

8342



HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
EASTERN REGION
LEASEHOLD VALUATION TRIBUNAL**

Case No : CAM/26UH/LSC/2011/0123 & 0140

Property : Nos 1, 6 & 8 Campion Court, Stevenage, Herts SG1 3EY

Claimant : Circle 33 Housing Trust Ltd

Defendants : Dawn Tobin (Nos. 1 & 6 Campion Court)
Mr & Mrs SK Sen (No. 8 Campion Court)

Inspection : 9th February 2012

Hearing : 9th February 2012

Determination : 9th February 2012

Written Decision : 28th June 2012

Tribunal : Mr S Reeder (lawyer chair)
Mr Dallas Banfield FRICS (valuer member)
Mrs Najiba Bhatti (lay member)

Decision : Determination of the liability for, and reasonableness of, service charges and administration charges following a transfer from the county court

DECISION

DECISION

The service & administration charges

The following service and administration charges are determined by this Tribunal to be reasonable and payable :

Charge	2004/5	2005/6
Communal Lighting (2100)	£23.63	£25.33
Depreciation Aerial (2424)	£0.52	£0.52
Tree surgery (2432)	£5.25	£24.73
Light bulb replacement (2466)	Nil	Nil
Rubbish clearance (2471)	Nil	Nil
General cleaning (2474)	£114.57	£241.19
Window cleaning (2473)	£45.24	£13.29
Car park maintenance (2478)	Nil	Nil
Grounds maintenance (2481)	£103.55	£86.77
TV & satellite (2490)	Nil	Nil

Buildings insurance (8882)	£108.87	£112.79
Reserve fund (8883)	£300.00	£300.00
General repairs (8885)	£16.42	£47.00
Admin depreciation (ADMD)	-£0.05	£0.05
Admin services (ADMS)	-£40.96	-£48.05
Management fee (8884)	£35.81	£37.10

Charge	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12
Communal Lighting (2100)	£27	£8	£66.59	£21.04	£82.30	£22.09
Depreciation Aerial (2424)	£0.52	£0.52	£0.52	£0.52	Nil	Nil
Tree surgery (2432)	£24.73	£24.72	£24.72	£24.72	Nil	Nil
Light bulb replacement (2466)	Nil	£0.39	Nil	Nil	Nil	£4.18
External cleaning (2465)	£64.55	£7.64	£44.74	£40.59	£48.72	£48.60
Rubbish clearance (2471)	£44.80	£5.88	£20.10	£68.53	£6.56	£50.00
General						

cleaning (2474)	£176.06	£183.40	£104.41	£94.71	£113.69	£136.12
Window cleaning (2473)	£6.35	Nil	Nil	Nil	Nil	Nil
Car park maintenance (2478)	Nil	Nil	Nil	Nil	Nil	£8.33
Grounds maintenance (2481)	£88.52	£259.05	£107.81	£107.71	£121.40	£129.92
TV & satellite (2490)	Nil	Nil	Nil	Nil	Nil	£4.17
Buildings insurance (8882)	£116.40	£121.17	£70.00	£70.00	£70.00	£73.50
Reserve fund (8883)	£309.60	£300.00	£300.00	£300.00	£300.00	£300.00
General repairs (8885)	£141.63	£29.65	£77.00	£25.44	Nil	£133.33
Admin depreciation (ADMD)	Nil	£2.52	£2.52	£2.52	Nil	Nil
Admin services (ADMS)	Nil	£71.85	£63.10	£53.72	£55.90	£80.52
Management fee (8884)	£38.28	£96.00	£96.00	£96.00	£96.00	£96.00

The costs of the Tribunal proceedings

As this matter was a transfer at the direction of the county court this Tribunal makes no determination as to whether to make an order pursuant to section 20C of the Landlord & Tenant Act 1985

Transfer back to the County Court

Each of these three claims (OLU0069) C33HT & Tobin, (OHI00343) C33HT & Tobin, and (OLU00689) C33HT & Sen) has been transferred to the Leasehold Valuation Tribunal for a determination in relation to the service charges and administration charges claimed. Each of the claims is stayed pending the determination of this Tribunal. The three consolidate claims are now transferred back to the Luton County Court to enable any party to apply to the court on any relevant matter including payment of court fees, costs within the court proceedings, interest and enforcement.

