

9174



**(RESIDENTIAL PROPERTY) FIRST-TIER  
TRIBUNAL  
PROPERTY CHAMBER**

**Case reference** : **MAN/30UQ/LSC/2012/0136**

**Property** : **Flats 1, 3, 5 & 6 Swallow Court,  
Goldfinch Drive, Catterall,  
Preston, PR3 1NW**

**Applicants** : **Mrs J McGhee, Mr J Stephens,  
Mrs S Stephens & Mrs P Kelsall**

**Respondent** : **Summer Downs Residents Management  
Company Limited**

**Type of Application** : **Application for a determination of  
liability to pay and reasonableness  
of service charges**

**Tribunal Members** : **P J Mulvenna LLB DMA (chairman)  
J Rostron MRICS  
Dr J Howell**

**Date and venue of  
Hearing** : **9 August 2013 at the Tickled Trout Hotel,  
Preston**

**Date of decision** : **9 August 2013**

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**DECISION**

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## **Decision**

**1. That the service charges demanded by the Respondent for the years ended 31 December 2010, 2011 and 2012, respectively, are reasonable and payable by the Applicants, subject to the following charges which are unreasonable and not payable by the Applicants, either at all or in the reduced sums indicated:**

**(a) For the year ended 31 December 2010 -**

- (i) £20.83 for electricity unreasonable and not payable;**
- (ii) £25.01 for grounds maintenance unreasonable and not payable;**
- (iii) £59.39 management fees to be refunded to Applicants;**
- (iv) £17.48 accountancy fees unreasonable and not payable.**

**(b) For the year ended 31 December 2011 -**

- (i) £25.53 for grounds maintenance unreasonable and not payable;**
- (ii) £183.84 for cleaning unreasonable and not payable;**
- (iii) £264.00 for water pump maintenance unreasonable and not payable;**
- (iv) £114.16 for electricity unreasonable and not payable;**
- (v) £12.95 for window cleaning unreasonable and not payable;**
- (vi) £21.36 for electrical maintenance unreasonable and not payable.**

**(c) For the year ended 31 December 2012**

- (i) £437.00 for company secretarial work unreasonable and not payable.**

**2. That the Applicants be awarded costs to a maximum of £500.00, subject to satisfactory evidence being provided to the Tribunal of the costs having been incurred.**

**3. That the Respondent reimburses the Applicants' application fee of £70.00 and hearing fee of £150.00.**

**4. That an order be made under section 20C of the Landlord and Tenant Act 1985 that any costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.**

## **DETERMINATION AND REASONS**

### **INTRODUCTION**

1. By an application dated 1 October 2012, Mrs J McGhee, Mr J Stephens, Mrs S Stephens & Mrs P Kelsall ('the Applicants') applied for the determination of the reasonableness and recoverability of the service charges sought to be recovered by Summer Downs Residents Management Company Limited ('the Respondent') for the years 2010 to 2012 in respect of Flats 1, 3, 5 & 6 Swallow Court, Goldfinch Drive, Catterall, Preston, PR3 1NW ('the Property').
2. The Applicants are the lessees of the flats comprising the Property. Mrs McGhee is the lessee of Flat 1; Mr & Mrs Stephens are the lessees of Flat 3; Mrs Kelsall is the lessee of Flats 5 & 6. Their respective interests are held under identical leases for terms of 125 years from 1 January 2005 ('the Leases'). The Tribunal has had sight of copies of all three leases.
3. The Respondent is the management company for the Property and has engaged Residential Management Group Limited ('RMG') as managing agents. RMG were named in the application as the respondent.

### **THE PROPERTY**

4. The Property comprises four of six flats in one of two two-storey, purpose built blocks ('Swallow Court', i.e., the block within which the Property is situate, and 'Goldfinch Drive')) which form part of a larger estate ('Summerdowns') having a mix of houses and apartments, the construction of which was completed in or around December 2008. Swallow Court has a common entrance area, with secure access, which includes stairs to the accommodation on the upper floors. Externally, there are common areas, including a lawned area with basic planting and a car park with unreserved spaces. Whilst Swallow Court is part of a larger development, it has a separate service charge account.

### **DIRECTIONS**

5. Directions were issued by Mr M Davey, sitting as a procedural chairman, on 31 October 2012 and amended at the Respondent's request on 6 December 2012. The parties have complied with the Directions.

### **THE INSPECTION**

6. The Tribunal inspected the common parts of the Property externally and internally within the context of Swallow Court and Summerdowns on the morning of 22 April 2013. The Applicants were neither present nor represented. The Respondent was represented by Mr O Keeble of RMG. The Tribunal found the Property and the common areas to be maintained to a reasonable standard.

