2861

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 AS AMENDED – SECTION 27A

Reference number:	LON/00AQ/LSC/2005/0161
Address:	Flat 4 Orford Court, Marsh Lane, Stanmore, Middlesex HA7 4TQ
Applicants:	(1) Orford Court Management Limited (2) Orford Court Freehold Limited
Respondents:	Mr M Zlitni and Mrs S Zlitni
Appearances:	Ms Lorraine Scott of Basicland Registrars Limited For the Applicants Mr Allan Conway, Chairman of the Orford Court Residents Association, attended the hearing The Respondents did not attend the hearing.

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb
Mr M L Jacobs FRICS
Mrs S E Baum JP

Date of decision: 21st April 2006

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 AS AMENDED – SECTION 27A AND SECTION 20C ("the Act")

Reference number: LON/00AQ/LSC/2005/0161

Property address: Flat 4 Orford Court, Marsh Lane, Stanmore, Middlesex HA7 4TQ

The Tribunal's decision

1. By an Application dated 10th June 2005, the first Applicant, Orford Court Management Company Limited ("the Management Company") applied to the Tribunal for a determination of the liability of the Respondents, Mr Mohamed Zlitni and Mrs Souzan Zlitni, to pay service charges in respect of Flat 4 Orford Court, Marsh Lane, Stanmore, Middlesex HA7 4TQ ("the property"), which is a purpose built block of twenty four flats.

2. Mr and Mrs Zlitni are the lessees of Flat 4 under a lease dated 8th March 1993 ("the lease") made between Charles Church London Limited ("the Lessor") of the first part, the Management Company of the second part, and the Respondents of the third part, for the term of 129 years from 1st January 1999. The lessee's interest under the lease was assigned to Mr and Mrs Zlitni in May 1993. The Lessor's interest under the lease is vested in Orford Court Freehold Limited. That company was joined in the proceedings as second Applicant by an order of the Tribunal dated 26th July 2005. The Lessees of the flats in Orford Court are members of the Management Company and shareholders in the second Applicant.

3. A hearing was held on 10th October 2005 and 10th March 2006. The Applicants were represented by Miss Lorainne Scott BA (Dip Law) LLM, Legal Support Manager of Basicland Registrars Limited ("BRL"), the managing agents for the property since 2004. The hearing was adjourned and further directions given. The subsequent hearing which was to take place in January 2006 was adjourned because Mr Zlitni had suffered bereavement. The Respondents did not appear at the pre-trial review or at the hearings in October 2005 and March 2006. A letter from Mr and Mrs Zlitni dated 9th March 2006 was received by the Tribunal, informing the Tribunal that Mr Zlitni was not able to attend the hearing on 10th March because the person who was supposed to cover for him at work had flu. No adjournment was sought. Mr Allan Conway, Chairman of the Orford Court Residents Association, attended the hearing on 10th March and gave oral evidence. The Tribunal did not consider that an inspection of the property would be of assistance.

4. The service charge years to which the Application relates are the years ended 31st December 1998, 1999, 2000, 2001, 2002, and 2003.

The profit and loss accounts for the Management Company prepared by Farra Wilkins & Gould, Auditors, for the years 1999 to 2003 inclusive set out the expenditure by the Management Company on the service charge items for the years in question. A breakdown of the costs incurred on each service charge item supported by invoices for most of the costs had been prepared by Miss Scott.

5. In a letter dated 23rd February 2006 from the Respondents, the following items of service charge expenditure in the service charge years 1999 to 2003 inclusive were challenged on the basis that the costs were not reasonably incurred and/or the works were not of a reasonable standard.
   (1) Management fees
   (2) Lift maintenance charges
   (3) General repairs and maintenance
   (4) Insurance
   (5) Telephone
   (6) Gardening
   (7) Entry phone and security gates
   (8) Cleaning

6. The lease included the following covenants by the lessees (who were called "the Owner" in the lease):

   By Clause 5(i) of the lease:
   "The Owner hereby covenants with the Lessor and the Management Company to contribute and pay the due percentage attributable to the Flat in accordance with the Sixth Schedule hereto of the total costs expenses outgoings and matters mentioned in the Fifth Schedule hereto"

   The percentage attributable to flat 4 is 4.21%.