REASONS

Procedural history

1. Case No. OLU00691 was commenced in the Hitchin county court in late 2010 and relates to 1 Champion Court and to Ms Tobin as the defendant lessee. The sum of £5,249.78 is claimed as service charges said to be due and owing at 1st December 2010. On 19th April this claim was transferred to the Luton county court. In May 2011 the claimant filed a reply to the defence & counterclaim. On 25th August 2011 District Judge Gill made an agreed order transferring this claim to this Tribunal for determination. On 29th September 2011 this Tribunal made a Directions Order for the further conduct of the matter.
2. Case No. OHI00343 was commenced in the Hitchin county court in late 2010 relates to 6 Champion Court and to Ms Tobin as the defendant lessee. The sum of £5,428.25 is claimed as service charges said to be due and owing at 1st December 2010. In March 2011 Ms. Tobin filed a defence in counterclaim. On 19th April this claim was transferred to the Luton county court. In May 2011 the claimant filed a reply to the defence & counterclaim. On 25th August 2011 District Judge Gill made an agreed order transferring this claim to this Tribunal for determination. On 29th September 2011 this Tribunal made a Directions Order for the further conduct of the matter.
3. Case No. OLU00689 was commenced in the Luton county court in September 2011 and relates to 8 Champion Court and Mr & Mrs Sen as lessee defendants. The sum of £5,288.12 is claimed as service charges said to be due and owing as at 1st September 2011. On 20th September 2011 District Judge Cross made an agreed order transferring consolidation this claim with those against Ms. Tobin and transferring it to this Tribunal for determination. In accordance with that order Mr & Mrs Sen filed a defence and counterclaim by 12th October 2011. On 25th October 2011 this Tribunal made an Order for Directions for the further conduct of the matter.
4. In accordance with the consolidation and transfer by the court this Tribunal has considered these claims together. On 9th February 2012 the Tribunal carried out a

visual inspection of the external parts and grounds/gardens together with the internal communal parts of the block in which the respective premises are situated and conducted a hearing that same day. The Tribunal completed its determinations on 9th February 2012. This decision was not written up until June 2012 due to a prolonged period of illness suffered by the Chairman who apologises to the parties for the undoubted inconvenience caused by this delay.

The relevant service & administration charges

5. The parties have helpfully provided a table which sets out the charges in dispute for the accounting years 2006/7-2011/12 inclusive (page 975 of the bundle) together with a Scott Schedule which summarises their respective positions on each of those charges. During the hearing and whilst making its determinations the tribunal has adopted the numbering used on those documents for the charges :

Charge	2004/5	2005/6			
Communal Lighting (2100)	£23.63	£25.33			
Depreciation Aerial (2424)	£0.52	£0.52			
Tree surgery (2432)	£5.25	£24.73			
Light bulb replacement (2466)	Nil	Nil			
Rubbish clearance (2471)	Nil	Nil			
General cleaning (2474)	£114.57	£241.19			
Window cleaning (2473)	£45.24	£13.29			
Car park maintenance (2478)	Nil	Nil			

Grounds maintenance (2481)	£103.55	£86.77				
TV & satellite (2490)	Nil	Nil				
Buildings insurance (8882)	£108.87	£112.79				
Reserve fund (8883)	£300.00	£300.00				
General repairs (8885)	£16.42	£47.00				
Admin depreciation (ADMD)	-£0.05	£0.05				
Admin services (ADMS)	-£40.96	-£48.05				
Management fee (8884)	£44.76	£46.37				

Charge	2006/7	2007/8	2008/9	2009/10	2010/11	2011/12
Communal Lighting (2100)	£27	£8	£66.59	£21.04	£82.30	£22.09
Depreciation Aerial (2424)	£0.52	£0.52	£0.52	£0.52	Nil	Nil
Tree surgery (2432)	£24.73	£24.72	£24.72	£24.72	Nil	Nil
Light bulb replacement (2466)	Nil	£0.39	Nil	Nil	Nil	£4.18