## **THE FIRST HEARING**

7. The first substantive hearing of the application was held on 22 April 2013 at St James House, St James Row, Burnley. At that hearing, the Applicants were represented by Mr and Mrs Stephens. The Respondent was represented by Mr P Barnes of Counsel instructed by PDC Legal and by Mr Keeble.
8. The Tribunal heard oral evidence and submissions on behalf of the Applicants from Mr and Mrs Stephens, together with oral evidence from Mr Keeble and oral submissions from Mr Barnes on behalf of the Respondent.
9. It became evident during the course of the hearing that it was not going to be possible for the Tribunal to determine many of the issues in dispute without making assumptions or having further evidence and/or submissions from the parties. The Tribunal considered that the fairer and more equitable way forward would be to invite further evidence and/or submissions on those issues. In these circumstances, the Tribunal decided, having heard the parties' submissions on the matter, to give Further Directions, then to adjourn the proceedings to a later date at which the disputed issues could be considered with the benefit of the further evidence and submissions.
10. In reaching their decision, the Tribunal had regard to *Yorkbrook Investments Limited -v- Batten (1986) 18 HLR 25* in which it was held that there is no presumption for or against the reasonableness of standard or of costs as regards service charges. If a defence to a claim for maintenance costs is that the standard or the costs of the service are unreasonable, the tenant will need to specify the item complained of and the general nature – but not the evidence – of his case; once the tenant gives evidence establishing a prima facie case, it will be for the landlord to meet those allegations. The Tribunal was satisfied that the Applicants in the present proceedings had established a prima facie case
11. The Further Directions are set out at paragraph 12 below. The issues raised by the Applicants and the Tribunal's indication as to the further evidence and/or submissions required are set out in paragraph 20 below, together with the parties' further evidence and submissions and the Tribunal's final determination in relation to each of the disputed charges.

## **FURTHER DIRECTIONS**

12. The Tribunal, having decided for the reasons mentioned above that further evidence and/or submissions were needed on certain matters, issued the following Further Directions:
  1. The Respondent shall, within four weeks from the date of receipt of this determination which shall be deemed to be two days after it has

been sent to the parties by the Residential Property Tribunal Service, provide the further evidence required as stated in relation to each of the issues referred to in paragraph 16 above [of the first determination - now in paragraph 20 below].

2. The Applicants shall, within two weeks from receipt of the further evidence, elicit any evidence or make any submissions in relation thereto.
3. The Respondent shall, within two weeks from receipt of the Applicants' submissions, make any further submissions or elicit any further evidence in relation thereto.
4. Unless otherwise indicated, the provision of any evidence or submissions shall be by way of providing three copies of such evidence to the Tribunal and one copy to the other party or parties, as the case may be.
5. It shall be open to either party to request an amendment, addition or variation to these Further Directions.
6. The Tribunal does not intend to carry out a further inspection of the Property and intends to determine all of the issues in dispute without a further oral hearing unless there is a request to the contrary by any of the parties.

#### **THE RECONVENED HEARING**

13. The parties duly complied with the Further Directions and neither requested a further inspection or an oral hearing. The Tribunal accordingly considered the issues on the papers before them at a hearing on 9 August 2013 at the Tickled Trout Hotel, Preston.
14. The Tribunal have considered the whole of the evidence before them, including the oral evidence given at the hearing on 22 April 2013 and the written evidence provided by or on behalf of the parties before that date and subsequently; have taken account of the parties' oral and written submissions received throughout the course of the proceedings; have taken account of their own inspection; and, applying their own expertise and experience, have reached the conclusions on the issues before them as indicated below.

#### **THE LAW**

15. The material statutory provisions in this case are as follows.
  - (i) The Landlord and Tenant Act 1985

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... (c) the amount which is payable’.

Section 27A (3) provides that an application may also be made ‘if costs were incurred.’

Section 19(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.

(ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to 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.

## **THE LEASES**

16. The Tribunal had before it copies of the Leases which have been read and interpreted as a whole. There is no dispute between the parties as to the provisions of the Leases or as to their applicability to the charges under consideration.

## **THE MATTERS IN DISPUTE, THE FURTHER EVIDENCE AND SUBMISSIONS, AND THE TRIBUNAL’S DETERMINATION**

17. Before addressing the specific issues, the Tribunal would make the following prefatory comments which are material to their deliberations and conclusions. The response by the Respondent to the Further Directions failed to address the requirements of those Directions which were specifically directed at the evidence which was required to be produced to the Tribunal to enable them to assess the reasonableness of the challenged expenditure. Rather than presenting the evidence as required, the Respondent simply presented a bundle of evidence which, in large part did not relate to the issues before the Tribunal. For example, many of the invoices submitted related generally to Summerdowns or specifically to Goldfinch Drive. Their relevance to the challenges to the expenditure incurred in respect of Swallow Court was not explained and could not be established from the information which was contained on the

face of them. In these circumstances, the Tribunal found much of the evidence not only to be unhelpful, but also to be obfuscatory in nature.