   Sub-clauses 5(ii) to 5(v) contained provisions for the mechanism for the calculation of and certification of the contribution.

7. As a matter of background, Miss Scott told the Tribunal that Mr and Mrs Zlitni had paid no service charges for the service charge years 1998 to the present. Some payments had been received in 1998 but these had been appropriated to outstanding service charges for periods before 1998.

8. Miss Scott informed the Tribunal that the provisions of Clause 5(ii) to (v) (which related to the mechanism of the service charge) had not been strictly complied with. What had actually taken place was as follows. Based on the estimated expenditure for each service charge year, budgets were prepared. Based on the budgets, demands were sent on a quarterly basis in advance. Sums received were deposited into the Orford Court management account. At the end of each service charge year a copy of all invoices was forwarded to Farra Wilkins & Gould.

9. Prior to each AGM of the Management Company, the accounts for the previous year and the budgets for the current year were forwarded to the lessees. At the AGM the residents could raise any questions that they had. The accounts were

approved at the AGM in each year. The minutes produced to the Tribunal were mainly hand written and in note form.

10. The net position is reflected on the balance sheets. In any year that the service charge received exceeded annual expenditure, the Management Company held these sums as reserves against future expenditure.

11. In respect of the burden of proof, Miss Scott submitted that where the lessee challenges the service charges as not reasonably incurred, the evidential burden is on the lessee to establish a prima facie case. If the lessee proves that there is a prima facie case, it is then for the landlord to answer this. She referred to the decision of the Lands Tribunal in *Dr Schilling and others v Canary Riverside Development Limited LRX/26/2005.*

Management fees

12. The expenditure on Management fees as shown on the profit and loss account for the service charge years in issue was:

1998	1999	2000	2001	2002	2003
£	£	£	£	£	£
4,500	4,500	5,000	6,000	6,000 6,000	

13. Miss Scott explained that two directors of the Management Company, Mr Jeffrey Flaum (lessee of Flat 2 Orford Court) and Mr Richard Lampert (lessee of Flat 14) undertook the management of Orford Court during the service charge years in issue. Miss Scott pointed out that the terms of the lease does not prohibit the Management Company from undertaking the management itself, but allows them the discretion to employ managing agents.

14. Mr Zlitni contended that Mr Flaum and Mr Lampert appointed themselves directors of Orford Court Freehold Limited without a vote by shareholders at the AGM. Mr Zlitni also challenged the appointment of Mr Flaum and Mr Lampert as directors of the Management Company. Mr Lampert ceased to be a director of the Management Company before November 2000.

15. Miss Scott submitted that Mr Flaum and Mr Lampert were properly appointed directors of the Management Company by members as allowed by clause 11g of the Memorandum of Association of the Management Company. The appointment did not need to be at an AGM. The legal position had been confirmed by Counsel's Opinion.

16. Until 1997 the property had been managed by a firm called Meridian Management Services Limited. Mr Zlitni made no criticism of Meridian's management and stated that he had always paid the service charge when Meridian was managing agent.

17. It was decided at a shareholders meeting of Orford Court Freehold Limited on 25th March 1997, to appoint new managing agents in place of Meridian. A letter sent to each lessee confirming the management arrangements. Mr Zlitni was informed of this decision by a letter dated 28th March 1997 from Mr R Lampert. It was also

stated in that letter that it had been agreed that the Management Company be closed down and Orford Court Freehold Limited be used as the management company, but this had not taken place.

18. In a letter dated 8th October 1997 from Mr Lampert to Mr Zlitni, Mr Lampert stated that "Over the past few months Jeffrey Flaum and I have spent a considerable amount of time chasing Meridian and dealing with matters in their place. We have therefore decided to take over the management ourselves. I will deal with the financial aspects and Jeffrey will deal with all maintenance."

19. The Applicants exhibited examples of Mr Flaum's communications to the residents which Miss Scott submitted indicated the level of his personal time and involvement in the management of the property. Mr Flaum was principally responsible for the day to day to day running of Orford Court. Mr Flaum invoiced his fees through a company called Dreamstar Limited. This company was controlled by Mr Flaum and had no other trading purpose at the time. Mr Lampert's principal function was accounting and bookkeeping. Elaine Lampert, his wife, assisted him on the book keeping and ledger payments and prepared documentation for the end of year accounts. Mr Lampert billed his fees on invoices submitted by his wife.