External cleaning (2465)	£64.55	£7.64	£44.74	£40.59	£48.72	£48.60
Rubbish clearance (2471)	£44.80	£5.88	£20.10	£68.53	£6.56	£50.00
General cleaning (2474)	£176.06	£183.40	£104.41	£94.71	£113.69	£136.12
Window cleaning (2473)	£6.35	Nil	Nil	Nil	Nil	Nil
Car park maintenance (2478)	Nil	Nil	Nil	Nil	Nil	£8.33
Grounds maintenance (2481)	£88.52	£259.05	£107.81	£107.71	£121.40	£129.92
TV & satellite (2490)	Nil	Nil	Nil	Nil	Nil	£4.17
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Reserve fund (8883)	£309.60	£300.00	£300.00	£300.00	£300.00	£300.00
General repairs (8885)	£141.63	£29.65	£77.00	£25.44	Nil	£133.33
Admin depreciation (ADMD)	Nil	£2.52	£2.52	£2.52	Nil	Nil
Admin services (ADMS)	Nil	£71.85	£63.10	£53.72	£55.90	£80.52
Management fee (8884)	£47.85	£120.00	£120.00	£120.00	£120.00	£120.00

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The relevant law – service charges

6. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal’s jurisdiction to determine liability to pay service charges. The relevant sections are set out below (adopting the numbering of the Act).

18. Meaning of ‘service charge’ and ‘relevant costs’

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

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 reasonable 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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C : Limitation of service charges : costs of proceedings

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

27A. Liability to pay service charges : jurisdiction

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

The relevant law – administration charges

7. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine the Payability and reasonableness of administration charges. The relevant sections are set out below (adopting the numbering of the Act).

Section 1 - meaning of "administration charge"

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly--
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither--

- (a) specified in his lease, nor
- (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Sections 2 & 3 - reasonableness of administration charges

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

(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that--

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be--

- (a) the variation specified in the application, or
- (b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Section 5 - liability to pay administration charges

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to--

- (a) the person by whom it is payable,

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

of any question which may be the subject matter of an application under sub-paragraph (1).

The inspection

8. Champion Court comprises two low rise blocks ; Block (Nos. 1-12) and Block B (Nos 13-24) on a corner plot. They have the benefit of a short driveway from the public road leading to a parking area, and relatively expansive and mature grounds/gardens to the front and rear of each of the blocks, including a very attractive side garden to block B planted and maintained by the occupier of flat 2. The Tribunal made a visual inspection of the external parts and grounds/ gardens together with the internal communal parts of the block A (Nos.1-12) in which the respective flats are situated, and an external inspection of Block with the assistance of the parties and their representatives. At the outset of that inspection the parties were reminded of the issues raised on the documents before the Tribunal being :

- Car park surface maintenance
- Adequacy of maintenance of the lighting to the grounds/gardens

- Adequacy, costs and value for money of the maintenance of the hedges, shrubs, trees and grassed areas to those grounds
 - Adequacy of cleaning of the external bin cupboards
 - Adequacy of managing larger items left in the gardens by occupiers
 - Maintenance of the boundary fence and border to one side of the plot
 - Adequacy of managing larger items left in the internal common parts by occupiers
 - Adequacy of external window cleaning
 - Water penetration into internal common parts
 - Maintenance of lighting to the internal common parts
 - Adequacy of the cleaning of the internal common parts
9. During that inspection the Tribunal observed that block A has 5 general refuse bins together with one further bin for paper refuse and one further bin for glass refuse. Internal lights to communal stairs and landing are controlled by a timer. The design of the blocks incorporates relatively small windows and so dictates that less natural light penetrates into those internal communal areas. Several large items (eg. a TV and washing machine) appear to have been discarded in the communal areas to Block A. The occupiers appear to be storing other items (child bikes & car seats etc) in those areas.
10. In the grounds/gardens there are 11 lights controlled by a timer : 6 serving block A and 5 serving block B. The car parking markings to the surface have worn away in places. The defendants referred to recurrent overflowing drains to the car parking areas during periods of rainfall, and to a lack of salt to the same during winter periods. A large section of the boundary fence to one side has clearly been part replaced or reconstructed and the parties agreed this occurred during 2011. The entrance gate into the plot was in a dilapidated state. The three drying frames in the gardens were in a relatively dilapidated state.

