HM Courts & Tribunals Service

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Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00AG/LSC/2011/0276 & 0438
Premises:	11 Waverley Court, 41 Steeles Road, London NW3 4SB
Applicant(s):	Stanley Sherwin Beller
Respondent(s):	Heritage Land Limited
Dates of hearing:	26 and 27 September 2011 6 and 7 February 2012
Date of inspection:	14 February 2012
Appearance for Applicant:	In person
Appearance for Respondent:	Mr J Bates, counsel Instructed by Davenport Lyons, solicitors
Leasehold Valuation Tribunal:	Ms F P Dickie, Barrister, Chairman Mr D D Banfield, FRICS Mr L G Packer
Date of decision:	5 April 2012

Decision of the Tribunal

(1) The Tribunal determines that :

a. The landlord's legal costs are not recoverable as a service charge.

b. Pest control and gardening costs are chargeable to the residential leaseholders only.

c. Garage leases:

   i. The landlord has already reasonably apportioned the electricity costs to the garage lessees in respect of all of the years in dispute.

   ii. The amount of 10% of the cost of insuring the Building is reasonable in respect of the contribution from the garage lessees for all of the years in dispute.

   iii. 5% of management fees charged prior to the introduction of a discrete management fee for the garages in 2008 are not payable by the residential lessees as a service charge, as they relate to the management of the garages.

   iv. No other contribution to service charge expenditure is reasonably required from the garage lessees.

d. The parking space leases:

   i. These lessees obtain no benefit from the service charge expenditure. No reduction of service charge expenditure (other than to repairs to the spaces) should reasonably be made in respect of them.

e. The mast leases:

   i. It is unreasonable to charge service charges to the residential lessees without accounting for the occupation of the roof lessees and the benefit they derive from the building and its services. Reasonable discounts from expenditure should be made prior to their apportionment to the residential leaseholders through the service charge:

      4% to Buildings Insurance, Caretaking, Electricity, Building maintenance including door entry and lift, accountancy and management, as set out in the decision below.

f. Subject to their proper apportionment, accountancy charges are reasonable and payable.

g. Service charges in the amount of insurance commissions of 20% paid to the managing agent for insurance claim handling are a reasonable and payable service charge.

h. Management fees charged to the Applicant for each year in dispute should not be more than £200 plus VAT in any event.

i. The tribunal's determinations regarding Individual invoices for service charge expenditure which were challenged are as set out in the Schedule at Appendix 1 to this decision.

(2) The Respondent must reimburse Mr Beller's tribunal fees of £350 within 28 days.

(3) The tribunal makes an order under s.20C of the Act.

(4) It is assumed that further application will be made by the landlord in the County Court proceedings in respect of interest and costs of these proceedings.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of estimated service charges payable by the Applicant in respect of the service charge years 2006 – 2010. The relevant legal provisions are set out in Appendix 2 to this decision. The Applicant also sought a lease variation under section 35 of the Landlord and Tenant Act 1987, but withdrew this application at the hearing.

2. The Respondent is the freeholder of Waverley Court, 41 Steeles Road, London NW3 4SB ("the Building") having purchased the freehold title in October 2000. The Building was until 16 August 2011 managed on behalf of the Respondent by Corporate Residential Management Limited ("CRM"). On 16 August 2011 the right to manage was acquired by Waverley Court RTM Company Limited following the exercise of the leaseholders' statutory rights to manage the Building pursuant to the Commonhold and Leasehold Reform Act 2002. The Applicant was at the time of his application to the LVT a member of that RTM Company.

3. The landlord issued a Claim against Mr Beller in the County Court dated 9 March 2011 for unpaid service charges in the sum of £10,087.74 plus interest and costs. Mr Beller filed a Defence dated 18 April 2011. Concurrently on filing his Defence, Mr Beller issued his application to the LVT. By order of District Judge Price sitting at the Central London County Court on 27 June 2011, the proceedings were transferred to the Leasehold Valuation Tribunal, and the claim stayed pending its decision.

4. The tribunal issued directions on 24 May 2011 for a full hearing to take place on 26 and 27 September 2011. The hearing was adjourned part heard to 6 and 7 February 2012, prior to which Mr Beller sold his lease. It is understood

that solicitors hold a retention against the service charges the landlord claims from him, pending the outcome of these proceedings.

The Lease

5. The Applicant was the owner of the leasehold interest in the subject premises, Flat 11 Waverley Court, pursuant to a lease dated 9 August 1974. His duty to pay for services is set out at Clause 4(4) of the lease. Payment for the services is dealt with at the Fifth Schedule, which requires the Applicant to pay a proportion of the Total Expenditure incurred by the Respondent in carrying out its obligations under Clause 5(5) and any other costs and expenses reasonably and properly incurred in connection with the Building. Mr Beller's contribution to the service charge expenditure was expressed in his lease to be 4.5%.

Inspection

6. The tribunal carried out an inspection of the Building on 14 February 2012, including the internal communal areas and the roof. The Building is a six storey residential block built around the 1970s comprising 16 residential flats. There are also 16 garages at basement level, accessed by a driveway leading off the public highway down into the lower ground level of the Building. There is a parking space at ground floor level to the front of the Building. The parking space is expressly reserved to the Respondent as part of its freehold interest in the Building. The Respondent lets the parking space on a short term licence to a third party, who does not enjoy any rights over the Building. Upon the flat roof areas is sited telecommunications equipment under leases granted by the Respondent.