18. These shortcomings have particular relevance as the Tribunal found that the Applicants have established a prima facie case (see paragraph 10 above). The Tribunal reached their conclusion in that respect because of the nature and extent of the Applicants' evidence and submissions which suggested that some of the services had been provided on an unsatisfactory basis, if at all, and that some of the charges were not supported by invoices or other cogent evidence. In those circumstances, on the basis of the decision in *Yorkbrook Investments Limited -v- Batten (1986) 18 HLR 25*, the burden of proof as to reasonableness falls to the Respondent. The shortcomings mentioned in the previous paragraph inevitably led to a failure to discharge the burden. This is of particular relevance as the parties were advised of the position in the preliminary determination which contained the Further Directions. It was reasonably expected by the Tribunal that the parties would respond to the Further Directions on the basis of their findings.
19. Balanced against the Respondent's shortcomings, the Tribunal would also observe that the Applicants' response was, by and large, in general terms, unsupported by evidence and subjective. This was, to some degree, understandable given the Respondent's evidential failures but the Tribunal was not assisted by the Applicants' conclusion that the Respondent had sought deliberately to confuse and mislead and their pressing the Tribunal to reach the same conclusion. For the record, the Tribunal would emphasise that, in their view, the Respondent's evidential failings arose from inadequate systems rather than a deliberate attempt to mislead.
20. The Applicants' particular challenges to the service charges were posed in their application as set out below, followed by the Respondent's initial replies, the further evidence determined by the Tribunal to be required, the Respondent's further evidence, the Applicant's submissions on the evidence and the Tribunal's final determination

(i) **In the year ended 31 December 2010 -**

*(a) Applicants' challenge:*

£301.97 charged for pre 2010 insurance but no invoice or evidence produced.

*The Respondent's initial reply:*

The Respondent indicated that the agents took over the management of Goldfinch Drive before the block at Swallow Court. When handover of Swallow Court was accepted it came to light that this block had been

covered by the insurance policy in place for Goldfinch Drive. This was charged to the owners as they had received the benefit of this service. The insurer provided the relevant apportionment for the block from January 2008 to June 2010 and this was split between the properties and charged appropriately.

*Further evidence required:*

The certificates of insurance for the years in question, together with a reasoned apportionment of the premium between Swallow Court and Goldfinch for each of the years in question.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted the requested evidence.

*The Applicants' submissions:*

The Applicants have pointed to the fact that a greater sum has been charged to Swallow Court than to Goldfinch Drive and have suggested that the apportionment should reflect the similarity of the properties.

*The Tribunal's determination:*

The Tribunal observes that the declared value of Swallow Court was significantly higher than that for Goldfinch Drive and accepts that this would lead to a difference in the premium of the order disclosed by the Respondent's apportionment. The charge is reasonable and payable by the Applicants.

*(b) Applicants' challenge:*

£20.83 charged for electricity but no invoice or evidence produced.

*The Respondent's initial reply:*

The Respondent indicated that the charges were based on estimates as there were some missing invoices which were being chased.

*Further evidence required:*

Available invoices, together with evidence of the cause and effect of the damaged meter and the attempts at reconciliation between amounts charged by the supplier and electricity consumed. The Tribunal accepted that this issue might be of a continuing nature and that the



determination made might be on an interim basis pending the completion of all enquiries.

*The Respondent's further evidence and/or submissions:*

The Respondent was unable to provide evidence of the cause and effect of the damaged meter or reconciliation. The Respondent has produced copies taken from a ledger showing invoices paid.

*The Applicants' submissions:*

The Applicants submitted that the lack of evidence proved their case.

*The Tribunal's determination:*

The Tribunal determined that the Respondent has failed to provide sufficient evidence to demonstrate that the charges are reasonable. It remains possible for a full reconciliation to be pursued by the Respondent and, in the fullness of time, there might be cogent evidence of reasonableness. In the meantime, however, the Tribunal have decided that the challenged element of the charge (£20.83) is unreasonable on the basis of the present evidence.

*(c) Applicants' challenge:*

£25.01 overcharged for Grounds Maintenance no gardening done Jan to July 2010 and Oct 2010 to March 2011.

*The Respondent's initial reply:*

The Respondent stated that the site was handed over to the agent on 21 June 2010; services were put in place following handover and there were some problems with the grounds maintenance contractors who were initially instructed. The agent acted swiftly to replace the maintenance contractor.

*Further evidence required:*

All invoices relating to grounds maintenance, together with evidence of project and management control to ensure that the work charged has actually been undertaken by the contractor(s).

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted invoices, but no evidence of project or management control. There is an admission that the contractor provided poor service.