The hearing

11. The claimant landlord has been ably represented by Mrs Chambers (barrister) and Samine Saleem (solicitor) and has relied upon oral evidence from Sarah Wittikend (income officer for Circle 33) and Eric Missah.
12. The defendant lessees have been ably represented by Ana Afonso (solicitor). Ms Tobin and Mr & Mrs Sen have been present and have spoken effectively on their own account. They have been accompanied by Mr & Mrs Davey (occupiers of 3 Campion Court), Mrs Linda Brown (occupier of 11 Campion Court), Mrs Gale, Ms Byrne and Miss St Clair.
13. The Tribunal has been provided with 2 volumes of documents running to over 1200 pages. This includes the court papers, leases, service charge accounts, service charge demands, section 20 consultation documentation, contractor and supplier invoices, computer maintenance records, photographs of the communal parts and gardens, and correspondence.

14. In accordance with the Tribunal Directions order of 25th October 2011 the parties have each filed a statement summarising their position on the disputed service charge items.
15. In addition, the defendant lessees have relied upon the witness statements filed in the county court proceedings from Ms Tobin and Mr Sen, together with Linda Brown (occupier of 11 Campion Court), Miladin Sajic (occupier of 9 Campion Court), Jane Bolton (occupier of 22 Campion Court), Gary Sladen (occupier of 24 Campion Court), Brenda Bull (occupier of 18 Campion Court), Sarah Byrne (friend of Ms Tobin who stays with her), Maria Gayle friend of Ms Tobin who stays with her) Frank Digardo (managing director of the adjacent Abington Hotel), Gloria Davey (lessee of 3 Campion Court), and Rosemary Trebble (occupier of 6 Campion Court). All of these statement largely repeat the issues raised by Ms Tobin and/or Mr Sen..
16. Ms Tobin has lived at 1 Campion Court since 1999 and acquired the leasehold interest of 6 Campion Court in 2002. She is a director of the Campion Court Leaseholders Association. She complains about many aspects of the claimant's management which she describes as "inefficient and inept". She states that charges for window cleaning, gardening and grounds maintenance external and internal communal lighting, electricity and aerial maintenance are unreasonably high given the poor level of service provided. She complains of a lacks of cyclical maintenance planning leading to dilapidation. In particular she refers to lessees having to replace windows as a result of such dilapidation, to the boundary fence falling in 2007 and not being reinstated until 2010 leaving the grounds insecure, to repeated water penetration into the communal landing from the roof, and to the repeated backing up of drains in the grounds. She states that lessee charges are inflated as the claimant's tenants make no contribution to the service costs.
17. Mr Sen provides a written statement which refers to failures to adequately remedy problems with water penetration, failures to adequately clean the bin cupboards, failures to eradicate rat infestations in the bin cupboards, a lack of cyclical maintenance planning leading to dilapidation, and failures to adequately maintain the communal parts and gardens. His view of the claimant's management is stark : "phone calls are seemingly dismissed and if there is any response at all, it is never promptly or within a reasonable time frame and we have to ring at least 3 times before any kind of acknowledgement is made, however incomplete it is.
18. Similarly, the claimant landlord has relied upon the witness statements filed in the county court proceedings from Eric Missah and Sarah Wittikend.
19. Sarah Wittikend is the Income Officer for Circle 33 and sets out the relevant lease covenants relied upon as imposing liability to pay the service charges demanded. She gives a chronology of, and exhibits, consultation documentation, service charge accounts and service charge demands. In addition she has given oral evidence and answered questions from the lessees and the Tribunal during the hearing
20. Eric Missah is the Portfolio Team Manager for Circle 33 and leads a team of 7 people who have direct management of 1800 properties including Campion Court.

