1508

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 – SECTION 27A

Reference: LON/00AM/LSC/2010/485

Premises: Flats 1, 6, 8, 9 and 10
Clayton Court
62 Craven Walk
London N16 6BL

Applicant: C.G. Land Limited (Landlord)

Respondents:
(1) Friends of Beer Avrohom Slonim – Flat 1
(2) Y.T. Sanger – Flat 6
(3) Euromile Investments Limited – Flat 8
(4) Triplerose Limited – Flat 9
(5) Superior Care Homes Limited – Flat 10
(Tenants)

Appearances

For the Applicant: Mr R. Sandler, Solicitor.

For the Respondents: Mr Y.T. Sanger attended the inspection and appeared in person at the hearing on 1st November 2010. He did not attend on 2nd November 2010. The other Respondents did not attend the inspection or the hearing and were not represented. Written representations were received from Triplerose Limited.

Also in attendance:

For the Applicant: Mr David Wilson, Mr Jamie Hulse and Mrs Julie Hawkes, Broadlands Estate Management LLP.

Date of application: 4th July 2010
Date of oral pre trial review: 3rd August 2010
Dates of inspection and hearing: 1st and 2nd November 2010

Members of the Leasehold Valuation Tribunal:

Miss S.J. Dowell BA (Hons) (Solicitor)
Mr M.A. Mathews FRICS
Ms J. Dalal

Date of decision: 30th November 2010

The application

1. This is an application dated 4th July 2010 by the landlord for a determination of the payability of service charges for the years 2006, 2007, 2008, and 2009. The service charge year is the calendar year.

2. The Applicant is the freehold owner of Watermint Quay, Craven Walk, London N16 8BL. The estate was built in or about 1987 and consists of 107 units made up of three blocks of flats, namely 78-94 Watermint Quay, 79-95 Watermint Quay and Clayton Court, the rest of the units being houses. Clayton Court, the subject of this application, is a purpose-built block of ten flats and two commercial units. Each unit in Clayton Court is liable to pay 1/12th of the block service charges and 1/107th of the estate charges.

3. The Applicant acquired the freehold interest in the estate in 2002. This application has been made because a number of lessees at Clayton Court, in particular the Respondents, are alleged to be in arrears with service charge payments. The Applicant acknowledged that the lift in Clayton Court did not function when it purchased the freehold and has not functioned since that time and therefore the lessees have been without the use of the lift during this period. The tribunal has not recorded the alleged arrears of service charges or made any investigation into those alleged arrears as this is a matter for the county court. The jurisdiction which we have been asked to exercise is under section 27A of the Landlord and Tenant Act 1985 ("the Act").

The law

4. The Landlord and Tenant Act 1985 is referred to as "the Act".

Section 18 – Meaning of "service charge" and "relevant costs"

(1) "Service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

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

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

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

Section 19 – Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

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

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 21B - Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded of him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold Valuation Tribunal for a determination on whether a service charge is payable and, if it is, as to
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub section (1) applies whether or not any payment has been made.

(3) .....

(4) No application under sub section (1) may be made in respect of a matter which
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

5. The Landlord and Tenant Act 1987 is referred to as "the 1987 Act".

Section 47 – Landlord's name and address to be contained in demand for rent etc

(1) where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely-
  (a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where –

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

The inspection

6. The tribunal carried out an inspection in the morning of 1st November 2010. We inspected the exterior and internal common parts of Clayton Court and the interior of Flat 6 Clayton Court in the presence of Mr J. Hulse, Broadlands Estate Management LLP and Mr Y.T. Sanger of Flat 6. We also inspected the whole of the estate in the presence of Mr Hulse, Mr Sanger having declined to be present for this part of the inspection.

7. Clayton Court is a four-storey block with one flat and two shops on the ground floor, with three floors of flats above there being three flats on each floor. It is brick-faced with pitched tiled roof and timber windows. To the rear of the block was a steeply sloping grassed area leading to the wooded boundary of the estate. To the front of the block was a pavement and parking bays.

8. The tribunal noted the external condition, which was poor, and saw the plants in the rainwater gutters and the poor condition of the side gutter. There was lichen growth on the tiled roof. Where the decoration had deteriorated some of the windows were in poor condition. The external bin stores at the side of the block were poorly maintained. There were two external lights by the entrance door which were on.

9. Entry to the block was by way of entry phone. There was a strong unpleasant smell in the ground floor entrance lobby and the lift did not work. The walls to the common parts were badly marked and damaged in many places. On the higher storeys the windows were very dirty. The lights to the staircases were broken, leaving exposed bulbs, some of which were blackened. The floors to the lobbies on each floor were generally clean and the lights in the lobbies were on.

10. When the tribunal went in to Flat 6 we were shown the cills of the rear window.

11. Clayton Court is part of Watermint Quay Estate, and is situated just outside the entrance pillars to the main part of the estate. The location of Clayton Court is apparent from the official copy of the title plan included in the bundle. The tribunal walked along Craven Walk through the estate down to the footpath along the canal/River Lea. We noted the trees and planted areas. Although it was autumn and consequently high leaf fall, the pavements were litter free. The external areas looked well maintained. However some of the decoration and the gutters to the rest of the estate were in poor condition.

The lease

12. The tribunal was supplied with a copy of the lease of Flat 1 and we were told that all the leases of the ten residential flats were the same. We were not provided with a copy of the lease plan for Flat 1 nor were we provided with copies of the commercial leases of the two shops on the ground floor.

13. The lease of Flat 1 is dated 1st September 1987 and made between Kentish Homes Limited (1) and Florida Limited (2) for a term of 999 years from 25th December 1985 at a ground rent of £100 per year.

14. "The Estate" is defined as Watermint Quay, Craven Walk, London N16, "the Flat" is defined as "the premises described in the First Schedule", "the block" is defined as "the block consisting of ten flats and certain commercial units known as Clayton Court, Watermint Quay, aforesaid together with the ground belonging thereto the extent of which block and grounds is shown on the Estate Plan annexed hereto and thereon hatched pink", "the demised premises" is defined as "the Flat together with the rights and reservations contained in the Second Schedule" and "the Retained Parts" is defined as "all such parts of the Estate (excluding the Block) as are for the time being not comprised or intended in due course to be comprised in any lease granted or to be granted by the Landlord".

15. A description of the flat is set out in the First Schedule, the rights appurtenant to the flat are set out in the Second Schedule and the rights to which the demise is subject are set out in the Third Schedule.