*The Applicants' submissions:*

The Applicants continued to claim that the service was poor or non-existent.

*The Tribunal's determination:*

The Tribunal determined that there was no evidence that the contractors had provided a satisfactory service. In fact, the admission by the Respondent that the service was poor tends to support the Applicants' case. In the absence of project or management control (the only evidence being of periodic estate inspection rather than contract management) it has not been established that the work was actually carried out. In all these circumstances, the Tribunal finds that the charge was unreasonable and not payable.

*(d) Applicants' challenge:*

£59.39 overcharge of management fee finally agreed following [one of the Applicant's] complaints but not yet allocated.

*The Respondent's initial reply:*

Mr Keeble gave evidence that RMG had passed the overcharged fee to the Respondent but was unable to assist further.

*Further evidence required:*

An indication from the Respondent as to how the refunded management fee has been treated with particular reference to the Applicants' benefit as they had been overcharged rather than the Respondent.

*The Respondent's further evidence and/or submissions:*

The Respondent produced evidence that the overcharge fee had been refunded.

*The Applicants' submissions:*

The Applicants have not made further submissions.

*The Tribunal's determination:*

The Tribunal determined that the charge was unreasonable and should be refunded to the Applicants, if it has not already been refunded.

*(e) Applicants' challenge:*

£17.48 overcharged for accountancy fees. Invoice received for £257.08 not £362 as stated on accounts. Also it is not clear from the invoice if this is just for Swallow Court or also the block opposite Goldfinch.

*The Respondent's initial reply:*

The Respondent said that the difference related to an audit fee.

*Further evidence required:*

Detailed fee notes disclosing hourly rates and actual work undertaken by the accountants and the auditors.

*The Respondent's further evidence and/or submissions:*

The Respondent has produced no evidence of a separate charge for audit and has produced only an accountancy invoice for Summerdowns Residents Development.

*The Applicants' submissions:*

The Applicants have not made further submissions.

*The Tribunal's determination:*

The Tribunal determined that the Respondent had failed to provide sufficient evidence to demonstrate that the charges are reasonable. The Tribunal decided that the charge is unreasonable and not payable.

*(f) Applicants' challenge:*

£25 charged for insurance valuation per apartment which is only required every 5 years. This means the insurance valuation would cost £1,500. [One of the Applicants] got an estimate for the valuation of £300 and requested RMG to contact the company to quote for the work. They did not do this and charged over £1,000 in 2012 for another insurance valuation.

*The Respondent's initial reply:*

The Respondent stated that the insurance valuation was carried out by Trevaskis at the request of the insurance broker.

*Further evidence required:*

Full disclosure of any relationship between Respondent, RMG, insurer, insurance broker and Trevaskis or any of them, together with evidence of competitive tendering and commissions payable to, or other benefits received by, any party.

*The Respondent's further evidence and/or submissions:*

The Respondent has not produced all of the evidence requested by the Tribunal but has produced evidence, by way of an invoice, of the payment having been made.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal does not consider that the charge in itself is unreasonable. In reaching that view, the Tribunal observes that the comparable evidence referred to by the Applicants has not been produced and there is no evidence as to what their estimate was based upon. There is, therefore, no comparable objective evidence available. The Tribunal does, however, consider that there is merit in the Applicants argument that there is no need for valuations to be undertaken on an annual basis unless there is reason to do so. The Tribunal would expect future valuations to be justified by cogent reasons. The present charge is, however, determined as being reasonable and payable.

*(h) Applicants' challenge:*

£269 per block charged for Health and Safety report which seems excessive for a small block of 6 flats.

*The Respondent's initial reply:*

The Respondent indicated that the Health & Safety, Fire Risk assessments were done by the agent and that the Respondent was satisfied that the agent's services represented value for money. Using

the agent's inspectors assisted with communication between the Property managers and the Health & Safety Department.

*Further evidence required:*

Copies of reports produced, together with detailed costing for any inspections, report production, work undertaken as a result of report, including expertise of report writer(s), hourly rates, the personnel comprising the agent's inspectors, the Property managers and the Health & Safety Department, their interrelationships and location. Evidence of competitive tendering is also required.

*The Respondent's further evidence and/or submissions:*

The Respondent has produced relevant evidence.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal does not consider that the charge in itself is unreasonable. In reaching that view, the Tribunal observes that the Applicants have submitted no comparable evidence but have simply expressed a subjective view that the cost is excessive. There is, therefore, no comparable objective evidence available. The Tribunal does, however, consider that there is merit in the Applicants argument that there is no need for full inspections to be undertaken on an annual basis unless there is reason to do so. The Tribunal would expect future valuations to be justified by cogent reasons, both as to frequency and extent. The present charge is, however, determined as being reasonable and payable.