His witness statement dated 9th November 2001 is prepared for the county court proceedings and details the claimant's position on each of the service charge items disputed. His second written statement dated 8th December 2011 responds to the defendant lessees' statement served in response to the Tribunal Directions order, and endeavours to respond to the issues raised in that document. In addition Mr Missah has given oral evidence and answered questions from the lessees and the Tribunal during the hearing

The leases

21. The Tribunal has been provided with the relevant leases which are in the same terms. At the Tribunal's request Mrs Chambers very helpfully addressed it on the relevant covenants for the purposes of the lessees' liability to pay each of the service charge items in dispute, and led formal evidence from Sarah Wittikend to this effect. The Tribunal has itself considered those leases carefully and is satisfied that the leases do impose liability in relation to each of the disputed service charge items. It follows that the Tribunal determines that each is payable in principle. The Tribunal therefore proceeds to determine whether the actual service charge sums are reasonable having regard to the relevant costs incurred and to the issue of whether the services charged for were provided to a reasonable standard.

The determinations

The service charge proportion for each lessee

22. The individual service charge for each lessee is calculated as 1/24th of the total relevant cost. This is based on the 24 flats in the two blocks which make up Champion Court, including the 6 flats which are retained by the claimant and let on assured tenancies. This is borne out by the document before the Tribunal. It follows that the lessees concern that they are 'subsidising' the service provided to the assured tenants can be allayed.

Communal lighting (2100)

23. This charge relates to 5 external lights in the grounds and 8 internal lights in the communal areas. The charges demanded are the actual usage as invoiced by the electricity supplier duly apportioned.

24. The lessees complain that for periods garden lights remain on 24/7 and so incur unreasonable electricity costs, and for periods they are either out of phase or fail and are not repaired causing inconvenience and risk during the hours of darkness. The claimant states that these lights are controlled by timer switches which are adjusted twice each year on a "seasonal" basis.

25. The lessees complain that the internal communal areas lights remain on 24/7 and so incur unreasonably high electricity costs, and for periods they fail and are not repaired timeously causing inconvenience and risk. The claimant argues that 24/7 lighting is required given the nature of the blocks. On inspection it was apparent that the design and build of the blocks, including the number and size of windows

to the common areas, restricts the daylight penetration into the communal parts. The Tribunal takes the view that, in such circumstances, the present arrangement of 24/7 lighting is reasonable.

26. Whilst Mr Missa helpfully directed us to documents which relate priority codes for repairing failed lights and maintenance records showing some timeous responses to such failures the consistent body of evidence of failures to ensure that timers are accurately reflecting the seasonal dusk and dawn and/or remedy failures of the lighting do establish management failings. However, the Tribunal determines that this should be reflected in the management charge rather than this item which merely recharges the actual electricity costs incurred and is reasonable and is payable in full.

Depreciation aerial (2424)

27. This relates to depreciation of the cost of the communal terrestrial TV aerial. The lessees complain that there is no communal TV aerial in block B. This may be so but there is a communal aerial in block A which served both of these defendant lessees up to and including the 2009/10 accounting year when a satellite system was adopted. The Tribunal determines that this charge is reasonable and is payable in full.

Tree surgery (2432)

28. The lessees state that the only substantial tree works to have been carried out have been removal of 2 trees several years ago and so the yearly fixed charge is unreasonable. The landlord states that such works were carried out in 2004 and 2005 at a reasonable cost and by appropriately qualified tree surgeons. The 2004 works cost £1010.56 and has been recharged at a depreciated sum of £5.25 p/a over 8 years. The 2005 works cost £4203.54 and has been recharged at a depreciated sum of £19.46 p/a over 5 years. These two depreciated charges make up the £24.72 charges between 2006/7 and 2009/10. For the year 2010/11 it was decided to recover the remaining balance on this item from the sinking and this is reflected in the 'nil' charge since 2010/11. It was apparent on inspection that the Camion Court grounds have the benefit of a number of mature trees. There is nothing before the Tribunal to suggest that either the works or the resulting charges are unreasonable. The Tribunal determines that this charge is payable as claimed.

Light bulb replacement (2466)

29. The lessees complain of a charge of £99.06 per flat. This is erroneous as can be seen from the actual sums claimed which are either very low or nil. The Tribunal determines that they are payable as claimed.