20. In his witness statement dated 19th January 2006, Mr Flaum stated that the management service provided by Dreamstar Limited was undertaken personally including all facets of the day to day running of the property. He said that he estimated that he spent roughly two full days per week attending to Orford Court matters. As he resided at the property, the residents were able to contact him twenty four hours a day, seven days a week. However, it was noted from a letter dated 15th March 2000 from the Mr Flaum on behalf of the Management Company to the residents of Orford Court that Mr Flaum requested that calls to his home were made between 9 a.m. and 5 p.m. Monday to Friday. Later and weekends were said to be for emergencies only.

21. Mr Flaum stated that he ensured adherence to the lease provisions, issued notices for repairs, dumping of rubbish and other maintenance issues. He organised placement of the buildings and lift insurance and assisted in processing insurance claims. He said that he monitored recurring service contractors including gardeners, cleaners and window cleaners and liaised with residents on all form of matters. He organised the AGM meetings, where the expenditure for each year and the forthcoming year was discussed.

22. In his witness statement dated 24th January 2006, Mr Lampert stated that, assisted by Mrs Lampert, he prepared the budgets, issued demands, organized payments, oversaw the accounts and prepared substantial documentation for end of year accounts.

23. Miss Scott submitted that the increase in fees by Mr Flaum and Mr Lampert during the service charge years in question, as shown by the invoices, was justified because of the extensive services provided by Mr Flaum and Mr Lampert. These fees were approved at the AGM in each year. It was noted by the Tribunal that the Respondents hardly ever attended AGMs.

24. Mr Zlitni contended that Mr Flaum was inexperienced and incompetent in property management and stated that in 1996 Mr R Lampert told Mr Zlitni that he was a divorcee and was living with his daughter in Flat 14. Mr Lampert in a letter to the Tribunal confirmed that this was correct but stated that he had remarried in 1998 and that his wife is a self employed book keeper. Mr Zlitni stated that it had never been mentioned that Mrs Lampert was doing the bookkeeping for the Management Company. The letter dated 8th October 1997 had indicated that Mr Flaum and Mr Lampert would carry out the management services themselves. Mr Zlitni contended that Mr Lampert's statement that his and his wife's appointments were agreed with the residents at the AGMs was untrue. Nobody knew anything about his wife providing services for the Management Company.

25. In respect of the standard of management, Mr Zlitni referred to an incident during which a bedroom window in flat 4 was broken by a stone kicked up during gardening works. He complained that there was glass in the bedroom and that an ornament had been damaged. The Window Company, which was the firm that had carried out the repairs, wrote a letter of apology to Mr Zlitni dated 28th May 2003. In a letter dated 10th June 2003 to Mr and Mrs Zlitni, Mr Flaum indicated the steps that had been taken to resolve the problem.

26. Mr Zlitni also referred to leaks into his son's bedroom from another flat and contended that there had been delay in carrying out repairs.

The Tribunal's decision – Management fees

27. In 2004 the present managing agents, BLR, took over the management of Orford Court. The charges for management fees in the service charge years in question (£4,500 for 1998 and 1999, £5,000 for 2000, and £6,000 for 2001, 2002 and 2003) substantially exceeded the management fees of BLR in 2005. The Tribunal noted that the estimated charge for the service charge year ending 31st December 2005 showed a management fee of £3,807.00 for that year. There are twenty four units in Orford Court and this equates to £158.63p including VAT per unit (£135 excluding VAT per unit). However, the Tribunal did note that the expenditure for 2005 did include in addition to management fees an item entitled 'Residents Management Company Service Charge' of £250.00.

28. Mr Conway said that a number of firms of managing agents had been interviewed before the decision was made to appoint BLR in 2004. At the time of that process some of the lessees questioned why the management charges had been higher prior to the appointment of BLR. The only problem that had been experienced since the appointment of BLR was that some residents had had difficulty contacting the person at BLR responsible for the property. Mr Conway said that the advantage of Mr Flaum had been that he had been available to deal with service charge matters.