**(ii) In the year ended 31 December 2011 -**

*(a) Applicants' challenge:*

£25.53 overcharged for lack of satisfactory grounds maintenance.

*The Respondent's initial reply:*

Satisfactory ground maintenance eventually commenced June 2011 following several months of complaints from the owners.

*Further evidence required:*

All invoices relating to grounds maintenance, together with evidence of project and management control to ensure that the work charged has actually been undertaken by the contractor(s).

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted invoices, but no evidence of project or management control. There is an admission that the contractor provided poor service.

*The Applicants' submissions:*

The Applicants continued to claim that the service was poor or non-existent.

*The Tribunal's determination:*

The Tribunal determined that there was no evidence that the contractors had provided a satisfactory service. In fact, the admission by the Respondent that the service was poor tends to support the Applicants' case. In the absence of project or management control (the only evidence being of periodic estate inspection rather than contract management) it has not been established that the work was actually carried out. In all these circumstances, the Tribunal finds that the charge was unreasonable and not payable.

*(b) Applicants' challenge:*

£22.83 charged for fire equipment maintenance but no evidence carried out as no equipment is marked with dates since 2008. Plus invoices received were 1 for Jan, 2 for Feb, 2 for July and 1 for Oct which make no sense. 2012 the charge is £16.32 which makes more sense. [The Applicants] do not believe the work has been carried out.

*The Respondent's initial reply:*

The Respondent indicated that the invoice related to smoke detectors.

*Further evidence required:*

All invoices for the work in question.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted a number of invoices, although many relate to Goldfinch Drive or to Summerdowns generally.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal determined that, although the evidence submitted by the Respondent is not all relevant and, therefore, unhelpful, there is evidence that some work has been done. In the circumstances, the Tribunal finds that the charge is reasonable and payable.

*(c) Applicants' challenge:*

£401 i.e. £66.83 per apartment charged for audit and accountancy but no invoice produced. [One of the Applicants] is the owner of another block of flats which is much larger (16 flats) and the accountancy charge is £278.

There was no specific response from the Respondent.

*Further evidence required:*

Detailed fee notes disclosing hourly rates and actual work undertaken by the accountants and the auditors.

*The Respondent's further evidence and/or submissions:*

The Respondent has produced invoices.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal does not consider that the charge in itself is unreasonable. In reaching that view, the Tribunal observes that the Applicants have submitted no comparable evidence but have simply expressed a subjective view that the cost is excessive. There is, therefore, no comparable objective evidence available. The charge is determined as being reasonable and payable.

*(d) Applicants' challenge:*

£25 charged per apartment for insurance valuation again despite previous year's comments of excessive charges.

There was no specific response from the Respondent.

*Further evidence required:*

Full disclosure of any relationship between Respondent, RMG, insurer, insurance broker and Trevaskis or any of them, together with evidence of competitive tendering and commissions payable to, or other benefits received by, any party.

*The Respondent's further evidence and/or submissions:*

The Respondent has not produced all of the evidence requested by the Tribunal but has produced evidence, by way of an invoice, of the payment having been made.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal does not consider that the charge in itself is unreasonable. In reaching that view, the Tribunal observes that the comparable evidence referred to by the Applicants has not been produced and there is no evidence as to what the estimate was based upon. There is, therefore, no comparable objective evidence available. The Tribunal does, however, consider that there is merit in the Applicants argument that there is no need for valuations to be undertaken on an annual basis unless there is reason to do so. The Tribunal would expect future valuations to be justified by cogent reasons. The present charge is, however, determined as being reasonable and payable.

*(e) Applicants' challenge:*

£183.84 i.e. £30.64 per apartment overcharged as cleaning not undertaken plus we then were invoiced for a deep clean in June as the block was in such a bad state.

*The Respondent's initial reply:*



The Respondent indicated that the contractor was dismissed as a result of complaints by occupiers of the Property.

*Further evidence required:*

All invoices relating to cleaning, together with evidence of project and management control to ensure that the work charged has actually been undertaken by the contractor(s).

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted invoices, but no evidence of project or management control. There is an admission that the contractor provided poor service.

*The Applicants' submissions:*

The Applicants continued to claim that the service was poor or non-existent.

*The Tribunal's determination:*

The Tribunal determined that there was no evidence that the contractors had provided a satisfactory service. In fact, the admission by the Respondent that the service was poor tends to support the Applicants' case. In the absence of project or management control (the only evidence being of periodic estate inspection rather than contract management) it has not been established that the work was actually carried out. In all these circumstances, the Tribunal finds that the charge was unreasonable and not payable.

*(f) Applicants' challenge:*

2 invoices were received to remove paint from a cupboard, 1 from the company who provided no services and did not remove paint at all.

*The Respondent's initial reply:*

The Respondent said that the issue was the removal of paint tins left in electricity cupboards by unknown, and possibly former, occupiers.