External cleaning (2465)

30. This item relates to the car parking area and pathways in the gardens/grounds. The landlord states that the external cleaning works are carried out by the same contractor who provides 'general cleaning' to the internal common parts and until

2007/8 'window cleaning' and that each is priced separately to ensure transparency and value for money. The lessees question whether this arrangement gives value for money and state that the poor quality of the service provided is not commensurate with the costs being recharged. On inspection the car parking area and pathways appeared to be in a reasonable state of cleanliness and order but this may not be a reliable indication of their state at other times. In addition close inspection was hampered by the remains of recent snowfall. The grounds to Campion Court are verdant and well planted and screened by mature trees and shrubs which will inevitable result in leaf fall and moss to pathways. The surface car parking area is ageing and will be difficult to clean. The charges made appear to be unremarkable to the Tribunal having seen the site. The division of charges for a number of tasks by the same contractor does provide transparency. Having regard to this charge in isolation and as a component of the three services provided it appears reasonable to the Tribunal. It follows that the Tribunal determines that this is charge is reasonable and is payable in full.

Estate rubbish clearance (2471)

31. This relates to bulk waste left in communal areas or in the gardens/grounds. It is common ground between the parties that this has been and continues to be a problem with occupiers 'dumping' unwanted large items. Indeed some were seen during the inspection as noted earlier in this Decision. The landlord states that, until 2010, this was carried out by a monthly visit to remove such items and since that time it is arranged on a responsive basis such as the record at page 880 of the bundles. The Tribunal takes the view that the sums charged are reasonable for this type of service. It is unfortunate that such costs are incurred on an ongoing basis and there is little evidence before us to show that the landlord has taken all reasonable management steps to eliminate such 'dumping' as Campion Court consists of only 24 flats in 2 blocks in its own grounds. However, any such concerns are relevant to the management charge rather than the actual charges incurred. It follows that the Tribunal determines that these charges are reasonable and are payable in full.

General cleaning (2474)

32. This is carried out by the same contractor that carries out the external cleaning and until 2007/08 external window cleaning and the Tribunal's view in relation to value for money and transparency of charging made earlier are repeated. The lessees state that the quality of the service provided is not commensurate with the charge made. The landlord states that the charge covers the contractor attending every two weeks and cleaning the internal communal parts including sweeping and washing floors, and cleaning the internal windows in the communal parts. The Tribunal is of the view that the charges made reasonably reflect this level of service. A more frequent and/or more comprehensive service could be provided but this would result in a higher charge. Having regard to the evidence before the Tribunal these charges are reasonable and so are payable in full.

Window cleaning (2473)

33. This relates external window cleaning and was carried out until 2007/08 by the same contractor who carried out the external cleaning and common (internal) cleaning and the Tribunal's view in relation to value for money and transparency of charging made earlier are repeated. The level of charge in 2006/7 (£6.35 per flat) reflects the basic service provided. Again, a more frequent and/or more comprehensive service could be provided but this would result in a higher charge. Having regard to the evidence before the Tribunal these charges are reasonable and so are payable in full. This cleaning ceased after 2006/07 as part of the negotiations relating to the lessees request to take over management of Campion Court which appears to have reached an impasse in that the landlord claims that the lessees have not complied with the statutory requirement to assume the management whereas the lessees believe they have done so with the assistance of a solicitor. The Tribunal cannot determine that 'right to manage' dispute as this matter was transferred by the court only for the service charges to be determined, but it does question whether it is good management to allow this impasse to result in their being no external window cleaning since 2006/7. However, it takes the view that this management failing should be reflected in its determination of the reasonable management charge rather than the actual cost of window cleaning which is recharged under this item.