29. Invoices were produced to support the management charges, however, there is no invoice for the first quarter of 2003 from Dreamstar. The precise nature of the work undertaken is not particularised in the invoices, but generally described in the witness statements of Mr Flaum and Mr Lampert. Miss Scott submitted that the certified accounts and evidence of management by Mr Flaum is good evidence to

support the expenditure claimed. She submitted that the charges were justified because of Mr Flaum's personal involvement in the management of the property.

30. Having considered the evidence the Tribunal finds that the management fees in each of the service charge years in question (1998 to 2003 inclusive) were unreasonable and unreasonably incurred. The Tribunal considers that reasonable charges for management fees including telephone and sundry expenses should be:
1998 - £100 per unit (total charge £2,400)
1999 - £105 per unit (total charge £2,520)
2000 - £110 per unit (total charge £2,640)
2001 - £115 per unit (total charge £2,760)
2002 - £120 per unit (total charge £2,880)
2003 - £125 per unit (total charge £3,000)

These figures are not subject to VAT as there is no evidence that Mr Flaum, Mr Lampert or Dreamstar are VAT registered.

31. Accordingly the Respondents are liable to pay 4.21% of the total charges for each of the above service charge years in accordance with the lease.

Lift maintenance charges

32. The expenditure on lift maintenance as shown on the profit and loss accounts was:

1998	1999	2000	2001	2002	2003
£	£	£	£	£	£
2,347	2,449	2,581	5,233	4,488	2,953

33. Miss Scott submitted that the Management Company undertakes the lift maintenance at the property pursuant to its obligation under clause 6(4) and 6(5) of the lease.

34. Miss Scott submitted that the Respondents had failed to establish a prima facie case that the expenditure on lift maintenance was unreasonable. They challenged their liability under the lease to contribute to the maintenance of the lift when his flat was on the ground floor of the property, although he was contractually bound to make such contributions. The Respondents had not made any specific challenge to the reasonableness of the costs incurred.

35. Miss Scott said that the lift service contract was with Hammond and Champness Limited for the servicing of the two lifts at the property. In 2000 a call out charge incurred. In 2001 the contractors undertook repairs to the lifts. In 2002 the contractors undertook LGI 5 year hydraulic tests to each lift at a total cost of £1,868.26.

36. An invoice from Hammond and Champess Limited dated 22nd January 2001 for the sum of £2,808.25 (including VAT). The work undertaken was described as: "1. Supply and fit electrically interlocked pit props x 2, 2. Upgrade motor room lighting x 2, 3. Supply and fit upgraded lighting to the lift motor rooms." The minutes of the meeting held on 19th September 2000 referred to works to be carried out to the lifts.

The order for the work had been given on 25th October 2000, so it seems that the works were unlikely to have been urgent.

37. The provisions of section 20 of the Act in force at the relevant time were as follows:

"(1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either –
(a) complied with, or
(b) dispensed with by the court in accordance with subsection (9);
and the amount payable shall be limited accordingly."

(2) In subsection (1) "qualifying works", in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.

(3) The limit is whichever is the greater of –
(a) £50 ..... multiplied by the number of dwellings let to the tenants concerned, or
(b) £1,000

(4) The relevant requirements in relation to such of the tenants concerned not represented by a recognised tenants' association are –
(a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
(b) A notice accompanied by a copy of the estimates shall be given to each of those tenants concerned or shall be displayed in one or more places where it is likely to come to the notice of those tenants.
(c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the address in the united kingdom of the person to whom the observations may be sent and the date by which they are to be received.
(d) The date stated in the notice, shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).
(e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice."

38. Miss Scott said that she had no information as to whether notices under the Act had been served on the lessees in respect of the lift works. Mr Conway confirmed that no notices had been served on him.

<u>The Tribunal's decision – Lift maintenance</u>

39. The Tribunal finds that under the terms of the lease the Respondents are liable to contribute to the costs of lift maintenance.

40. The Tribunal considers that the charges for lift maintenance in the service charge years 1998, 1999, 2000, 2002 and 2003 were reasonable and reasonably incurred.

41. The Tribunal notes that in 2002 there were two invoices totalling £1,868.26 for the statutory five year hydraulic testing, which are cyclical maintenance matters and an extension of the maintenance contract rather than separate works.