*Further evidence required:*

All invoices relating to this issue, together with evidence of project and management control to ensure that the work charged has actually been undertaken by the contractor(s).

*The Respondent's further evidence and/or submissions:*

The Respondent has produced the invoices.

*The Applicants' submissions:*

The Applicants have made no additional submissions.

*The Tribunal's determination:*

The Tribunal determined that the charges were reasonable and payable. The Applicants' challenge appears to be based on a misunderstanding of the service provided (i.e., removal of paint rather than removal of paint tins).

*(g) Applicants' challenge:*

£264 charged for water pump maintenance, which is a very short one page report. Various invoices were sent to [the Applicants] which as per the fire equipment made no sense at all and there is no evidence the report was done.

*The Respondent's initial reply:*

The Respondent claimed the report served as evidence that the report was carried out.

*Further evidence required:*

Copies of reports produced, together with detailed costing for any inspections, report production, work undertaken as a result of report. Evidence of competitive tendering is also required.

*The Respondent's further evidence and/or submissions:*

The Respondent has produced copies of inspection reports and invoices, but no further evidence.

*The Applicants' submissions:*

The Applicants have maintained their objection.

*The Tribunal's determination:*

The Tribunal observes that the Respondent has made no attempt to justify the need for periodic inspection of the water pump. All the

reports produced disclose no defects or problems. In these circumstances, the Respondent has not demonstrated that the expenditure was reasonably incurred. The Tribunal finds that the charge is unreasonable and not payable.

*(h) Applicants' challenge:*

Electricity £775 was charged to Swallow Court but no invoices have been received...It seems an overcharge of £114.16 is relevant.

*The Respondent's initial reply:*

The Respondent indicated that the charges are based on estimates as there were some missing invoices which were being chased.

*Further evidence required:*

Available invoices, together with evidence of the effect of the damaged meter and the attempts at reconciliation between amounts charged by the supplier and electricity consumed. The Tribunal accepts that this issue might be of a continuing nature and that the determination made might be on an interim basis pending the completion of all enquiries.

*The Respondent's further evidence and/or submissions:*

The Respondent was unable to provide evidence of the cause and effect of the damaged meter or reconciliation. The Respondent has produced copies taken from a ledger showing invoices paid.

*The Applicants' submissions:*

The Applicants submitted that the lack of evidence proved their case.

*The Tribunal's determination:*

The Tribunal determined that the Respondent had failed to provide sufficient evidence to demonstrate that the charges are reasonable. It remains possible for a full reconciliation to be pursued by the Respondent and, in the fullness of time, there might be cogent evidence of reasonableness. In the meantime, however, the Tribunal have decided that the challenged element of the charge (£114.16) is unreasonable on the basis of the present evidence.

*(i) Applicants' challenge:*

Invoice received for insurance was £941.93 which is £470.97 per block yet accounts state £526 which is an overcharge of £9.17.

*The Respondent's initial reply:*

The Respondent indicated that it was not uncommon for the cost of insurance to vary from block to block, the claims history for each block would differ. This in turn impacted on the insurance premium due.

*Further evidence required:*

Evidence of premium and apportionment between blocks, together with supporting claims history.

The Respondent has submitted the requested evidence.

*The Applicants' submissions:*

The Applicants have pointed to the fact that a greater sum has been charged to Swallow Court than to Goldfinch Drive and have suggested that the apportionment should reflect the similarity of the properties.

*The Tribunal's determination:*

The Tribunal observes that the declared value of Swallow Court was higher than that for Goldfinch Drive and accepts that this would lead to a difference in the premium of the order disclosed by the Respondent's apportionment. The charge is reasonable and payable by the Applicants.

*(j) Applicants' challenge:*

An invoice has been received for 2 grit bins which have not been requested by the owners of Swallow Court, this equates to £51 overcharge. The grit bins have been placed on a car park belonging to houses on the development not the flats. The Applicants have asserted that they do not wish to have the bins.

*The Respondent's initial reply:*

The Respondent's position was that the grit bins were supplied as agreed by the landlord at RMG's suggestion.

*Further evidence required:*

Evidence of need.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted the required evidence.

*The Applicants' submissions:*

The Applicants maintained their challenge.

*The Tribunal's determination:*

The Tribunal determined that the grit bins were provided in response to a demonstrable need, albeit not one identified by the Applicants. Nonetheless, the Tribunal accepts that the provision addresses a real safety need and was a reasonable response by the Respondent to that need. The charge is reasonable and payable.

*(k) Applicants' challenge:*

£12.95 overcharged on window cleaning as service not received until July 2011.

*The Respondent's initial reply:*

The Respondent indicated that the contractor was dismissed as a result of complaints by occupiers of the Property.