16. The tenant's covenants are set out in the Fourth Schedule and include at paragraph 10 the following provisions.

    (a) To keep the landlord indemnified against a one-hundred and seventh part of all costs charges and expenses which the landlord shall incur in or in connection with the management of the Estate whether in carrying out the obligations set out in the Sixth Schedule or in doing any other works or things for the maintenance and/or improvement of the Estate (including by way of example only the fees of the managing agent appointed by the landlord to manage the Block and/or the estate).

    (b) To keep the landlord indemnified against a one-twelfth part of all costs and charges and expenses which the landlord shall incur in complying with the obligations set out in Clause 6 of the Sixth Schedule of the lease or in doing any works or things for the maintenance and/or improvement of the block.

17. Paragraph 11(a) of the Fourth Schedule sets out the lessee's obligations to pay the service charge. The lessee is required to pay to the landlord on demand in each half year such sum as the landlord shall estimate to be half of the amount prospectively payable by the tenant such sum being payable on the First day of January and the First day of July in each year. These sums are deemed to be sums due by way of additional rent and to be recoverable by the landlord as such.

18. Paragraph 11(a) goes on to provide that the expression "all costs charges and expenses which the landlord shall incur" shall include not only those costs charges and expenses which the landlord shall have actually incurred or made during the year in question but also such other reasonable part of all such costs charges and expenses and other expenditure which are of a periodically or recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the term granted or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure as the landlord may in his absolute discretion allocate to the year in question as being fair and reasonable in all the circumstances.

19. Paragraph 11(b) provides that if the landlord is required in order to comply with any of its obligations contained in the Sixth Schedule of the lease or in carrying out any other works or things for the improvement of the block to expend any sum of money in excess of such sums as the landlord shall then have collected from the tenant together with the other tenants of the block towards the cost of carrying out such obligations or works or things then the landlord shall be entitled to require the tenant to pay on demand such sums as shall represent a proportionate part (calculated as previously set out) of the money that will be required to be expended by the landlord over and above such sums as shall already have been received by the landlord and such further amounts shall be taken into account in calculating the Service Charge contributions pursuant to the provisions of Clause 11(a) and any sum due from the tenant to the landlord under this provision shall also be deemed to be due by additional rent and shall be recoverable by the landlord as such.

20. Under Clause 12 of the Fourth Schedule the lessee is required within twenty-one days after receipt of a copy of the certification of the service charge (which is provided for in the Sixth Schedule) to pay to the landlord the net amount (if any) appearing by such notice to be due to the landlord from the tenant.

21. The Fifth Schedule of the lease contains the tenant's additional covenants – these are not relevant to the service charge provisions of the lease.

22. The Sixth Schedule of the lease contains the landlord's covenants which in summary are

    (1) to insure against liability for injury or damage to any person entering upon the estate and such other risks as the landlord shall deem appropriate.

(2) To pay all rates, taxes and outgoings to the appropriate authorities in respect of the estate.

(3) To maintain the service roads and pathways of the estate in good order and condition and to provide lighting, to maintain common service conduits in, under or over the estate in a good state of repair and condition.

(4) To keep the communal areas forming part of the estate neat and tidy and in a good state of repair and condition and to keep the communal garden areas stocked with suitable flowers, shrubs and trees and to maintain any communal facilities provided in or upon the estate.

(5) To keep such parts of the retained parts as are or should be repaired or decorated in good and tenantable repair and decorative condition and to repaint and redecorate the same as and when the landlord shall deem appropriate.

(6) To insure and keep insured in the joint names of the landlord and the lessees for the time being of the flats comprising the block and their respective mortgagees if so necessary the block against the usual risks (which are set out in detail).

(7) To keep the structure and the exterior and all common parts of the block and all fixtures and fittings in such common parts and additions in good and tenantable repair and decorative condition (including any renewal and replacement of all worn or damaged parts) (damage by any of the insured risks excepted).

(8) To keep so far as it is practicable the entrance, entrance hall, stairways, passages, communal refuse bins and grounds forming part of the block properly cleaned and in good order and to keep adequately lighted all such common parts of the block as are normally or should be lighted.

(9) To keep proper books of account of all costs charges and expenses incurred by the landlord in carrying out its obligations under the Sixth Schedule or in otherwise managing and administering the block and/or the estate and once in each year during the said term to certify (a) the total amount of such costs, charges and expenses for the period to which the certificate relates and (b) the proportionate amount due from the tenant to the landlord under the provisions set out in the Fourth Schedule of the lease after taking into account payments made in advance under the provisions set out in the same Schedule and to send a copy of the certificate to the tenant.

History of management of the estate including Clayton Court

23. Mr Wilson who is a director of Broadlands Estate Management LLP gave the history of management of the estate as follows:

2002	:	CG Land Limited acquire the freehold.
2004	:	Mr Wilson was then employed by Castle Estates who managed the estate.
2006	:	Touchstone CPS Limited bought out Castle Estates. Management of the estate remained with Touchstone/Castle Estates.
June 2007	:	Mr Wilson retired and left Touchstone.
March 2008	:	Mr Wilson came out of retirement and set up a new company with his wife called Broadlands Estate Management LLP ("Broadlands").
March 2008	:	Broadlands take over the management of the estate.

Service charge demands

24. The service charge demands were not in the bundle but on the second day of the hearing, we were provided with copies of service charge demands and statements which included:

- opening balance up to 30th June 2008
- service charge for period 1st July 2008 to 31st December 2008
- balancing service charge for the period 1st January 2008 to 31st December 2008
- service charge for the period 1st January 2009 to 30th June 2009
- service charge for the period 1st July 2009 to 31st December 2009
- balancing service charge for the period 1st January 2009 to 31st December 2009.

These were the only service charge demands and statements which Broadlands could supply the other service charge demands having been issued by their predecessors.

25. Mrs Hawkes, who is employed by Broadlands as an accountant, provided the tribunal with these service charge demands and statements and explained that a typed sheet

headed "Service charges – summary of tenants' rights and obligations" which was a double-sided sheet of paper with paragraphs numbered from 1 to 12 was issued with every service charge demand in accordance with the requirements of section 21B of the Landlord and Tenant Act 1985. A copy of this document was supplied to the tribunal.

26. However she accepted that some of the service charge demands did not show the landlord's name and that even where the landlord's name was shown none of the service charge demands included the address of the landlord on the face of the service charge demands.