42. In respect of the charges for lift maintenance in the service charge year 2001, the Tribunal finds that the provisions of section 20 were not complied with. The minutes of the meeting on 19th September 2001 did not satisfy the requirements of the Act. Accordingly the Hammond and Champness invoice dated 22nd January 2001 (referred to in paragraph 36 above) is disallowed, apart from the statutory permitted figure of £1,200. The other items of charges for lift maintenance in 2001 are reasonable and reasonably incurred.

43. Accordingly the total charges for lift maintenance in each of the service charge years in question should be:
1998 - £2,347
1999 - £2,449
2000 - £2,581
2001 - £3,625
2002 - £4,488
2003 - £2,953

44. The Respondents are liable to pay 4.21% of the above total charges in accordance with the terms of the lease.

General repairs and maintenance

45. The expenditure on general repairs and maintenance as shown in the profit and loss accounts was:

1998	1999	2000	2001	2002	2003
£	£	£	£	£	£
11,885	1,105	16,920	4,816	5,597	5,365

46. Miss Scott submitted that the Management Company undertakes to carry out general repairs and maintenance under clause 6 of the lease. Invoices were produced as evidence of the costs incurred.

47. Works to the interior of the property had been carried out in 1998. Works to the exterior had been carried out in 2000. Miss Scott stated that the works were completed by May 2000.

48. Mr Zlitni contended that the Management Company had failed to consult the lessees in respect of work to the building in 2000 and had failed to comply with the provisions of section 20 of the Landlord and Tenant Act 1985. He contended that the Management Company had produced only one estimate for the works, which

was from Exec Décor Ltd. Mr Zlitni stated that when he confronted Mr Flaum with his alleged failure to comply with the provisions of section 20, he had been ignored.

49. Mr Zlitni asserted that the contract was awarded to Exec Décor on the understanding that the internal decoration of Mr Flaum's flat (Flat 2) was included in the contract but produced no evidence to support the assertion. The estimate from Exec Décor Ltd dated 7th January 2000 did not include decoration to Mr Flaum's flat.

50. Mr Zlitni complained about the standard and quality of the works and also contended that the works and materials used were not of a reasonable standard. He stated that most of the items stated in the contractors' estimate were not done or were overlooked. He had to stop the painters from painting his external windows as it was pouring with rain. He stated that he told them to stop and they replied that their boss had told them to continue even though it was raining.

51. Miss Scott referred to a specification for external works prepared in about 1998 by or for Meridian. She contended that it was likely that this specification had been used by the contractors estimating for the 2000 external works.

52. The Applicants submitted that three estimates had been obtained for the 2000 works. Miss Scott pointed out a hand written note of the AGM minutes for 1999 on which it was stated that "Outside Painting £10,000 - ?another quote". It was stated in the handwritten minutes of the AGM held on 19th September 2000, that "three quotations were obtained and the contract given to Exec Décor Limited in the sum of £15,392 50 (inc VAT). However, the Applicants were unable to produce any quotes or estimates other than an estimate from Exec Décor Limited dated 7th January 2000 that was addressed to Mr Flaum. In his witness statement Mr Flaum said that Mr Zlitni had copies of the specifications and had the opportunity to attend the AGM to discuss the prospective expenditure and approve the figures, however the 2000 AGM was months after the completion of the works in May 2000.

53. A surveyor was appointed to oversee the works, which were completed to his satisfaction. Mr Flaum produced a letter dated 21st May 2000 from Mr J E Wise FRICS, Chartered Surveyor. It was noted that Mr Wise had been instructed after the major external works had commenced in 2000. Following his appointment and an initial meeting on 28th March 2000, Mr Wise reported generally to the Management Company in a letter dated 29th March 2000. By this time the works were just about to commence. He also commented in a letter dated 21st May 2000 to the Management Company that "I am satisfied that the works were carried out to a competent and workmanlike standard and am satisfied with the completed job."

54. Mr Zlitni challenged the Management Company's Surveyors opinion that the work was satisfactory. He stated that a friend of his who is a qualified builder with 20 years experience inspected the work and that that person was appalled at the standard of the woodwork and painting. No statement or letter from Mr Zlitni's friend was provided to the Tribunal.