*Further evidence required:*

All invoices relating to cleaning, together with evidence of project and management control to ensure that the work charged has actually been undertaken by the contractor(s).

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted invoices, but no evidence of project or management control. There is an admission that the contractor provided poor service.

*The Applicants' submissions:*

The Applicants continued to claim that the service was poor or non-existent.

*The Tribunal's determination:*

The Tribunal determined that there was no evidence that the contractors had provided a satisfactory service. In fact, the admission

by the Respondent that the service was poor tends to support the Applicants' case. In the absence of project or management control (the only evidence being of periodic estate inspection rather than contract management) it has not been established that the work was actually carried out. In all these circumstances, the Tribunal finds that the charge was unreasonable and not payable.

*(l) Applicants' challenge:*

Electrical maintenance invoices received for £304.80 yet charged £433 on accounts making an overcharge of £21.36.

*The Respondent's initial reply:*

The Respondent indicated that the charges were based on estimates as there were some missing invoices which were being chased.

*Further evidence required:*

Available invoices, together with evidence of the effect of the damaged meter and the attempts at reconciliation between amounts charged by the supplier and electricity consumed. The Tribunal accepts that this issue might be of a continuing nature and that the determination made might be on an interim basis pending the completion of all enquiries.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted invoices but they do not demonstrate that the alleged overcharge has actually been incurred.

*The Applicants' submissions:*

The Applicants maintained their challenge.

*The Tribunal's determination:*

The Tribunal determined that the Respondent has failed to demonstrate that the alleged overcharge of £21.36 has been incurred. That element of the charge is found to be unreasonable and not payable.

*(m) Applicants' challenge:*

£26 charged for door entry yet no owners aware of a problem and there is no evidence to suggest it was Swallow Court's invoice.

*The Respondent's initial reply:*

The Respondent stated that an issue with the intercom was reported in late December 2010. Due to the Christmas period the contractor was not able to attend until January 2011. The charge therefore appeared in the accounts for 2011.

*Further evidence required:*

Evidence of complaint and invoice for work undertaken.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted the required evidence.

*The Applicants' submissions:*

The Applicants made no further submissions.

*The Tribunal's determination:*

The Tribunal determined that the charge was reasonable and payable.

**(iii) In the year ended 31 December 2012 –**

[The Tribunal accepted at the hearing on 22 April 2013 that the audited accounts were not then available for the year ended 31 December 2012, but expressed the view that they would expect that the reasonableness of the disputed issues could be assessed on the production of appropriate working papers.]

*(a) Applicants' challenge:*

Grounds Maintenance costs £248.40 per year based on evidence yet the budget set was for £674 i.e. £112.50 per apartment even though they knew exactly the costs.

There was no specific response from the Respondent.

*Further evidence required:*

All invoices relating to grounds maintenance, together with evidence of project and management control to ensure that the work charged has actually been undertaken by the contractor(s).

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted the available evidence.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal determined that the reasonableness of the actual charges cannot be assessed until the final accounts have been produced. It is to be expected that the Applicants will be given the information necessary for them to assess the reasonableness of the final expenditure. The Tribunal is only able to assess the reasonableness of the estimates which, by definition, cannot be prepared or assessed with precision. The Tribunal has seen no evidence that would suggest that the estimates, as such, are unreasonable. The Tribunal has concluded, therefore, that the estimated charges are reasonable and payable.

*(b) Applicants' challenge:*

Company Secretarial has been added for £437 for 12 apartments with no explanation in addition to £1,622.25 for management fees which has also increased by over 10%.

*The Respondent's initial reply:*

The Respondent indicated that the landlord asked for the provision of a company secretarial service.

*Further evidence required:*

Detailed reasons for requirement of company secretarial service, if, as appears to be the case, it is connected with a proposed transfer to the residents of control of the management company, an indication as to why they have not been notified and of the proposals for transfer. A detailed breakdown of management fees is required, including nature and extent of all work, personnel involved and hourly rates.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted that the work was carried out preparatory to the possible handover by the landlord of the management responsibility for Swallow Court to the lessees.



*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal has seen no evidence that steps to secure the possibility of handover have yet commenced. Moreover, there is no evidence that a company is, at this stage, required and there is no evidence of any company activity. In any event, the decision as to the administrative arrangements to be put in place if handover were to occur is for the lessees to make and for them to give the necessary instructions for the formal implementation of such arrangements. The pre-emptive formation of a company by the Respondent was unreasonable. The charges are unreasonable and not payable.

*(c) Applicants' challenge:*

£176.26 charged for Water Pump maintenance which still seems excessive for work undertaken but is an improvement on £264 in 2011!

There was no specific response from the Respondent.