7. The tribunal inspected the meter cupboard at the rear of the ground floor hall containing various items of electrical equipment and noted the separate meters for the telecommunications companies. On inspection the roof was observed to comprise several flat sections at differing heights connected by fixed roof ladders. A substantial amount of telecommunications equipment comprising masts, control cabinets and cable trays was present on the roof, some of which had integral climbing points. The tribunal observed areas of standing water and some sections where the roof surface appeared to have "lifted".

8. To the rear are large gardens approximately 70 feet in length, heavily planted with large trees and bushes. There are plants and shrubs in beds at the front of the building.

Preliminary Issue

9. Significant time was taken up on the first day of the hearing by an application by Mr Beller to exclude parts of the Respondent's evidence. The Respondent had delayed significantly in complying with the direction of the tribunal to serve

its statement of case and evidence. Neither party applied for an adjournment on the day of the hearing as a result. Mr Beller sought an order debarring the Respondent from relying on its statement of case and evidence so disclosed, other than the witness statement of Ms O'Leary.

10. The tribunal heard evidence from Ms Northover, the solicitor with conduct of this case on behalf of the Respondent, as to the reasons for this delay. She said she understood it had been indicated that the managing agent for the RTM company would be taking over this litigation. Mr Beller did not suggest in cross examination that she was lying and the tribunal was satisfied that her reasons were not invented. Mr Beller established that the Respondent's solicitors knew of the handover date of 16 August from 20 May 2011 in the notice of claim. It was said that they ought to have taken earlier steps to establish whether the RTM company was to take an assignment, or to have prepared the Respondent's statement of case and evidence in the absence of a completed assignment. In any event, the expectation of the tribunal was that its directions would be followed, and they were not.

11. The essential factor for the consideration of the tribunal in such circumstances is whether the other party has been prejudiced by such a default. Mr Beller's submissions were to the effect that he had, but he did not direct the tribunal to any particular piece of evidence which it would be prejudicial to admit. The tribunal takes seriously its duty to ensure no party is prejudiced by a failure to comply with directions, and advised the parties that if Mr Beller could satisfy it that he would be prejudiced by the late submission of a particular document it would consider appropriate steps in the circumstances, including its own discretion to order an adjournment in respect of some parts of this application, or whether (subject to consideration of the tribunal's powers) it would be appropriate to exclude that piece of evidence. The hearing therefore proceeded, and in any event was adjourned because of insufficient time. At no time did Mr Beller seek to show that he had been prejudiced by the admission of any particular part of the Respondent's case.

The Hearing

12. Prior to the hearing and during the course of the adjournment, the landlord made various concessions with regard to amounts inappropriately charged to the service charge account in response to the arguments that had been put by Mr Beller.

13. The tribunal heard evidence from Mr Beller and from Mrs Anne-Marie O'Leary, Head of Block Management at CRM for the Respondent.

14. On numerous occasions during the hearing, Mr Beller complained that the tribunal was curtailing his evidence and cross-examination, and generally giving preferential treatment to Mr Bates. The tribunal takes seriously its responsibility to ensure that parties are treated fairly, and it took particular care in this case, being aware of Mr Beller's concerns from an early stage in the

hearing. Whilst the tribunal did indeed feel the need repeatedly to intervene in Mr Beller's evidence and cross-examination because it was lengthy, frequently unfocused, argumentatively conducted and often repetitive, the hearing extended over four days plus inspection, and the tribunal is satisfied that both parties had had more than enough time to present their evidence and arguments, bearing in mind the number of issues in dispute.

Issue (i) Service Charge Apportionment

15. All of the residential lessees are required to contribute to the Total Expenditure but only those having a garage lease also contribute to the garage costs. At the time of the application the majority of lessees held garage leases – but the Applicant did not.

16. Mrs O'Leary gave evidence that block maintenance and gardening was charged solely to the residential leaseholders, and that the services of a caretaker (who throughout the relevant time was Mr Larry Goldberg) should be charged according to the area to which his work related. Invoices marked as relating to the garages or the mast lessees would not be charged to the residential lessees. The aerial companies did not contribute to the caretaking costs, building maintenance, insurance or indeed any of the service charge expenditure. Mr Beller challenged a number of aspects of the apportionment of service charges. Principally, he argued that:

    (i) The service charges currently apportioned to the garage lessees should be apportioned differently, and some service charges not apportioned to them should be.

    (ii) Service charges should be apportioned in respect of the ground floor parking space, whose user enjoyed the benefit of the building and gardens.

    (iii) Service charges should be apportioned to the holders of the mast leases on the roof.

    (iv) The cost of major works including rooflight repairs should be similarly apportioned.

17. Mr Beller's case was that the leaseholders of the garages ought to pay a proportion of all the service charges payable on the building other than the lift. He argued it was unreasonable of the landlord to charge to the residential leaseholders' service charge 100% of the costs expended on the building including repairs, caretaking, cleaning, gardening, pest control since the garage and parking space leaseholders enjoyed the benefit of some of these services. He considered, for example, that the garage lessees obtained a benefit from the maintenance of the structure of the Building which provides them with protection. Some of those costs should therefore, he argued, be apportioned to the garage and parking space leaseholders before they were

shared proportionately between the residential leaseholders. Mr Beller considered that the electricity supply to the garages should be separately metered.

18. Mr Beller estimated that 70.6% of the floor area of the building is occupied by the flats, 14.7% by the garages, 2.9% by the parking spaces, and 11.8% by the roof. He considered that reasonable apportionment of service charges should reflect these proportions. The tribunal did not carry out measurements to verify these estimates.