27. The tribunal requested sight of the previous service charge demands. On 11th November 2010 we were sent by the landlord's solicitor,

(a) a copy of a "tenant statement" addressed to Avon Estates in respect of Flat 9 dated 15th February 2006 and marked "reminder". This showed a demand for legal fees due date 16th December 2005 for £176.25 and a demand for arrears letter charge due date 21st November 2003 £50. The total and the amount due was shown as £3,591.72;

(b) a copy of a "tenant statement" addressed to Superior Care Homes Limited in respect of Flat 10 dated 16th January 2008 and marked "reminder". This showed service charge £494.52 due date 1st July 2006, service charge £561.87 due date 4th January 2007, service charge £551.86 due date 1st July 2007, arrears letter charge due date 15th January 2008 £88.13, balancing service charge due date 3rd July 2006 credit £47.29, total amount due £1,659.09.

Neither of these documents showed the landlord's name nor the address, nor did the statement dated 15th February 2006 appear to be a formal service charge demand, and there was no reference to the statutory requirements under section 21B of the Landlord and Tenant Act 1985 on the statement dated 16th January 2008.

Decision

28. The Landlord and Tenant Act 1987 section 47 requires that a service charge demand must contain the name and address of the landlord and, if that address is not in

England and Wales, an address in England and Wales at which the tenant may serve notices on the landlord.

29. Section 47(2) of the 1987 Act states that a service charge should be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant. The tribunal were not provided with any service charge demands for the years 2006, 2007, 2008 and 2009 the subject of this application which complied with section 47 of the 1987 Act.

30. Since 1st October 2007 section 21B of the Landlord and Tenant Act 1985 has required a demand for the payment of a service charge to be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The provision was inserted by section 153 of the Commonhold and Leasehold Reform Act 2002. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257) describes the statement which is to be included. If and for so long as the landlord fails to comply the tenant is entitled to withhold the service charge demanded (section 21B(3) of the Act). Section 21B includes no power for the leasehold valuation tribunal to excuse service of this demand.

31. We accept Mrs Hawkes' evidence that the summary of the rights and obligations of tenants of dwellings in relation to service charges as required by section 21B of the Act did accompany the service charge demands, which were supplied to us at the hearing. These commence for the period 1st July 2008 to 31st December 2008 which was the first service charge period after which Broadlands took over the management of Clayton Court.

32. We were not provided with copies of any service charge demands for 2006, again such demands would not need to comply with section 21B of the Act. Where a service charge demand was served prior to 1st October 2007 in respect of service charges which fell due after 1st October 2007 then the prescribed summary must accompany all further demands (Regulation 4(b)). We did not see any evidence of compliance with section 21B for the service charges which fell due after 1st October 2007 prior to those for the period commencing 1st July 2008.

33. In our opinion a valid service charge demand is a prerequisite to a claim for unpaid service charges. This is a matter which will be considered by the county court if the landlord issues proceedings for recovery of unpaid service charges as a debt.

The lift at Clayton Court

34. Mr Wilson acknowledged in his witness statement that "the main difficulty with Clayton Court is that the lift has not worked for many years. It was not working when the Applicant purchased and unfortunately its non-operation has been used as a reason for non-payment of service charges by some lessees for very many years". Further on in his witness statement Mr Wilson said "as far as the lift at Clayton Court is concerned, lack of funds has always prevented replacement/repair being undertaken. We entered into a full consultation exercise last year". Mr Wilson exhibited the section 20 consultation documents to his statement. He went on to say "however all lessees in Clayton Court have refused to pay sums on account and the matter therefore remains in abeyance".

35. The only Respondent who attended the hearing was Mr Sanger. He had sent to the tribunal a letter dated 18th October 2010 of which the Applicant had a copy. Mr Sanger denied that his arrears were in the sum as alleged by the Applicant. His main complaint about the block was "ever since I purchased my flat in September 2003 I have constantly been writing to all the various management agents to get the Elevator in working order. We finally after five years of putting pressure on the management agents and freeholder received quotes for replacing a new lift. I claim that if the freeholder would have repaired the lift immediately it would have not come to a situation where the lift would have fallen into such a state of disrepair that it now needs complete replacing". Mr Sanger confirmed his challenge to the charges for the lift at the hearing when he attended on 1st November 2010.

36. The tribunal explained to Mr Sanger that the sums which had been requested in 2010 by the Applicant for the lift replacement were outside our jurisdiction and we could not consider them as they were not included in the service charge years which were the subject of the application i.e. 2006 to 2009 inclusive.

Decision

37. It is clear that the lift at the block has not been kept in good and tenantable repair as required by Clause 6(c) of the Sixth Schedule of the lease. Mr Sanger indicated to the tribunal he wished to make a claim in this respect but he had not provided the landlord and the tribunal with details of his claim or any expert evidence. The tribunal considers Mr Sanger may have a set-off/counter claim in respect of the non functioning lift but the tribunal concluded this was outside our jurisdiction and a matter for the county court. We deal later in this decision with the question of whether the landlord/managing agent should have used the provisions in the lease for collecting a reserve fund and/or additional expenses outside the normal service charges to fund the repair/replacement of the lift.

Clayton Court costs

38. The service charges shown on the service charge certificate were divided into estate costs and Clayton Court costs. We deal first with the Clayton Court costs for which each lessee is liable for 1/12th of the total cost.

Insurance

39. The sums claimed for insurance were as follows:
    - 2006: £3,655.30 covering the period 1st December 2005 - 1st December 2006
    - 2007: £3,775.75 covering the period 1st December 2006 - 1st December 2007
    - 2008: £3,956.52 covering the period 1st December 2007 - 1st December 2008
    - 2009: £4,428.37 covering the period 1st December 2008 - 1st December 2009

40. The Applicant provided us with some invoices in the bundle and additional invoices at the hearing. The sums shown on the invoices were as follows:
    - 2006: £3,400.28
    - 2007: £3,512.33
    - 2008: £3,739.52
    - 2009: £4,005.14

41. At the hearing Mr Sanger raised the question why, on the basis of the budget he had received for 2009, the insurance for each of the two blocks of flats in Watermint Quay

was lower than the insurance for Clayton Court. The explanation given for this was that Clayton Court included two commercial units.