*Further evidence required:*

Copies of reports produced, together with detailed costing for any inspections, report production, work undertaken as a result of report. Evidence of competitive tendering is also required.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted the available evidence.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal determined that the reasonableness of the actual charges cannot be assessed until the final accounts have been produced. It is to be expected that the Applicants will be given the information necessary for them to assess the reasonableness of the final expenditure. The Tribunal is only able to assess the reasonableness of the estimates which, by definition, cannot be prepared or assessed with precision. The Tribunal has seen no evidence that would suggest that the

estimates, as such, are unreasonable. The Tribunal has concluded, therefore, that the estimated charges are reasonable and payable.

*(d) Applicants' challenge:*

£500 has been charged on the budget for electricity despite previous remonstrations of charges being excessive.

*The Respondent's initial reply:*

The Respondent indicated that the charges were based on estimates as there were some missing invoices which were being chased.

*Further evidence required:*

Available invoices, together with evidence of the effect of the damaged meter and the attempts at reconciliation between amounts charged by the supplier and electricity consumed. The Tribunal accepts that this issue might be of a continuing nature and that the determination made might be on an interim basis pending the completion of all enquiries.

*The Respondent's further evidence and/or submissions:*

The Respondent has submitted the available evidence.

*The Applicants' submissions:*

The Applicants have maintained their challenge.

*The Tribunal's determination:*

The Tribunal determined that the reasonableness of the actual charges cannot be assessed until the final accounts have been produced. It is to be expected that the Applicants will be given the information necessary for them to assess the reasonableness of the final expenditure. The Tribunal is only able to assess the reasonableness of the estimates which, by definition, cannot be prepared or assessed with precision. The Tribunal has seen no evidence that would suggest that the estimates, as such, are unreasonable. The Tribunal has concluded, therefore, that the estimated charges are reasonable and payable.

21. The Applicants raised additional issues, such as administration charges arising from litigation, in their response under the Further Directions. The Respondent has addressed some of these issues, but the Tribunal has decided that, effectively, the Applicants had attempted to widen the scope of the proceedings at a stage where to do so would be unjust. The Respondent has not had an opportunity to argue or respond to the issues

in detail and the Tribunal has insufficient evidence to reach sustainable conclusions. The Tribunal has determined, therefore, not to consider those issues.

22. The Tribunal would add that they are not satisfied that the Respondent has adequate procedures in place properly to account to the Applicants for the expenditure which is subsequently to be recovered by way of service charge. The Applicants are entitled to receive sufficient information to enable them to assess the reasonableness of the sums which they are being asked to pay. It is evident that such information has not, in the past, been provided to the Applicants and, on the basis of the Respondent's inability to produce the specific evidence requested by the Tribunal in the Further Directions, it is not unreasonable to infer that there are not systems in place to remedy the shortcomings and deliver the required information. The Respondent's failure to provide information to the Applicants must have been a major contributory factor in their decision to refer the matter to the Tribunal for adjudication. Unless these failures are addressed, it is likely that there will be continuing dissatisfaction and further disputes. This is exemplified by the Applicants' response to the evidence submitted in accordance with the Further Directions. They considered that it was deliberately confusing and misleading. That signals a breakdown of trust between the parties which must be addressed by the Respondent if further disputes are to be avoided.

## **COSTS**

23. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:
- '(1) The Tribunal may make an order in respect of costs only –
- ...(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
  - ...(ii) a residential property case...
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.'
24. Neither party made an application for the award of costs, although there is still an opportunity to do so (see Rule 13(5)). The Tribunal has, however, considered the position on its own initiative and has determined that, on the basis of the evidence at the time of the Decision, the Respondent has acted unreasonably in defending the proceedings by failing to provide relevant evidence in a suitable form to enable the Tribunal to consider and address the matters in issue. In these circumstances, the Tribunal awards

costs to the Applicants to a maximum of £500.00, subject to satisfactory evidence being provided to the Tribunal of the costs having been incurred, and directs that the Respondent reimburse to the Applicants the application fee of £70.00 and the hearing fee of £150.00. The Applicants must submit their evidence in relation to costs no later than 30 August 2013 and provide a copy to the Respondent. The Respondent may make submissions or submit evidence thereon within ten working days of receipt of the Applicants' evidence.

25. The Applicants applied under section 20C of the Landlord and Tenant Act 1985 for an order that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees. The Tribunal considers that any costs incurred, or to be incurred, by the Respondent in this case would be based on an unreasonable belief in the merits of any arguments which might be advanced in relation to the substantive issues in the proceedings. The Tribunal has found that the Respondent has acted unreasonably in defending these proceedings and has failed to provide sufficient information to the Applicants to enable them to assess the reasonableness of the charges which they were being asked to pay. That contributed significantly to the Applicants' decision to make the application to the Tribunal. In all of these circumstances, the Tribunal has decided that it would be reasonable and proportionate to make an order.