19. Mrs O'Leary said that the insurance was apportioned between residential and garage leaseholders according to rebuild value, with 90% of the cost attributed to the leasehold flats as this is where the majority of the rebuild cost would be incurred. This split had been applied since 2004.

20. Mrs O'Leary further said that electricity was charged to the garage leaseholders jointly at £150 per year in 2006 and 2007, and since about 2008 10% of expenditure on electricity had been charged to the garage leaseholders and the remainder proportionately shared between the residential leaseholders. The tribunal heard evidence that in 2008 new garage lighting was installed which was assumed to have increased usage. There is also an electric gate to the garages. The flats have lighting in the communal areas on at all times, as well as the door entry system, and the lift.

21. The figure of 10% was taken from CRM's experience of managing other blocks and Mrs O'Leary considered it to be reasonable. At approximately £1500, she believed the capital cost of installing a separate electricity meter for the garages to be prohibitive. She was sure that the masts had their own electricity meter, and an email was produced from the Respondent's utility management company UPL confirming they had had their own electricity supply in place since November 2006.

22. It was conceded on behalf of the landlord at the September hearing that some garage costs incurred from December 2005 to October 2009 (totalling £2381.60) had inappropriately been applied to the service charge account. The credit to Mr Beller was 4.5% of that sum, and by the time of the adjourned hearing Mrs O'Leary said that appropriate credits had also been made to the other lessees who do not own a garage.

23. Since 2008 the garages had been charged a separate management fee for CRM's services (though that for the flats was not reduced and therefore no retrospective adjustments were made). Mrs O'Leary explained that prior to 2008 there had been only a few minor repairs to the garages and the apportioned electricity charge.

24. Pest control charges appearing in the service charge accounts were charged to the residential lessees only. Mr Beller objected, noting that several traps were located in the garages. Mrs O'Leary considered this appropriate

because pests are likely to be the result of food rubbish, and the beneficiaries of pest control are the residential lessees.

25. The landlord enjoys an income from renting out the ground floor car parking space. Mr Beller argued that a contribution to service charge expenditure ought to be paid in respect of this. He considered that the user of the space had the benefit of the garden landscaping to the front of the property, and it was wrong that the landlord should not have to contribute to its cost.

26. Mrs O'Leary said that CMC was not involved in the landlord letting the parking space. In 2009 there had been an issue with a wall adjoining it and this was repaired at the expense of the landlord. Any such costs do not go through the service charge account, she confirmed. The terms of the lease simply allow the licensee to park one private vehicle in the parking space. To this extent the licensee does not enjoy any of the services, she considered.

27. Mr Beller's case was that since the erection of the masts on the roof of the building in 2006 there has been an element of service charge expenditure which has not been to the benefit of the residential lessees but accrued to the landlord in connection with benefits provided to the mast lessees under the leases. It was observed by the tribunal that Mr Beller did not suggest that the installation of the masts was a breach of the terms of his lease, and the tribunal has therefore not considered the point.

28. The leases for the roof space make no provision for the payment of a service charge for costs such as services, repairs or insurance. The landlord does not reduce the service charge payable by the tenants to reflect any proportion of total expenditure which is attributable to the roof space lessees. Those lessees enjoy a right of access to the common parts of the building through the communal front door, and use the lift.

29. Several caretaking charges relating to attendance on the mast lessees were conceded as not service charge items – these charges were in respect of Mr Goldberg's time in attending on the roof lessees. Mrs O'Leary said that £201 had been charged to the service charge account between 2005 and February 2010 in respect of Mr Goldberg's attendances on the mast companies. By the date of the adjourned hearing credits to all the lessees for their proportionate share of this overcharge had been conceded. Mr Beller argued that charges including door entry, lift maintenance, insurance, management fees, accountancy etc. should be shared with the roof lessees.

30. Mrs O'Leary confirmed that lift maintenance was not apportioned to the mast lessees, and was charged in full to the residential lessees. She was not aware of the mast lessees or their servant agents having caused damage or scuffing in the common parts or lift. She did not know how many times in a year the lessees made visits to the aerials – they had had access fobs since at least early 2010, for which they were charged, though they are not charged for the maintenance of the door access system. Mr Beller also suspected that the

roof lessees had been using the flat lessees' communal electricity supply. A lease was produced between Vodaphone and the Respondent, and another that had been assigned to Hutchinson 3G and T Mobile who from December 2008 have been sharing a mast, according to the landlord.

31. Mr Bates submitted for the Respondent that, the apportionment of service charge costs being dealt with in the residential leases, the LVT has no power to revisit or amend the contractual scheme. Liability is fixed at 4.5% of the costs of complying with the Fifth Schedule, and the LVT enjoys no power to decide what liabilities *should* exist under the terms of the lease. He relied on the decision of the Lands Tribunal in *Schilling v Canary Riverside Development Ltd Ltd. LRX/26/2005 (at [19]):*

"Costs are to be taken into account "only to the extent that they are reasonably incurred", but if reasonably incurred they fall to be apportioned in accordance with the terms of the lease, except if excluded by a failure to consult or otherwise under for example ss. 20B and 20C. The foundation of the Applicants' challenge therefore falls away and their appeal on this ground can be dismissed without the need for detailed analysis of the reasons for their, I accept, genuine sense of grievance."

