	N	£200. A modest uplift on the previous year's charge is reasonable.
Repairs Security Systems Y/E 23.6.13	£300.00	The only reason that it was necessary to repair the security panel previously is because of the overflowing guttering was causing damage to it. The Applicant considers any expenditure on the security panels is unlikely to be necessary and therefore is an unreasonable amount.	£0.00	This is a budget amount for any repairs that may be required to the security system. If amounts are not budgeted then there are not monies to pay to have works undertaken when required or requested by the long leaseholders. With the location of the intercom we fail to see how the assertion within the applicant's comments can be made.	N	Allowed. This sum appears reasonable as an estimate.
Maintenance Contract – Lamping Y/E 23.6.13	£400.00	For looking after two light bulbs this appears to be completely an unnecessary amount. In any event the Lessees are happy to replace light bulbs as and when necessary.	£0.00	Please see comments above.	N	A total of £1500 for this and the following two items appears to us to be reasonable. The sum included in the budget is excessive based on previous years' charges.
Repairs – Lamping Y/E 23.6.13	£500.00	This is in addition to the maintenance contract. It seems to the Applicant such expenditure should be covered by the maintenance contract anyway. In any event £500.00 a year to look after two light bulbs is unreasonable in amount.	£0.00	Please see comments above.	N	See above
Repairs Y/E 23.6.13	£750.00	Given the level of repairs in previous years this seems to be unreasonable in amount.	£250.00	Amount needs to be budgeted to allow for	N	See above

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				works when required.		
Internal Cleaning Y/E 23.6.13	£576.00	This is still not being carried out except for the short bursts the day before the PTR. In any event the Applicants clean their own common parts. Accordingly it is both unreasonable to incur this cost and unreasonable in amount.	£0.00	This has been carried out to mid-September when the contractor withdrew services because of non-payment of invoices as service charge funds had not been received.		£600 is a reasonable estimate, as in the previous year
Insurance Ad-hoc Demand 28.8.12 [80]	£1070.92 (for the flats)	<p>Insurance charges are part of the service charges and as such should be included in either the service charge estimate or the end of year service charges and therefore is not something which should be chargeable to the Applicants as an ad-hoc payment.</p> <p>The Applicants accept that insurance must be paid and that the amount is reasonable in all the circumstances. However they deny that it is payable because it has not been charged in accordance with the lease.</p>	£0.00	<p>The insurance has always been charged ad hoc as evidenced by the information supplied by Ms Warren in January 2010.</p> <p>We can include within the budget but as the landlord pays 1 July in advance there would be an additional finance cost payable.</p>	Y	The reasonableness of the cost of insurance is not challenged. The tenants accept that there were possibly good reasons for demanding this cost separately from other service charges because the insurance year is not coterminous with the service charge year, although Mr Moore said that in future charges for insurance should be estimated and demanded in advance in accordance with the lease.