The Tribunal's decision – Repairs and maintenance

55. Mr Lampert, in a fax to Miss Scott dated 8th March 2006, stated that "I do believe that Mr Flaum did discuss the proposed decorations with the flat owners and that he did get a number of estimates. I do not hold any records to confirm this...". Mr Flaum, in his witness statement, said that Mr Zlitni had copies of the specifications and had the opportunity at each AGM to discuss the prospective expenditure and approve the figures as the other residents sought to do. Miss Scott mentioned that the minutes of the AGM on 19th September 2000 stated that the main expenditure for 2000 was the external decoration of the property, that three quotations were obtained and that the contract had been given to Exec Décor Limited in the sum of £15,392.50 (inclusive of VAT). She submitted that this constituted compliance with the provisions of the Act. She also pointed to the reference in the 1999 minutes to the possibility of a further quotation being obtained. However, She accepted that the 2000 AGM was held in September 2000 after the completion of the works in May 2000.

56. Miss Scott submitted that Mr Zlitni was fully aware of the works and had indicated in a letter dated 29th April 2000 that external decoration works would only be permitted if the weather was good and completed properly. The Tribunal finds that this letter does not constitute acceptance of the major external works.

57. On the evidence available the Tribunal finds that the requirements of section 20 of the Act were not complied with in respect of the major works of external decoration carried out in 2000. The sum of £16,920 was charged for general repairs and maintenance in 2000. Of this sum, it appears to the Tribunal that £14,342.50 was incurred on the external decoration.

58. The Tribunal determines that as the section 20 requirements were not correctly complied with and that the recoverable cost of the external decoration is limited to £1,200. To be added to this figure is the sum of £2,577.50 for other works of repair and maintenance in 2000 which have not been challenged and the charges for which the Tribunal finds are reasonable and reasonably incurred. This makes a total recoverable charge of £3,777.50.

59. Accordingly the total charges for repairs and maintenance for the service charge years in issue should be:
1998 - £11,885
1999 - £1.105
2000 - £3,777.50
2001 - £4,816
2002 - £5,597
2003 - £5,365

60. The Tribunal finds that the Respondents are liable to pay 4.21% of the above amounts.

Insurance

61. The expenditure on Insurance as shown in the profit and loss account was:

1998	1199	2000	2001	2002	2003
£	£	£	£	£	£
1,804	2,017	2,121	2,514	4,754	6,942

62. Miss Scott submitted that the Management Company undertook the insurance in accordance with its obligations under clause 6(1) of the lease. She submitted that Mr Zlitni had not established a prima facie case that the insurance charges were unreasonable or unreasonably incurred.

63. For 1998,1999 and 2000 the Insurance for the property was placed through Miller Insurance Group. There was both building insurance and engineering insurance for the lift maintenance. For 2001 the building insurance was no longer placed through the Miller Insurance Group as this renewal was not offered because of the poor claims history of the property as detailed in a letter dated 14th September 2001 from the Miller Insurance Group to Mr Flaum. The Miller Group renewed the engineering insurance for the lifts. The Building insurance was placed with Jannard Quadrant. The invoice for this is not available but Miss Scott relied upon the evidence of the audited accounts that the costs had been incurred. For 2002 and 2003 engineering and building insurance including terrorism cover were placed through Jannard Quadrant. Correspondence was produced from that firm which indicated the factors affecting the choice of insurance underwriters during this period. Correspondence was also produced showing the efforts made by Jannard Quadrant to review the market at renewal; and explaining the premiums.

The Tribunal's decision - Insurance

64. The Respondents provided no details of the basis upon which they challenged the charges for insurance, nor did they provide any evidence of alternative quotations. The Tribunal does not consider that the Respondents have raised a prima facie case in respect of the insurance charges.

65. The Tribunal finds that the charges for insurance in each of the service charge years in issue are reasonable and reasonably incurred. Accordingly, the Respondents are liable to pay 4.21% of the charges for the years in issue in accordance with the lease.

Telephone

66. The expenditure on Telephone as shown in the profit and loss accounts was:

1998	1999	2000	2001	2002	2003
£	£	£	£	£	£
348	398	586	677	720	679

67. Miss Scott submitted that the Management Company undertakes the provision of the emergency telephone service to be used in conjunction with the lifts at the property under clause 6(4) and 6(5) of the lease. The costs of the lines in connection to the lifts consist of the rental charges and equipment plus VAT. The

costs incurred in this and the ntl package referred to below were evidenced by invoices.