32. Mr Bates described the Applicant's real argument that service charge costs were not reasonably incurred because there is someone else who must be required to contribute. He considered the LVT was required to consider whether the decision of the landlord was within a range of reasonable decisions, and relied on *Regent Management Ltd. v Jones* [2011] UKUT 369 (LC) at [35]:

"The test is whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem of management. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable"

33. Mr Bates argued, in summary, that the landlord's decision was reasonable because:

(i) Costs relating to one area had been so charged – e.g. garages charged for items of work and other costs which exclusively serve them.

(ii) The landlord had rational reasons for deciding how to charge other costs – e.g. in deciding not to charge gardening to the garage lessees because they obtained no

benefit from the gardens in spite of shrubbery adjacent to the path providing access only to the garages. No perverse or unreasonable decision had been demonstrated.

(iii) Where apportionment had taken place (e.g. electricity costs in the garage) the landlord has explained why a particular apportionment was adopted, and there was no evidence to demonstrate this approach was wrong.

34. With regard to the phone mast lessees, Mr Bates submitted there was no evidence that they had ever had the benefit of the communal electricity supply, that the masts and equipment had damaged the roof or any other part of the building, and the mobile phone companies could be asked to pay for such damage under the relevant provisions of their leases. The work to the glazed rooflights, though positioned on the roof, was wholly irrelevant to the mobile phone masts.

Tribunal's Decision and Reasons regarding Service Charge Apportionment

35. Having had the benefit of inspecting the building and the planted areas, the tribunal is satisfied that the gardens to the front and rear provide no benefit to the car park licensee or the garage and mast lessees, and are provided solely for the benefit of the residential lessees. Though there is some planting on the ramp to the garage, its purpose is clearly to enhance the view of the block for the benefit of the residential occupiers and it is in any event de minimis. The tribunal finds that the landlord has reasonably decided to charge all of the gardening costs to the flat lessees.

36. The landlord has since 2008 made a separate management charge for the garages. Modest though the management requirement may be for those garages, the conclusion that some management time was spent on the garages prior to 2008 is inescapable. The only charge made for management was to the flat lessees. The Respondent's case was that CRM made no charge for managing the garages as a gesture of goodwill, but no management contract was produced to support this. In the view of the tribunal, any such "goodwill" was a commercial consideration for CRM arising out of the benefit it received for managing the Building. The tribunal finds CRM was receiving an overall fee for its entire service and not in reality providing free management of the garages (which included the preparation of a separate account in respect of garage costs).

37. A proportion of the management charge made prior to 2008 was, the tribunal finds, attributable to the garages and was not therefore a service charge recoverable from the flat lessees. The tribunal on the available evidence finds that 4% of such management charges are irrecoverable from the flat lessees.

38. The landlord has acted reasonably in deciding not to apportion the cost of pest control to the garage lessees. The tribunal agrees that those lessees are not the likely cause of such infestations and do not benefit measurably from their eradication.

39. Considering the landlord's decisions regarding the apportionment of electricity costs to the garage leaseholders, the tribunal is satisfied that they are reasonable in all the circumstances. It accepts the practical difficulties of accurately determining the electricity consumption attributable to the garages, and that the landlord has to make a reasonable judgement. The fixed amounts charged for electricity prior to the installation of the new garage lighting was reasonable, as well as the decision since then to adopt a figure of 10%.

40. The tribunal furthermore finds that 10% is a reasonable apportionment in respect of the cost of insurance attributable to the garage leases, and is applicable to all of the years in dispute. It rejects Mr Beller's preferred approach based on floor areas. Mr Beller argued that the building and its roof provide a benefit to the car park occupiers below, but given the nature and purpose of their occupation, that argument was without merit. The parking space does not receive a benefit from the structure of the Building proportionate to that enjoyed by the flat lessees. No contribution to insurance or building maintenance should reasonably be made in respect of it.

41. The Vodaphone lease is for 15 years from 28 September 2008 at an initial rent of £10,000 per annum, reviewed every 5 years, and a premium of £2,000. The Hutchisons lease is for a term of 20 years from 25 August 2006 at an initial rent of £17,500 per annum, reviewable every 3 years, and no premium. The landlord in drafting the mast leases chose not to include a service charge provision and therefore in exchange for valuable consideration did not pass the cost of services provided onto the mast leaseholders. It chose not to do so for its own commercial reasons, but took on the obligation of maintaining / providing the support of the building in relation to the roof mast leases.

42. The mast companies covenant at 3.6 (Hutchinson 3G lease) to:

"Keep the Apparatus (and the surface of any part of the Communications Site on which the Apparatus is situated) in good and tenantable repair."

The landlord covenants at 4.8(a):

"To maintain and keep those parts of the Site over which the Tenant has rights and anything from which the Apparatus (or any part thereof) take support in good and substantial repair and condition to the reasonable satisfaction of the Tenant to include for the avoidance of doubt undertaking any repairs or works necessary to satisfy any environmental or statutory obligations relating to the condition of the Site."

43. The Rights granted to the mast lessees also include the right to operate, inspect, maintain, repair, etc. the Apparatus, as well as the right of support and shelter enjoyed by the other parts of the Site, and:

"the right at all times and for all purposes of access to and egress from the Communications Site and the Apparatus with or without vehicles plant and machinery through and at the Site and over and along all such parts of the Site as is reasonably necessary for access to egress from the Communications Site the Tenant making good as soon as reasonably practicable all physical damage thereby caused ....."