Car park maintenance (2478)

34. The lessees state that no such maintenance has been carried out since 2002 and that the surface has dilapidated and parking markings worn away. This corresponds with the Tribunal observations during the inspection. The landlord does not dispute this. Indeed it is reflected in the fact that no service charge has been demanded in relation to this item between 2006/7 and 2010/11. A charge of £8.33 is made for 2001/12 with a view to now remedying these conditions. In the Tribunal's view this is reasonable and payable. Again, the Tribunal questions whether it is good management to allow this dilapidation to continue despite lessee complaints between 2006/7 and 2010/11 without programming planned maintenance. However, it takes the view that this management failing should be reflected in its determination of the reasonable management charge rather than the actual cost of window cleaning which is recharged under this item.

Garden/grounds maintenance (2481)

35. As noted on inspection Campion Court has the benefit of relatively expansive and mature grounds/gardens to the front and rear of each of the blocks with sections of lawn and sections of plants and shrubs. The lessees state that the gardening service is inadequate and the charges made unreasonable given the level of service. The landlord states that the gardening contract (held by ISC until April 2011 and John O'Connor since then) provides for 19 planned works visits each year comprising 2 a month during Summer months and a single monthly visit during Winter months. The Tribunal notes from its own experience that such a programme is fairly typical. The Tribunal notes from its own experience that the resulting charges are fairly typical and are within the permissible range of what is reasonable. It follows that the Tribunal determines that these charges are reasonable and are payable in full. Given the extent and nature of the gardens/ grounds to Campion Court it may

be advisable to make provision for a more comprehensive gardening programme but such an arrangement would result in a proportionately higher charge.

TV & satellite (2490)

36. This relates to the satellite TV system which includes a distribution system in the bin store to Block A seen on inspection and resulting charges which are explained in some detail on correspondence between the landlord and lessees which is included in the bundles before the Tribunal. The fixed cost of £4.17 p/a is the actual depreciated costs of the installation. In the circumstances the Tribunal determines that these sums are reasonable and payable.

Ground rent (8881)

37. For the reasons explained during the hearing this Tribunal has no jurisdiction to determine a different ground rent to that payable under the lease. The sums claimed do appear to correlate with the leasehold provisions on ground rent but this is a matter for the court.

Buildings insurance (8882)

38. There is no dispute between the parties that the sums claimed are payable and reasonable. The Tribunal endorses that position having regard to the information before it relating to the insurance.

Reserve fund (8883)

39. Since the 'call' for £309.60 in 2006/7 this has settled to a fixed sum of £300 p/a. In response to questions from the lessees during the hearing the landlord explained that this sum is arrived at by a method which takes into account the entire Circle 33 estate under management which runs well beyond Campion Court. In his November 2011 statement for the court proceedings Mr Missah states that this calculation is based on the premise that average cost of cyclical maintenance over a 7 year cycle across the Circle 33 managed stock as whole is £21,000. He states that the accumulated reserve was intended in part to fund roof inspection and programmed works during 2010/11 and section 20 consultation correspondence in the bundles before the Tribunal confirms this. However, this too appears to have been halted due to the impasse relating to the 'right to manage' dispute. In the circumstances the Tribunal is of the view that the sums charged to the reserve fund are rational and reasonable and due in full. Given the ongoing problems with water penetration through the roofs it is advisable that so soon as is practicable this fund is applied to remedying that problem and further delays, whether referable to the 'right to manage' dispute or any other cause will only likely result in further inconvenience and greater costs at the end of the day.

General repairs (8885)

40. These are variable sums which recharge the actual costs of responsive repairs carried out. The lessees complain that these costs are recharged only to the long lessees and not to Circle 22 assured tenants. The documents and evidence before

the Tribunal establish that this is not the case and they are apportioned across all 24 flats. It follows that these charges are reasonable and are payable.

Admin depreciation (ADMD)

41. The lessees merely wished for an understandable explanation of what this item related to. This was provided in Mr Missah's written statements and his oral evidence before the Tribunal. These charges are reasonable and are payable. It is apparent that none of the documentation provided in the bundles before the Tribunal adequately explains these charges but the Tribunal takes the view that this failure is best reflected in its assessment of a reasonable management charge rather than interfering with these calculated actual costs.