42. Triplerose Limited had raised a question in their letter of 27th August 2010 as to what commission was obtained by the agents or freeholder in respect of the insurance. Mr Wilson in his witness statement had set out figures giving the insurance commission and a copy of this statement had been sent to Triplerose Limited. However the tribunal was concerned that as the insurance was collected by the landlord's agents Freehold Managers (Nominees) Limited and not Broadlands that the information contained in Mr Wilson's statement was hearsay. On the second day of the hearing Mr Sandler produced a letter from Oval Insurance Broking which confirmed they acted as insurance brokers in respect of Freehold Managers (Nominees) Limited's property portfolio. The letter stated that the total annual brokerage received by Oval Insurance Broking for the periods in question amounted to 23.34% of the net buildings premium and that of this they ceded to Freehold Managers (Nominees) Limited an amount equivalent to 20% of the buildings premium. The letter set out the commission received by the Freehold Managers (Nominees) Limited which when translated to the service charge years was as follows:

- 2006: £551.27
- 2007: £556.54
- 2008: £604.20
- 2009: £647.10

Decision - insurance

43. The tribunal considered the insurance certificates and the invoices which were included in the bundle and additional invoices provided at the hearing.

44. Having considered the documentation it was clear that the sums included in the service charge certificate did not reflect the sums shown in the invoices for buildings insurance. Having compared the invoices in the bundle with the invoices we were provided with at the hearing we could see that there was an additional sum added in manuscript which for the year 2007 was "+ interest £263.42" and for the year 2008 was "+ £216.90". We assume therefore that the difference between the sums shown on the original invoices and the sums shown on the service charge certificates is for interest perhaps because payments were made by standing order or direct debit on a

monthly basis although we were not told this. Certainly at least two of the invoices were endorsed with the words "do not pay".

45. In any event no satisfactory explanation was given for the discrepancy between the sums shown on the invoices and the sums shown on the service charge certificates. There is no provision in the lease for charging interest on insurance payments. Indeed the lease makes very precise provisions for collecting monies on account or in arrears after expenditure has been incurred. We determine that the lessees are not liable to pay the interest on the buildings insurance payments because there is no liability under the lease or in the alternative because those costs have not been reasonably incurred in accordance with section 19(1)(a) of the Act.

46. There was no challenge, apart from the point raised by Mr Sanger, to the premiums themselves but only to the collection of the commission by the landlord which was raised by Triplerose Limited, the lessees of Flat 9.

47. Under the terms of the lease the lessees are required to keep the landlord indemnified against all costs, charges and expenses which the landlord shall incur in complying with the obligations set out in Clause 6 of the Sixth Schedule which include insuring the flats comprising the block. The cost to the landlord is the net cost of the insurance after it has collected the commission. This is the sum for which the lessees have contracted to indemnify the landlord. We therefore determine that the Respondents are each liable for a 1/12th share of the actual cost to the landlord of the buildings insurance which for the relevant years is, having deducted the interest and commission:-

- 2006: £2,849.01
- 2007: £2,955.79
- 2008: £3,135.42
- 2009: £3,358.04

Cleaning

48. The sums claimed for cleaning were as follows:

- 2006: £1,844.50
- 2007: £1,998.64
- 2008: £2,036.63
- 2009: £2,030.07

49. At the hearing on 1st November 2010 a general explanation of the cleaning costs was given to the tribunal and to Mr Sanger. Mr Sanger told the tribunal he had no challenge to the cleaning costs either for Clayton Court or for the estate.

50. At the hearing on 2nd November 2010 Mr Hulse gave evidence regarding the cleaning contracts. He explained that in 2006 there was weekly cleaning for Clayton Court and he produced a copy of the cleaning contract between the landlord and Beechwood Property Services Limited ("Beechwood"). This included the cleaning specification. There was only one contract for the whole of the estate including Clayton Court and Mr Hulse explained that the costs were apportioned as follows:

- Estate: 53.3%
- 78-94 South Watermint Quay: 17.77% (internal)
- 79-95 North Watermint Quay: 17.77% (internal)
- Clayton Court: 11.16% (internal)

51. There was no copy of the contract for 2007 available but the invoices of Beechwood were available and were inspected by the tribunal. The contract with Beechwood was available for 2008 and we were told that in 2007 it was in the same form. In July 2008 there had been some complaints from the residents about Beechwood and the landlord therefore entered into a new contract through its managing agents with a firm call Site Acres on 21st June 2008. However by 28th July 2008 it had become apparent that this new arrangement was not to the satisfaction of the residents and the new contract was cancelled. The residents met with Mr Wilson and Beechwood were brought back to carry out the cleaning, the new contract having effect from 1st October 2008. The cleaning was carried out in August and September by Beechwood on an informal basis. The contract with Beechwood for 2009 was supplied to the tribunal and this included a detailed specification of services.

52. The objection raised by Triplerose Limited was that the cleaning was not regular and was of poor quality. However no further details were provided. The complaint was endorsed by Enterprise Bonding Limited, the lessees of Flat 3, in a letter of 31st August 2010 to the tribunal. In his witness statement Mr Wilson stated that the cleaning was carried out regularly in accordance with the specification and this was endorsed by Mr Hulse at the hearing.

Decision – cleaning

53. As recorded above the tribunal inspected Clayton Court on 1st November 2010. We were, of course, not able to make any assessment of the quality of the cleaning over the four years in question. We have noted that the lessees of Flat 9 and Flat 3 have stated that the cleaning is not regular and of poor quality. However Triplerose Limited have not produced any evidence to show that they or anyone else made complaints about the cleaning over the four years in question. Mr Sanger who was present on the first day of the hearing said that he had no complaint about the quality of the cleaning of the common parts at Clayton Court. The managing agents on behalf of the landlord denied the allegation made by Triplerose Limited and told the tribunal that a representative from the managing agents checked the cleaning at least once a month. None of the other lessees had challenged the cleaning costs at Clayton Court. Triplerose's allegations related to both the cleaning and the gardening and they did not give any detail of their complaint. This means we have a single generalised complaint made by two of the twelve lessees. We take into account that it is unlikely that the lessees of the commercial units would complain as they do not have access to the common parts and therefore there are two lessees who have made a general complaint, two lessees who are unlikely to complain and eight lessees who have not complained. We take the view that the complaint of Triplerose Limited supported by Enterprise Bonding Limited is not made out. No alternative figures were put forward and no previous letters of complaint were relied on. Having considered the contracts, the specifications and the charges we have concluded that the sums shown in the service charge certificates for 2006, 2007, 2008 and 2009, are for costs for which the lessees are liable under the terms of the lease and which have been reasonably incurred and that the provision of the services was to a reasonable standard. Accordingly the Respondents are each liable for a 1/12th share of the cleaning costs for each of the years in question.