44. The Vodaphone lease is not in the same terms, but grants the right of support for the Apparatus from the Building and requires the lessee to effect insurance on the Apparatus and to fund any increased premium in the Building insurance and. The lessor's covenants include to ensure that those parts of the Building which are not let comply with all health and safety legislation.

45. Notwithstanding Mr Bates' reliance on *Regent Management Ltd. v Jones* as illustrating the general test of reasonableness which the Leasehold Valuation Tribunal must apply, he did not address the question of the landlord's self-interest, which is an essential feature in this case. The landlord itself would be the person liable to contribute any expenditure on the building, insurance etc. attributable to the mast lessees. The landlord has decided it is not so liable. Mr Bates says that is a reasonable decision on the part of the landlord, but this tribunal does not agree.

46. The tribunal concludes that the mast lessees obtain the benefit of the lift, door entry system and the common parts to access the roof, as well as the support of the building and its insurance to full reinstatement value. The case put for the landlord was that the use of the lift, entry system and common parts was negligible given that they visit the building little. There was insufficient evidence, however, of the frequency of those visits, and it is no longer monitored by the caretaker. Access needs can change over time. It is the right to and nature of the access which is relevant, not the frequency with which those rights are exercised at a particular time. A residential leaseholder who leaves his flat empty will still have to contribute to the service charges. Of course, the nature of the occupation of the roof lessees is very different to a residential lessee, and the tribunal has taken that into account in determining an appropriately low contribution.

47. The point is not merely theoretical. The door entry system is used by and to the benefit of the mast lessees, since they use it to access the roof. It is clear to this tribunal that it is not reasonable that the residential lessees should pay 100% of its installation and maintenance. Mr Goldberg's services under his new terms and conditions do not refer to the mast lessees, but with valuable equipment sited on the roof they do without doubt benefit from his supervision of the common parts, fault reporting, emergency response, and other features of a concierge service. The tribunal is satisfied that the masts have their own metered electricity supply. However, it is only reasonable that the mast

lessees contribute to the electricity supply in the common parts, including to the lift, which they have the right to use as a means of access.

48. A previous LVT has determined that the major works expenditure reasonable and payable by the residential lessees (for discussion see the "Major Works" section below in this decision), and that decision cannot be revisited. It was not argued that the reapportionment issue could not now be raised in the present proceedings in relation to other repairs and maintenance costs. To the extent that such other expenditure enables the landlord to comply with its obligations to the mast lessees in relation to providing support or building maintenance to, apportionment of a reasonable proportion of that expenditure to the landlord in respect of the occupation of the mast lessees should be made. All repairs and maintenance invoices for the years in dispute were not before the tribunal, which must do the best it can with the evidence available to determine a reasonable proportion attributable to the occupation by the mast lessees.

49. The tribunal determines the following proportions of the expenditure relevant to the Building are attributable to the mast leases. It is not reasonable to seek to recover this expenditure from the residential lessees.

(i) Gardening – no discount – all attributable to residential lessees.

(ii) Buildings Insurance, caretaking, electricity, all building maintenance (other than major works the subject of previous proceedings but including door entry and lift maintenance), accountancy and management (notwithstanding that the agent does not have direct contact with the mast lessees themselves) 4%. This percentage for the mast leases combined, being significantly less than that for the average flat, and slightly less than for Mr Beller's flat, is considered reasonable.

Issue (ii) Legal and Professional Costs

50. The tribunal was referred to the decision of a previous Leasehold Valuation Tribunal in case LON/00AG/LSC/2009/0401 relating to the subject Building, in which the LVT made no finding on the issue of whether the lease enables the recovery of legal costs as a service charge. The tribunal in its written reasons of 16 October 2009 did not make a determination under section 20C (since there was no such application). The question of legal costs was left open for a future tribunal, and the present tribunal is seized of an application under section 27A in respect of those costs.

51. Mr Beller sought an adjustment in respect of his proportionate share of all legal costs charged as service charges since 2005. This included legal costs

of County Court the proceedings taken against him for service charge arrears. He objected to the recovery through the service charge of the landlord's legal costs in the sum of £16813.45 (£16,448.45 to Davenport Lyons and £365.00 to Brethertons – expenditure which was recorded in the accounts for the year ending 31 December 2009 under the heading "Damp Ingress Works - £20,311". This figure included the charges of Northwood Collings, surveyors, in the sum of £3494.81, to which Mr Beller also objected. He had unsuccessfully sought to obtain a copy of the retainer or contract in each case.

52. It was argued for the Applicant that there are three clauses in the lease entitling the landlord to recover legal costs:

(i) Clause 3(9) provides that the tenant shall pay "all costs charges and expenses including Solicitors' Counsel's and Surveyors' costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925"

53. Mr Bates observed that in the recent decision in *Freeholders of 69 Marina v Oran and Ghoorun* [2011] EWCA Civ 1258, this clause is now to be flexibly interpreted. It was wide enough to cover costs incurred, for example, in applying to an LVT for dispensation from the consultation requirements under section 20 ZA of the Act, a determination under s.27A of the Act and any enforcement proceedings in the County Court – since all such steps are necessary pre-conditions to any service of a notice under section 146 of the 1925 Act, given the effect of section 81 of the Housing Act 1996. Mr Bates therefore argued that the costs of the earlier LVT proceedings were plainly recoverable and the present case came about because the landlord had issued proceedings which were then transferred to the LVT.

(ii) Clause 5(g)(ii), by which the tenant covenants to pay those costs of "... other professional persons as may be necessary or desirable for the proper administration of the Building".