68. Miss Scott stated that in 2000 Mr Flaum obtained a dedicated phone line for the purposes of calls relating to the management of the property. Mr Conway confirmed this.

69. Mr Zlitni said the ntl telephone package included the TV service for Mr Flaum's private use. Mr Zlitni also contended that Mr Flaum had not repaid the Management Company for the private calls that he had made on the ntl line, but gave no details.

70. Miss Scott said that there was no separate charge for 'Telephone' incurred in respect of the management of Orford Court, after the management was taken over by BLR Property Management in 2004, this being part of the disbursements or overheads included in the per unit charge.

The Tribunal's decision - Telephone

71. The Tribunal finds that the charges for line rental to service the emergency telephones for the lifts in each of the service charge years in issue are reasonable and reasonably incurred.

72. In respect of the dedicated telephone line, the Tribunal considered that the Respondents had raised a prima facie case. On the basis of the evidence the Tribunal finds that in each of the service charge years 2000 to 2003 inclusive, that the sums charged in respect of the dedicated telephone line should be disallowed as not reasonable and not reasonably incurred. In normal circumstances the telephone charges for a managing agent would be included in their management fee.

73 The total charges for the service charge years in question should be:
1998 - £348
1999 - £398
2000 - £405
2001 - £418
2002 - £374
2003 - £431

74. The Respondents are liable to pay 4.21% of the above amounts in accordance with the lease.

Gardening

75. The expenditure on gardening as shown on the profit and loss account was:

1998	1999	2000	2001	2002	2003
£	£	£	£	£	£
2,984	5,157	5,233	4,760	5,083	4,333

76. Miss Scott submitted that the Management Company undertakes to provide the gardening pursuant to its obligations under clause 6(2d) of the lease. The Applicants produced invoices to as evidence of costs incurred.

77. Mr Zlitni contended that the general upkeep of the estate was very poor, but failed to give any further details of the grounds for his challenge. Mr Conway described the gardens at the property as a large garden at the front and rear of the property.

78. Miss Scott submitted that the Respondents had failed to make out a prima facie case that the service charges for gardening were unreasonable. It was submitted that the Respondents had given no indication that they were dissatisfied with the gardening.

79. The Applicants produced invoices for gardening for each service charge years 1998 to 2003 inclusive. Miss Scott pointed out that the gardening contractors changed in 1999 from Harrison Gardening. The works carried out by Harrison Gardening was trimming the hedges, pruning the trees and shrubs, mowing the lawn and clearing rubbish and the general up keep of the garden areas. In 1998 Harrisons had charged £55.20 per visit. In some months the gardeners attended twice a month and others up to five visits a month.

80. It was noted in the minutes of the 1999 AGM that "The increased cost in gardening was due to our original contractor having retired, three quotations were obtained and the contract was given to Greenfingers."
Greenfingers' duties were similar to the duties of the previous contractor. Greenfingers continued to carry out weekly visits to the property. In 2000 the contractors carried out the additional task of supplying materials for and conducting repairs and the repainting of pergolas at the property. The charges for Greenfingers gardening service was £80 per month for October to March. For the other months it was £100 per month.

The Tribunal's decision – Gardening

81. The Tribunal considers that the Respondents have not raised a prima facie case in respect of the charges for gardening. The Tribunal finds on the evidence that the sums charged for gardening in each of the service charge years in question are reasonable and reasonably incurred. Accordingly the Respondents are liable to pay 4.21% of the above charges in accordance with the lease.

Entry phone and security gates

82. The expenditure on entry phone and security gates as shown in the profit and loss accounts was:

1998	1999	2000	2001	2002	2003
£	£	£	£	£	£
1,491	1,239	1,098	1,309	1,243	3,142

83. Miss Scott submitted that the Management Company undertakes to maintain the entry phones and security gates at the property pursuant to its obligations under

clause 6(2)(e) and 6(5) of the lease. Invoices were produced to support the costs incurred.