Electricity

54. The sums claimed for electricity were as follows:

- 2006: £361.10
- 2007: £861.15
- 2008: £407.00
- 2009: £678.72

55. Mr Wilson explained that there was a separate meter for the electricity for the common parts at Clayton Court. The explanation for the varying amounts was that there was some degree of "catch up" in 2007 and also electricity prices were increasing. Mr Sandler produced all the invoices for the electricity.

56. Although Mr Sanger did not raise it at the hearing he had complained in his letter dated 24th July 2006 to Castle Estates that "the electricity timer switch did not seem to be working and the lights were constantly on 24/7, internally and externally".

57. Mr Wilson said that there had been huge problems with the estate in 2006. Mr Hulse said that the two exterior lights were on twenty-four hours and that they were low energy bulbs which cost very little to run. He submitted that in fact it would cost more in electricity charges to have a timer turning the lights on and off than to leave them on all the time. He said that in any event some people preferred to have the exterior lights on constantly.

58. There were no other challenges from any of the other lessees in respect of the electricity costs.

Decision - electricity

59. We have considered the invoices which show the consumption of electricity for the common parts at Clayton Court as claimed in the service charge certificates. The lessees are liable for these costs under the terms of their leases and in our opinion these costs have been reasonably incurred and are payable by the Respondents, their share being 1/12th each.

General repairs

60.

2006:	Replacement glass hallway light	£ 70.50
	Repairs to Flat 4 (less payment from insurers)	£250.00
	Total	**£320.50**
2007:	Light repairs	£113.39
	Additional cleaning	£ 82.25
	Lock repairs	£110.44

	Lock repairs	£ 82.25
	Lock repairs	£ 81.66
	Total	**£469.99**
2008:	Light repairs	£129.25
2009:	Pumping out of lift shaft	£ 575.00
	Lighting repairs	£ 402.50
	Rubbish removal	£ 57.50
	Cleaning out lift shaft	£ 218.50
	Window cleaning – March	£ 16.10
	Window cleaning - August	£ 16.10
	Window cleaning - November	£ 16.10
	Total	**£1,301.80**

61. Mr Sandler on behalf of the Applicant produced the receipts for all these items. No challenges were raised by any of the lessees.

Decision – general repairs

62. Having considered the nature of these works, the sums of money charged and the invoices we are satisfied that the lessees are liable for service charges for general repairs under the terms of their leases and that these costs have been reasonably incurred and that the works were of a reasonable standard. In those circumstances the sums for general repairs set out in the service charge account for the years 2006, 2007, 2008 and 2009 are payable by the Respondents, each being liable for a 1/12th share.

Miscellaneous expenses

63.

2006:	Asbestos survey of common areas	£ 270.25
2007:	Door entry repairs	£ 171.55
2008:	Gutter clearing	£ 650.00
2009:	Lift survey /specification	£3,559.19

64. Mr Sandler submitted that all these costs were necessarily and properly incurred, the receipted invoices were available and all these items came within the lessees' liability under the lease.

65. None of these items were challenged except that Mr Sanger had a complaint that the gutters needed to be cleaned and repaired. He said that although he did not live in the property he went to the supermarket on the ground floor and that frequently when he went and it was raining there was water pouring down the front of the building. He said that he had written letters about this but there had been no response. Mr Wilson explained that the gutters had been cleaned and repaired in 2008 and there was an invoice to support this.

Decision – miscellaneous expenses

66. The tribunal is satisfied that the Respondents are liable for these costs under the terms of their leases. We are also satisfied that these costs have been reasonably incurred and that the works were carried out to a reasonable standard. So far as the gutters are concerned we accept the evidence of Mr Sanger that the gutters are currently in a very poor state of repair as we saw this at our inspection. However we accept that some work was carried out in 2008 which was invoiced and paid for. We are satisfied that the Respondents as lessees are liable to pay the 1/12th share of the cost of the asbestos survey in 2006, the door entry repairs in 2007 and the lift survey/specification in 2009.

Estate costs

Cleaning

67. The sums claimed for cleaning on the estate were as follows:
- 2006: £5,996.62
- 2007: £6,064.44
- 2008: £6,179.82
- 2009: £6,159.81

68. Mr Sandler had already explained how the cleaning costs were divided as recorded in paragraph 46 above. There is not a separate contract for the estate and Clayton

Court but one contract for the whole estate including Clayton Court. The history of the cleaning contract has already been set out. Mr Hulse said that apart from Triplerose Limited there had been no other complaint about cleaning on the estate and he denied that it was not regular and that it was of poor quality. He explained that he met with the cleaning staff regularly, standards were monitored and the contractors would be dismissed if the managing agents was not satisfied. He visits the site a minimum of once a month.

69. Mr Wilson acknowledged that the estate was in a dreadful state in 2004 but slowly the managing agents had turned it around and from 2006 it has been vastly improved.

Decision – cleaning

70. The only complaints submitted to the tribunal were from Triplerose Limited in their letter dated 27th August 2010 and the letter from Enterprise Bonding Limited, of Flat 3, dated 31st August 2010. As recorded above, this letter stated "the cleaning and gardening is not regular and of poor quality". The complainants did not specify whether the cleaning on the estate as well as at Clayton Court is alleged to be unsatisfactory. Certainly so far as the tribunal is aware, there are no complaints recorded from the other 105 lessees on the estate in respect of the cleaning.

71. The tribunal is satisfied that the Respondents are liable for these payments under the terms of their leases and further we are satisfied that these costs have been reasonably incurred and that the services provided have been of a reasonable standard. In those circumstances the Respondents are liable to pay for the service charges for cleaning on the estate as set out above, their individual share being 1/107th.

Gardening

72. The sums claimed for gardening were as follows:

- 2006: £3,172.66
- 2007: £2,966.93
- 2008: £4,535.44
- 2009: £3,732.88

73. The tribunal was provided with a copy of the gardening contract made with Enfield Garden Services for the period 1st January 2006 to 31st December 2006. There was no specification available. There was no contract available for 2007 but the invoices were presented. Again the gardening was carried out by Enfield Garden Services that year. For 2008 there was a contract with Site Acres the length of the contract being from 21st July 2008 to 31st December 2008. Prior to that between January and July there was no contract but the work was carried out by Enfield Garden Services. There was no specification of works attached to the contract. In 2009 there was a contract with Site Acres with a specification attached.