54. Mr Bates argued that this too was apt to cover legal costs, relying on the analysis in *Plantation Wharf Management Co. Ltd. v Jackson and Irving* [2011] UKUT 488 (LC) at [23].

55. Mr Beller referred the tribunal to the decision of the Upper Tribunal (Lands Chamber) in *Greening v Castelnau Mansions Ltd.* [2011] UKUT 326 (LC). In that case, the President of the Chamber considered whether the particular terms of the lease allowed for the recovery of legal fees through the service charge account. The wording of the term in question was:

"5(5)(j)(i) To employ at the Third Company's discretion a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be

managing the Building including the cost of computing and collecting the rents in respect of the Building or any parts thereof

(ii) To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building."

56. The President referred to the decision of the Court of Appeal in *Sella House Ltd. v Mears* [1989] 1EGLR 65, which concerned tenant's covenants identical to those in clause 5(5)(j)(i) except that (j)(i) included the words "and Chartered Accountants" after "Managing Agents".

Tribunal's Decision and Reasons regarding Legal and Professional Costs

57. The tribunal considers it is clear that Clause 3(9) does not relate to the service charge provisions of the lease. The tribunal has the jurisdiction to determine reasonable variable administration charges payable (under Schedule 11 of the Commonhold and Leasehold Reform Act 2002) but no application in respect of administration charges was put before this tribunal and they have not been demanded of Mr Beller in that form. .

58. The relevant term of Mr Beller's lease is in all but identical terms to that in the *Sella House* and *Greening* cases, and is as follows:

(g)(i) the Lessors will themselves or alternatively at their discretion employ a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable themselves or to such agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any parts thereof

(ii) To employ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building."

59. Dillon LJ giving judgment in *Sella House* concluded that the fees of solicitors and counsel are outside the contemplation of either limb of clause 5(4)(j) of the lease. Agreeing, Taylor LJ said that nowhere in the relevant clause is there any specific mention of lawyers, proceedings or legal costs, and the scope of the clauses are management and maintenance, safety and administration respectively. He required to see a clause in clear and unambiguous terms before being persuaded that the tenant would be liable via the service charge to subsidise the landlords costs of suing his co-tenants, even if they were all defaulters.

60. *Sella House* was referred to in the decision of the Upper Tribunal (Lands Chamber) in *Plantation Wharf Management Company Ltd v Jackson and Irving* [2011] UKUT 488 (LC), the authority relied on by Mr Bates. In that case the Upper Tribunal considered a term of the lease defining service charges as Categories of Service which include "the enforcement ... of any covenants ... contained in the lease ... relating to any unit within the building ... where ... such enforcement will be in the interests of good estate management." To which shall be added "the fees and charges ... and expenses of ... all other ... professional advisers and other performing and carrying out the matters specified in each Category of Services". It found that the term was (borrowing the words of Taylor LJ in Sella) clear and unambiguous that a tenant is liable, via the service charge, to subsidise the landlord's costs of suing defaulter tenants.

61. Mr Bates's argument was not a specific analysis of the terms of the present lease, but rather a general reliance on *Plantation Wharf*. He did not concede Mr Beller's argument regarding Greening, and argued that there was no reason that "other professional persons" could not include lawyers. However, given that the decision of the High Court in *Sella House* related to lease terms the same as those in present lease in all material respects this tribunal cannot construe Mr Beller's lease in another way, and cannot rely on another authority considering significantly different lease terms.

62. The tribunal determines in accordance with *Sella House* that Clause 5(g)(ii) of the lease is not apt to include the landlord's legal costs in service charge recovery within the service charge provisions.

> (iii) Schedule 5, para 1(1), by which the tenant covenants to pay such "other costs and expenses reasonably and properly incurred in connection with the Building...".

63. Relying again on the judgment in *Plantation Wharf,* Mr Bates argued that this paragraph too is apt to include legal costs. This clause is entirely unspecific. If the much broader drafted terms in 5(g) are insufficient to include legal costs in service charge recovery within the service charge, the argument that this paragraph is sufficiently "clear and unambiguous" is not attractive. The tribunal feels unable to conclude that costs and expenses "in connection with the Building" is sufficiently "clear and unambiguous" on that point.

64. In conclusion therefore, the tribunal determines that a contribution towards the landlord's legal costs is not recoverable as a service charge from Mr Beller under any provision of the lease.

Issue (iii) Major Works including Rooflight Works

65. The landlord had incurred costs of approximately £34,000 in 2010 on major works to repair rooflights to flat 15. Mr Beller argued that the rooflights were

demised to the leaseholder of that flat and were windows and therefore the responsibility of the lessee to repair under the terms of the lease.

66. The matter had previously been the subject of a determination by the Leasehold Valuation Tribunal in respect of Waverley Court as mentioned above (case number LON/00AG/LSC/2009/0401, 2009). None of the tenants appeared at the hearing, and Mr Beller had not objected to the application for a determination under section 27A of the Act whether, if the cost of these major works was incurred, it would be recoverable from the lessees as a service charge.

67. Mr Beller was dissatisfied that he had been misled by Mrs O'Leary in correspondence that repairs to the windows were the landlord's responsibility. He said that as a result of his misapprehension as to the terms of the lease, he did not take part in the previous tribunal proceedings, which he felt had been wrongly decided on the question of whether the expenditure on rooflight repairs was a service charge or not. That tribunal was being asked primarily to determine a different question – whether the cost of balcony repairs was a service charge. The LVT determined that any service charges arising in respect of the proposed work (as set out in the accepted quotation) would be reasonable and payable by the Respondents. This included the work to the rooflights, though whether they were within the structure of the building was not a specific issue raised in the proceedings.