84. Miss Scott submitted that the Respondents had failed to state the detailed grounds of their challenge to the costs of the security gates and had failed to establish a prima facie case that the charges were unreasonable or not reasonably incurred.

85. Mr Conway said that there had been problems with the security gates. One end of the property had security gates, the other did not. Transmitters had been provided to residents with parking bays whose entrance to the property was through the security gates, including Mr Zlitni.

86. The charges included costs of payments for maintenance of the video door entry system and for maintenance and emergency cover on the security gates.

The Tribunal's decision – Entry phone and security gates

87. The Tribunal considers that the Respondents have not raised a prima facie case in respect of the charges for entry phone and security gates. The Tribunal finds on the evidence that the sums charged for entry phone and security gates in each of the service charge years in question are reasonable and reasonably incurred. Accordingly the Respondents are liable to pay 4.21% of the above charges in accordance with the lease.

Cleaning

88. The expenditure on cleaning as shown on the profit and loss accounts was:

1998	1999	2000	2001	2002	2003
£	£	£	£	£	£
1,560	1,632	1,656	1,740	1,747	1,896

89. Miss Scott said that the Management Company undertakes the provision of cleaning of the common areas pursuant to its obligations under clause 6(2b) of the lease. Invoices were produced as evidence of the costs incurred.

90. Miss Scott submitted that the Respondents had provided detailed grounds of challenge to the cleaning charges. She submitted that the Respondents had failed to establish a prima facie case that the charges were unreasonable or unreasonably incurred.

91. Miss Scott submitted that the communal areas of the property were cleaned weekly at a cost of £30 per clean in 1998, £31.80 per clean in 1999 and 2000, £145 per month in 2001, £149.50 per month in 2002, and £154 per month in 2003. A comparative spreadsheet showed that the cleaning charges had not increased significantly between 1998 and 2003. Miss Scott said that the cleaning took place once a week.

92. Mr Conway said that the common areas of the property were cleaned including the two staircases and hallways. The cleaners attended and did a reasonably good job.

The Tribunal's decision – Cleaning

93. The Tribunal considers that the Respondents have not raised a prima facie case in respect of the charges for cleaning. The Tribunal finds on the evidence that the sums charged for cleaning in each of the service charge years in question are reasonable and reasonably incurred. Accordingly the Respondents are liable to pay 4.21% of the above charges in accordance with the lease.

Application under section 20C of the Act

94. In the letter from the Respondents to the Tribunal dated 23rd February 2006, an application was made for an order under section 20C of the Act. The Respondents made no submissions in support of the section 20C application.

95. Under section 20C 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 leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. The Tribunal may make such order on the application as it considers just and equitable in the circumstances.

96. Miss Scott submitted that the Respondents had failed until shortly before the hearing to properly identify all the items of service charges that they considered unreasonable or unreasonably incurred. The first indication of which service charge items were challenged in the current proceedings was contained in a letter dated 23rd February 2006 addressed to the Tribunal. She submitted that the Respondents had failed to state the grounds for challenging the charges in respect of many of the items.

97. The failure of the Respondents to identify the ambit of the disputed items had meant that the Applicants had had to prepare for the hearing on the basis that all of the services charge items might be challenged by the Respondents. This had involved a substantial increase in the documents included in the hearing bundles. This was against the background of the failure by the Respondents to pay any service charges for the service charge years in issue (or the following service charges years). Miss Scott urged the Tribunal to refuse the application.

The Tribunal's decision – Section 20C application

98. In respect of several of the service charge items challenged, the Respondents failed to provide grounds or evidence to support the challenge and failed to establish a prima facie case. This, together with the failure of the Respondents to clearly identify the ambit or reasons for challenge until a late date, resulted in substantial extra preparation by the Applicants. The Respondents were successful in respect of the management charges and some telephone charges. In respect of

repairs and maintenance and lift maintenance, the challenge was on the basis of failure to comply strictly with the requirements of section 20 of the Act, which is subject to the possibility of exercise of dispensation by the Court.

99. Taking all the circumstances into account, the Tribunal considers that it is just and equitable that 50% of the costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.

CHAIRMAN..... Ann Seifert

DATE..... 21st April 2006

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb
Mr M L Jacobs FRICS
Mrs S Baum JP