74. Mr Hulse gave evidence that there had never been a break in standards and that the gardening was always of a high quality. This included the area behind Clayton court.

75. The only complaint received by the tribunal was from Triplerose Limited endorsed by Enterprise Bonding Limited the lessees of Flat 3. Again there is the allegation "the gardening is not regular and of poor quality". There is no other complaint about the standard of gardening in the four years in question and indeed Mr Sanger confirmed that on occasion he walked down through the estate to the river and that he found the general condition of the estate to be "okay".

Decision - gardening

76. We are satisfied that the Respondents as lessees are liable to pay the cost of gardening on the estate under the terms of their leases. We are not satisfied that Triplerose Limited have made out their complaint that the gardening is not regular and of poor quality. There is no evidence of any letters of complaint nor any support from anyone else apart from Enterprise Bonding Limited who own Flat 3, Clayton Court. We accept that these costs, which are supported by some contracts and invoices for each year, are reasonably incurred and that these services has been of a reasonable standard. The Respondents are therefore liable to pay the service charges for the gardening on the estate as set out above the share of each of them being 1/107th of the total cost.

Electricity

77. The sums claimed for electricity were as follows:
    - 2006: £ 432.99

- 2007: £1,479.26
- 2008: £2,035.38
- 2009: £3,393.60

78. Mr Wilson explained that the huge leap between 2006 and 2007 was due to the fact the estate was still in a poor state in 2006 and that there was a very low consumption. Most of this electricity was for the street lighting on the estate some of which had been broken. The managing agents had invoices to support these charges and Mr Wilson explained that in any event prices for electricity had increased substantially over the four years under scrutiny. He confirmed that investigations were being made about changing the supplier for future years. There was no challenge from any of the Respondents to the charges.

Decision - electricity

79. The tribunal is satisfied that the Respondents are liable to pay for the cost of the electricity on the estate under the terms of their leases. We are also satisfied that these costs have been reasonably incurred. In those circumstances the Respondents are liable to pay for the service charges for electricity on the estate as set out above, their individual share being 1/107th.

Bins and skips (hire charges)

80. The sums claimed for hire charges for bins and skips were as follows:
- 2006: £ 669.58
- 2007: £1,381.82
- 2008: £1,746.70
- 2009: £2,141.61

81. Mr Wilson explained that this charge is necessary because it is a private estate and the landlord was responsible for refuse disposal and had to pay for the cost of bins and skips. The invoices were provided. There was no challenge from any of the Respondents in relation to these charges.

Decision – bins and skips (hire charges)

82. The tribunal is satisfied that the Respondents are liable to pay for the cost of hire charges for bins and skips on the estate under the terms of their leases. We are also satisfied that these costs have been reasonably incurred and that the services were of a reasonable standard. The Respondents are therefore liable to pay the service charges as set out above the share of each of them being 1/107th of the total cost.

Drains and pump maintenance

83. The sums claimed for drains and pump maintenance charges were as follows:

- 2006: £2,549.77
- 2007: £6,254.55
- 2008: £6,931.37
- 2009: £5,000.20

84. Mr Sandler produced the invoices for these charges which were queried by the tribunal as the sums appeared high. It was explained that there had been considerable problems on the estate in respect of drainage. The estate ran down a steep hill and the pumps were at the lower end of the estate. There had been a major problem because of items being flushed down the toilets which were not suitable for this process. This causes the pumps to stop working and the alarm to go off and the contractors have to come out to carry out repair and maintenance work. From the pumps at the lower end of the estate the sewage then has to be pumped uphill and the whole process is a major problem on the estate. This is the reason for the fluctuation in the costs and the very high costs in the later years. Mr Hulse said that he had recently circulated all lessees again with instructions in respect of flushing of unacceptable items down the toilets and thus the managing agents were doing what they could to resolve the problem. There were no challenges to these charges from the Respondents.

Decision – drains and pump maintenance

85. The tribunal is satisfied that the lessees are liable to pay for the cost of drains and pump maintenance on the estate under the terms of their leases. We are satisfied that these costs have been reasonably incurred and that the works have been carried

out to a reasonable standard. The Respondents are therefore liable to pay the service charges for drains and pump maintenance as set out above the share of each of them being 1/107th of the total cost.

Reserve fund

86. The sums claimed for the reserve fund were as follows:

- 2006: £3,000
- 2007: £3,000
- 2008: £3,000
- 2009: £3,000

87. Mr Sandler submitted that the wording of the lease permitted service charges to be collected for the purposes of a reserve fund in order to pay for large items which were the liability of the landlord under the lease. He submitted that £3,000, when there were 107 lessees each paying an equal amount which was £188 per year was not unreasonable. There were no objections raised to this charge from the Respondents.

Decision – reserve fund

88. We accept that there is provision for a reserve fund in the lease to be found in the Fourth Schedule, paragraph 11. The sum of £3,000 between 107 lessees is a reasonable sum in view of the nature and size of the estate. We determine that these charges are payable by the Respondents.

Accountancy fees

89. The sums claimed for accountancy fees were as follows:

- 2006: £400
- 2007: £500
- 2008: £550
- 2009: £650

Decision – accountancy fees

90. There was no information at the hearing in respect of the fees for accountancy and no invoices were included in the bundle of invoices with which we were supplied for the four years in question. There is no requirement in the lease for audited accounts and we did not see any audited accounts. Paragraph 7 of the Sixth Schedule requires certification yearly of the total amount of costs and the proportion of this amount due from the tenant. This service charge certificate has been supplied with the relevant years by Broadlands and not by an outside accountant.

91. Having considered the terms of the management agreement with Broadlands we are satisfied that the management services do not include a requirement to provide the certificate of service charges required by the lease at the end of each year. No challenge has been made to the accountant's charge in the service charge certificate. We are therefore satisfied that it has been necessary to pay accountancy fees to finalise the service charge accounts each year. The fees which have been charged, taking into account that there are 107 units which include three separate blocks of flats and 77 houses are reasonable, these costs have been reasonably incurred and the services have been of a reasonable standard. In the circumstances the Respondents are liable to pay for the service charges for accountancy fees as set out above, their individual share being 1/107th.