68. Not until a letter dated 9 February 2010 was Mr Beller notified by the managing agent that he was responsible for the repair and maintenance of the windows under the terms of his lease, and he reluctantly accepted that this was so. He did not agree that the rooflights were part of the structure, and sought a determination from this tribunal to that effect.

69. Mr Beller sought to rely on the decision of the LVT in the matters of 28 Lower Oldfield Park, Bath, Somerset (CHI/00HA/LSC/2009/0033) and Boss House, 2 Boss Street, London SE1 2PT (LON/00BE/LSC/2010/0865) in which the tribunals found rooflights above the flats on the top floors to be "windows", and demised to the leaseholders of those flats. The lease terms considered by the LVTs in those cases were different, however, and did not contain a term the same as .....

70. Clause 5(5) of the lease requires the Applicant to "maintain and keep in good and substantial repair and condition (i) the main structure of the Building ... and the roof .... (ii) all waste water .,,, (vi) all other parts of the Building not included ... in the demise of any other flat ..."

71. Mr Bates submitted that the previous LVT decision had found that the works to the rooflights were properly recoverable as a service charge, and that the Applicant cannot now go behind that decision, no matter how much he disagrees with it, since:

(i) The landlord proposed, amongst other things, to replace the glazed roofs and sought a determination that, if costs were incurred in doing so, they would be payable as a service charge;

(ii) The application was served on the leaseholders and those who wished to oppose were given the opportunity to do so;

(iii) The landlord argued that the works came within the scope of Clause 5(5) of the lease and the LVT agreed.

Tribunal's Decision and Reasons regarding Major Works including Rooflight Works

72. The previous LVT determined that the works to the rooflights were recoverable as a service charge. Furthermore, it determined that proposed expenditure of approximately £41,000 plus VAT would be reasonable, though the scope of works was larger than those actually carried out. Mr Beller disputed that "man fall" works on the roof would be recoverable as a service charge from the residential lessees - since he considered they would be for the benefit of the mast lessees in whole or in part. However, it was clear on the evidence that those man fall works were not in fact carried out in any event. The final expenditure of £34,321.98 plus VAT (as shown in the final account produced by Northwood Collings), represented a reduction on the estimate which was largely accounted for by this change in the specification. For the work carried out the cost was not higher than the estimate and in these circumstances it is not open to the present tribunal to revisit whether this was reasonable and payable expenditure.

73. In Clause 4 the Tenant covenants to:

(2) Repair maintain renew uphold and keep the Demised Premises and all parts thereof including so far as the same form part of or are within the Demised premises all windows glass and doors... in good and substantial repair and condition ...

The Demised Premises are defined in the First Schedule to the lease to include:

(a) the internal plastered coverings and plaster work of the walls bounding the Flat and the doors and door frames and window frames fitted in such walls.

(c) the plastered coverings and plaster work or the ceilings and the surfaces of the floors including the whole of the floorboards and supporting joists (if any) and

....

(e) all fixtures and fittings in or about the Flat and not hereafter expressly excluded from this demise BUT not including:

(i) any part of parts of the Building (other than any conduits expressly included in this demise) lying above the said surfaces of the ceilings or below the said floor surfaces ....

74. It is clear therefore that the windows are the tenant's responsibility to repair. There is no ambiguity in the lease on this matter, though it appears for some time that Mr Beller and the managing agent may have been operating under a misunderstanding that it was the landlord's duty to replace the windows. Mr Beller lay the blame at the foot of Mrs O'Leary, but must surely take his share of the responsibility for having apparently failed to understand his lease. He had the opportunity to seek his own legal advice on its interpretation at the time of purchase or thereafter.

75. The tenant bears the responsibility to repair the windows. Whilst Mr Beller feels aggrieved that he was misled that the landlord would at some point pay for his replacement windows through the service charge, this was not a disincentive to his taking part in the previous LVT proceedings regarding the range of issues raised therein. The landlord's liability to repair the rooflights is a different issue. Nothing about Mrs O'Leary's mistake can do more than affect the reasonable management charge for the services of CRM.

76. The relevant lease terms for flat 15 are the same as those for flat 11. There was some discussion at the hearing as to whether the rooflights lay above the surfaces of the ceilings. The tribunal did not carry out an internal inspection to flat 15. The Respondent's argument was that the roof glazes form part of the area reserved to the landlord as they lie above the surface of the ceiling of the flat. That argument, based on Paragraph (e)(i) of the First Schedule, was wholly unrelated to the question of Mr Beller's liability for the windows in the walls, and he was not restricted from making it in the previous LVT proceedings. The tribunal is satisfied that the question of liability for the rooflights under the major works contract has been determined and cannot be reopened.

77. Mr Beller also challenged the expenditure on the ground that there was no evidence that the work had actually be paid for. However, on the basis of the surveyor's final account the tribunal is satisfied that it was.

Issue (iv) Accountancy Charges

78. Mr Beller relied upon the decision of The Upper Tribunal (Lands Chamber) in *Rettke-Grover v Needleman & Anor* [2010] UKUT 283 in support of his argument that the costs of employing chartered accountants to certify service charge accounts did not form part of the service charge. His case was that the cost of certification by an accountant falls within the management charges for Waverley Court and there should be no separate charge.