Admin services (ADMS)

42. The lessees merely wished for an understandable explanation of what this item related to. This was provided in Mr Missah's written statements and his oral evidence before the Tribunal. These charges equate to approximately 15% of the contract costs of the relevant works/services recharged as service charge. The Tribunal accepts that this percentage falls within suggested scope of 10-20% provided by RICS guidance. These charges are reasonable and are payable. It is apparent that none of the documentation provided in the bundles before the Tribunal adequately explains these charges but the Tribunal takes the view that this failure is best reflected in its assessment of a reasonable management charge rather than interfering with these calculated actual costs.

Management fee (8884)

43. Other than the charge of £47.85 for 2006/07 this charge is a fixed fee of £120p/a for managing the Champion Court blocks, grounds and lessee matters. The Tribunal accepts that this is a reasonable fee in principle. However, the Tribunal takes the view that the actual management has fallen short of the service level commensurate with such a charge as has been noted above. The Tribunal is presented with a body of evidence which supports this conclusion.

44. Ms Tobin complains about many aspects of the claimant's management which she describes as "inefficient and inept". The Tribunal would not endorse this description but does determine that the management failures must be reflected in its determination of a reasonable management charge for the actual service delivered to lessees.

45. Mr Sen's view of the claimant's management is equally stark : "phone calls are seemingly dismissed and if there is any response at all, it is never promptly or within a reasonable time frame and we have to ring at least 3 times before any kind of acknowledgement is made, however incomplete it is. This failure to adequately and/or timeously respond to lessee complaints is also reported by others.

46. In her written statement Linda Brown of 11 Champion Court states that the claimant has failed to adequately respond to her complaints about rainwater

penetration through the skylight to the communal landing other than by ineffective patch repairs, failed to adequately respond to her complaints about the communal lights being out of synch and staying on 24/7, failed to provide adequate planned maintenance to the internal communal parts and exterior grounds, and failed to repair the fallen boundary fence for many months. The essence of her complaint is that the claimant does not provide proper planned maintenance and does not provide reactive maintenance within a reasonable timeframe.

47. In his written statement Miladin Sajic of 9 Campion Court states that there have been “significant management issues” and refers to unsuccessful attempts to remedy rainwater penetration, lack of window cleaning, poorly maintained gardens, inadequate cleaning of the common areas, the failure to deal with the dumping of items and rubbish in the internal communal parts and in the gardens. He states “the building resembles a tip”.
48. The main complaint made by Jane Bolton of 22 Campion Court in her written statement relates to the unsuccessful attempts to remedy rainwater penetration but she also refers to the same communal areas and gardens issues raised by others. The essence of her complaint is that “Circle 33 makes promises which are never fulfilled. They assure us of actions which are never carried out and they rarely reply to emails”.
49. Gary Sladen appears to be the claimant’s tenant at 24 Campion Court. His written statement refers to the same issues as others. He too states that his letters and phone calls to the claimant remain unanswered and the issues he raises unresolved after long delays.
50. A written statement from Brenda Bull of 18 Campion Court refers to a lack of cyclical maintenance to the external window frames, failure to remedy failures of the external lights, and a lack of proper management and maintenance of the bin cupboards, garden pathways and clothes hanging area.
51. Having careful regard to the information and evidence before it, and doing the best it can when applying the inevitably imperfect assessment of what is, in fact, a reasonable charge for the actual management service delivered the Tribunal has determined that the management charges for each of the accounting years should be reduced by 20%.

The costs of the Tribunal proceedings

52. As this matter was a transfer at the direction of the county court there is no application fee due but a hearing fee of £150 has been paid by the claimant. Further, the claimant has incurred representation costs before the Tribunal.
53. As this matter comes before the Tribunal as a transfer from the county court these costs best fall to be considered by that court when considering the issue of costs in the round including those incurred in the county court proceedings. That court has jurisdiction pursuant to section 20C of the Landlord & Tenant Act 1985 to make an order precluding the claimant from re-charging the costs referable to this Tribunal as a service charge if it considers it just and equitable to do so.

Accordingly, this Tribunal does not exercise its own jurisdiction to make such an order.

Stephen Reeder
Lawyer Chair

28th June 2012

Caution

The Tribunal inspected the blocks and the gardens/grounds solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the blocks or gardens/grounds are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the same.