General repairs

92. The sums claimed for general repairs on the estate were as follows:

2006:

Replace light bulbs -	January	£	1.12
	February	£	14.46
	April	£	3.35
	May	£	39.84
	June	£	22.21
	Aug	£	2.23
	Step	£	2.23
Rubbish removal -	February	£	70.50
	December	£	70.50
Gate repairs -	June	£	130.24

	November	£ 114.30
Gate keys -	July	£ 774.33
Gate repairs -	February	£ 79.90
	December	£ 363.66
Replace lock	-	£ 162.15
Paving slab repairs	-	£ 99.88
Wall repairs	-	£ 58.75
Bolt repair	-	£ 115.74
External works	-	£ 759.05
Glass repairs	-	£ 265.00
Door repairs	-	£ 75.00
Glass repairs	-	£ 165.00
Lock treatment	-	£ 232.89
Total	-	**£3,622.33**

2007:

Bulb replacement -	January	£ 4.47
	February	£ 13.87
	April	£ 19.98
	September	£ 1.70
	December	£ 3.41
Extra cleaning	-	£ 41.13
Rubbish removal	-	£ 94.00
Gate repairs –	April	£ 122.88
	May	£ 227.29
	December	£ 114.31
Gate fobs	-	£ 79.90
Pest control -	July	£ 529.93
	October	£ 69.80
	October	£ 141.00
	December	£ 69.80
Lamp post repairs	-	£ 129.25
Vehicle check	-	£ 5.00
Salt pathways	-	£ 88.13
Total	-	**£1,755.85**

2008

Rubbish removal	-	£ 47.00
Bulb replacement	-	£ 34.08
	-	£ 44.08
General repairs -	January	£ 400.00
	November	£ 117.50
Wall repairs	-	£1,500.00
Keys	-	£ 35.84
Lamp post repairs	-	£ 264.38
Gate repairs -	January	£ 367.31
	March	£ 262.85
Lamp post works	-	£ 460.00
Tarmac repairs	-	£ 258.75
Bin store clearance	-	£ 58.75
Pest control -	March	£ 69.00
	April	£ 70.50
	June	£ 70.50
	August	£ 70.50
	October	£ 70.50
	December	£ 69.80
Total		**£4,227.26**

2009

Signage -	July	£ 49.22
	November	£ 805.00
Install posts	-	£ 322.00
Gate storage	June	£ 184.00
	June	£ 57.50
	August	£ 57.50
	September	£ 57.50
	October	£ 57.50
	October	£ 57.50
Slab replacement	-	£ 4,065.25
Road repairs	-	£ 1,357.00
Bulb replacement	-	£ 264.50
Repairs to street lighting		£ 1,690.50
Gate repairs -	January	£ 220.46

	April	£	166.12
Locate electricity supply -	August	£	69.00
	August	£	172.50
Replace lamps	-	£	272.55
Street lamp repairs -	May	£	196.51
Street lamp repairs -	May	£	138.00
Pest control –	February	£	69.00
	April	£	69.00
	June	£	69.00
	August	£	69.00
	October	£	69.00
	December	£	69.00
DVLA check	-	£	65.00
Total		**£10,739.11**	

93. Mr Sandler submitted for the invoices for these items most of which were routine. Mr Hulse explained that the large item of £1,900 in 2008 which referred to "wall repairs" was in fact for a comprehensive refurbishment of architectural features on the estate including the entrance pillars. In 2009 the slab replacement of £4,625 was because the pavement was defective and the sum of £1,290.50 for repairs to street lighting in 2009 included the cost of excavating a trench and renewing lamp posts. No challenge was made to any of these charges by the Respondents.

Decision – general repairs

94. The tribunal was satisfied with the explanation given in respect of these items which were clearly itemised in the statements attached to the service charge certificate. For most items invoices were available. We are satisfied the Respondents are liable to pay for these charges under the terms of their leases. We are also satisfied that these costs have been reasonably incurred and the works were of a reasonable standard. In those circumstances the Respondents are liable to pay the service charges for general repairs as set out above, their individual share being 1/107th.

Management fees

95. The sums claimed for management fees were as follows:

- 2006: £20,116 (£160 + VAT per unit)
- 2007: £22,000 (£175 + VAT per unit)
- 2008: £22,880 (£180 + VAT per unit)
- 2009: £24,610 (£195 + VAT per unit)

96. The tribunal was provided with a copy of the management contract between the Applicant and Broadlands dated 9th October 2008. This was for a period of twelve months and deemed to continue after the period of twelve months unless cancelled in writing giving three months notice. Mr Sandler was not able to provide the tribunal with a copy of the contract with the previous managing agents. In his witness statement Mr Wilson stated that essential services were kept up at Clayton Court but that it could not be denied that the block was shabby and in need of attention. He said that Broadlands had been informed by residents of the estate that Broadlands looked after the estate in a satisfactory manner. They did much more than simply paying bills. He explained that the estate was not an easy one to manage with three separate blocks of flats needing to be looked after as well as parking areas and estate grounds that are sometimes used by the public even though it is a private estate. To complicate matters part of the estate had recently been sold off which needed careful attention inasmuch as there could sometimes be major parking and litter problems. The two commercial units at Clayton Court constantly had to be monitored and they often placed their rubbish in unlawful areas. To ensure that problems are kept to a minimum the property manager visits monthly or more frequently if necessary.

97. Mr Wilson explained that the current management fee in 2010 was £200 per unit plus VAT per year which he considered to be reasonable. Mr Wilson in his statement explained that lack of funds had always prevented replacement/repair of the lift at Clayton Court being undertaken. A full consultation under section 20 of the Act had taken place in 2009 and Mr Wilson exhibited the consultation documents to his witness statement. He explained however that all the lessees in Clayton Court had refused to pay sums on account and that the matter therefore remained in abeyance. The Applicant had decided, rather than to issue court proceedings to apply to the leasehold valuation tribunal for a determination in respect of the four years in question. It was hoped that once the determination had been received that sufficient funds would become available to pay into the estate fund and carry out the essential works to bring the block up to an acceptable standard.

98. Mr Sandler on behalf of the Applicant conceded that a criticism could be levelled against the Applicant for not taking action earlier in respect of the arrears of service charges which have now been accruing for four years or longer.

99. The level of management was the area of most contention between the Applicant and the Respondents. Mr Sanger when asked by the tribunal about management told the tribunal that the lessees at Clayton Court were simply not getting any management. He said that in his opinion the place had been neglected, the lift had not been repaired, the window frames are rotten and the gutters had not been maintained properly and were causing water to pour down the exterior of the block. In his opinion the managing agents should not be paid at all for the management of the block. However Mr Sanger did accept that the rest of the estate was managed in a reasonable manner.

100. The position of Triplerose Limited (as set out in its letter of 27th August 2010) in respect of management fees was that the block had been neglected and very poorly and rarely cleaned. No decoration had taken place and the managing agents had simply ignored the covenants in the lease for maintenance and repair. The agents simply paid basic bills, did not inspect the premises regularly and address the problems at the block. The management fees charged for purely a service of "administrating bills" were excessive. Triplerose Limited did not produce any alternative quotations, estimates or a reasonable figure for management for the block but stated "we would like the tribunal to determine what is reasonable for this administrative task". Their complaint was endorsed by Enterprise Bonding Limited in their letter of 31st August 2010.

Decision – management fees

101. It appears to us from the complaints of Triplerose Limited, Enterprise Bonding Limited and Mr Sanger and our inspection that this block has seen a gradual deterioration over the years due to a lack of maintenance and decoration. In our opinion there has been a breach of the lease terms by the landlord. Similarly over a period of at least eight years since 2002 the lift has not been operating. This is a four-storey block of flats which was built with a lift. The Applicant acknowledges that the lift has not been working since it purchased the freehold in 2002 but blames the lessees for not paying the service charge.

102. We acknowledge that in principle the fees which have been charged by the managing agents per unit are set at a reasonable level for an estate of this nature. However the lease has extensive provision in the Sixth Schedule paragraph 11 for collection of payments on account and sums of money from the lessees where there is extraordinary expenditure. The managing agents have fallen down seriously on the collection of service charges. We do not have the contract for the previous managing agents but the one which we have for Broadlands sets out in the Second Schedule, "the managing services" at paragraph 2, that one of the managing agent's responsibilities is "collecting the service charge and a sinking fund and holding such sums as agent for the landlord". Paragraph 2(3) requires the managing agents to prepare "a statement of payments made by the tenant to the agent on account of the service charge and the sinking fund for each relevant year or part year under the leases and the payments and provisions made and liabilities incurred in respect of service charges and the sinking fund during each relevant year or part year such statement to be submitted to the landlord within six months of the end of each relevant year".

103. We are satisfied that the lessees are liable to pay management agents fees under the terms of their leases. However, as the level of arrears is so extensive in this block as evidenced in the statement of arrears exhibited to Mr Wilson's witness statement it appears that the landlord and the managing agents have simply not collected the service charges nor have they maintained or decorated the block and no repairs have been carried out to the lift. In those circumstances we can only conclude that as far as the Respondents are concerned, being lessees in Clayton Court, that these costs for managing agents fees have not been reasonably incurred and that the services have not been of a reasonable standard. Although we had no alternative figures presented to us by any of the Respondents, we have concluded taking into account the services that have not been provided to the Respondents at Clayton Court, that a reasonable fee per unit for the years in question would be £120 plus VAT.

Miscellaneous expenses

104.

2007:	Health and safety	£ 470.01
	(Fire risk assessment, Watermint Quay - £264.38)	
	(Fire risk assessment, Clayton Court - £205.63)	
2008:	Managing agents' set-up fee	£ 940.00
2009:	Risk assessment	£1,598.50

105. Mr Sandler explained that a fire risk assessment was carried out for each block in 2007 and submitted that this was a reasonable exercise for the landlord to carry out under the terms of the lease.

106. The set-up fee of £940 was a fee charged by Broadlands when they took over the management of the estate. A copy of the invoice was provided to the tribunal. The tax date on the invoice was shown as 19th October 2009 and the set-up fee was £817.39 plus VAT.

107. The insurance rebuilding valuation in 2009 was self-explanatory. Mr Sandler produced an invoice from Property Risk Management Limited dated 31st March 2009 the details of which were "Property risk survey, insurance rebuilding valuation", however there was no address on this invoice and indeed it appears that the address may have been obliterated.

108. No objection to any of these charges were raised by the Respondents.

Decision – miscellaneous expenses

109. The tribunal accepts it was reasonable to have fire risk assessments. Under the terms of their leases the lessees are liable for these charges and the tribunal determines that these costs were reasonably incurred. In those circumstances the Respondents are liable to pay for the service charges for the fire risk assessments, their individual share being 1/107th.

110. The invoice for the building insurance rebuilding valuation is dated 31st March 2009 and the details as shown on the invoice are "property risk survey, insurance rebuilding valuation re.". Following the word "re." the next word has been obliterated with what appears to be a felt tip pen. Therefore although this invoice is addressed to – C.G. Land Limited - Watermint Quay C/o Broadlands Estate Management LLP it does not give the address of the property risk survey and insurance rebuilding valuation. This means that the tribunal cannot be satisfied that these costs were reasonably incurred for either Clayton Court or the estate. In the circumstances we determine that the Respondents are not liable for this service charge.

111. We do not accept that the Respondents are liable to pay the "set-up fee" under the terms of their leases. This is a one-off fee which appears to have been charged after the contract was entered into by the landlord with the management agents and there is no explanation given on the invoice as to why this fee was payable. In the circumstances we determine that the Respondents are not liable for the set-up fee as a service charge under the terms of their leases.

Summary

112. The service charges for 2006 to 2009 inclusive shall be treated for all purposes as not being due from the tenant to the landlord at any time before the information required under section 47 of the 1987 Act is furnished by the landlord by notice to the tenant. For the years 2007 to 2009 inclusive the tenants may withhold payment of the service charges if section 21B(1) of the Act has not been complied with in relation to the demands for the service charges.

113. As to payablity of the actual service charges by the Respondents the following sums have been disallowed or reduced

- Insurance:
  2006 – sum allowed £2,849.01 (reduced from £3,655.30)
  2007 – sum allowed £2,955.79 (reduced from £3,775.75)
  2008 – sum allowed £3,135.42 (reduced from £3,956.52)
  2009 – sum allowed £3,358.04 (reduced from £4,428.37)
  The Respondents are each liable for 1/12th of the total yearly sum.
- Management fees:
  2006 – sum allowed £120 plus VAT per unit (reduced from £160 + VAT)
  2007 – sum allowed £120 plus VAT per unit (reduced from £175 + VAT)
  2008 – sum allowed £120 plus VAT per unit (reduced from £180 + VAT)
  2009 – sum allowed £120 plus VAT per unit (reduced from £195 + VAT)
  This sum is payable by each Respondent
- Set-up fee:
  2008 - £940 disallowed in total
- Risk assessment:
  2009 - £1,598.50 disallowed in total

James Dorrell
Chairman
30 November 2010.