79. In *Rettke-Grover* the Upper Tribunal determined that the engagement of an accountant to prepare and certify the accounts was not recoverable as a service charge under the terms of the particular lease in question which allowed for recovery of the cost of:

> "... any other services ... of whatever nature as the Lessor may from time to time deem necessary or expedient for the efficient management of the Building and the garden areas, forecourts and footpaths belonging thereto".

80. A management fee of 15% was expressly provided for in that lease. Mr Beller acknowledged that the terms of his lease were not written in precisely the same terms but considered they were on all fours with the relevant clause in the *Rettge-Grover* case.

81. The Respondent argued that the accountancy fees were reasonable. Those charges had been in the region of £950 for each of the years ending December 2008 and 2009. The Applicant disagreed, given the mistakes and misapportionment in the accounts that had not been noticed by the accountant. In light of errors not identified by the accountants in certifying the accounts, Mr Beller sought a partial refund of their fee. He has sought a copy of the retainer with the accountant, but CRM had refused. He observed that the 2006 accounts were certified 18 months late in 2008.

Tribunal's Decision and Reasons regarding Accountancy Charges

82. The Fifth Schedule of the lease defines the service charge Total Expenditure as:

"the total expenditure incurred by the Lessors in any Accounting Period in carrying out their obligations under Clause 5(5) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing:

(a) the cost of employing Managing Agents

(b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder ..."

Paragraph 6 of that Schedule requires the service upon the Tenant "by the Lessors or their Agents a certificate signed by the Lessors or such Agents" containing prescribed information with regard to the amount of the service charge.

83. The landlord is obliged to provide certification of the accounts, and may do so by its Agent. The landlord is also entitled to employ an accountant to determine the service charges payable by the tenant. In the circumstances the tribunal rejects the interpretation placed on the lease by Mr Beller. The *Rettke-Grover* case is not on point, since the Mr Beller's lease contains different and more explicit provisions than considered in that case. The tribunal is satisfied that the costs of employing an accountant to provide certified accounts are recoverable in addition to the management charge. That accountant acts on instructions and does not have the responsibility of interpreting the apportionment of service charges under the lease. It is not appropriate in the tribunal's view to reduce the accountancy charges for the errors relied on by Mr Beller. The tribunal is satisfied that the accountancy fees are reasonable.

Issue (v) Insurance Commissions

84. Mr Beller challenged commissions received by the managing agent and / or landlord from the insurer / broker. He considered their services in placing the insurance were paid for by the management charge, and that the commission was a disincentive to the managing agent to obtain best value for the tenants on the market. He observed that the RICS Code on Residential Management (at paragraph 15 on page 25 and 2.6) made it clear that commissions should be disclosed to the tenants, but they were not for some time in spite of his specific enquiries.

85. CRM admitted in correspondence dated 26 August 2010 that it received a 20% commission on insurance premiums, in addition to its full management fee. Mr Beller relied on *Williams and another v London Borough of Southwark* (2001) 33 HLR 22 in support of his argument that an amount representing the commissions was not a reasonable service charge.

86. The Respondent's position was that such commissions were permissible for services rendered, and were reasonable in the current instance. Mrs. O'Leary gave evidence that CRM placed insurance with brokers, gathered quotations and claims handling (most commonly water leaks), including contacting the leaseholder and arranging access), handling enquiries of the insurers and loss adjusters, and payment of claims as well. CRM had to be regulated by the FSA and to hold capital of £10,000, pay an annual subscription and submit an annual report on insurance handling and commissions earned.

87. Mrs O'Leary gave evidence that the company received between £800 and £1600 per annum from insurance commission, which was in lieu of charging a management fee for the insurance cost (which would otherwise have been

charge at £150 per hour for 14/15 hours per annum. Mr Bates argued the commission was reasonable on any view since it represented a considerable saving to leaseholders.

88. Mr Bates distinguished the present circumstances from those in the decision in *Williams v LB Southwark*, which involved a 25% commission of which 5% was a loyalty bonus and 20% was for administrative costs involved in dealing with insurance claims. The former was conceded and the latter successfully defended.

Tribunal's Decision and Reasons regarding Insurance Commissions

89. The tribunal concurs with Mr Bates's summary that *Williams* is authority for the proposition that a fee for services rendered, which is received as a commission, is lawful. The tribunal agrees that this is precisely what happened in the circumstances of the present case. As determined in *Williams,* the tribunal is satisfied that commission may be retained where it represents payment for services (in administering and handling the insurance). The tribunal heard ample evidence from Mrs O'Leary as to the insurance handling work carried out by CRM and is satisfied that the commission received is reasonable payment for these services, and when looked at combined with the insurance premiums payable (which were not challenged).

90. Under the RICS code, such commissions should be disclosed to leaseholders. They were not for some time, even on specific enquiry from Mr Beller, and CRM has thus been in breach of the code. The question raised for the tribunal by Mr Beller was whether the amount reasonably payable by way of commission, if that commission is not disclosed in compliance with the Code, ought to be reduced. The tribunal determines that it should not. The inability to recover undisclosed commissions is not a penalty envisaged by the RICS Code. The tribunal considers that the matter goes to the reasonable management fee payable for the services of CRM.

Issue (vi) Management Fees

91. Breaches of the Code are matters relating to the standard of management, and the fee reasonably payable for it. Given the nature of Mr Beller's criticism of CRM, as put to Mrs O'Leary in lengthy cross examination, a challenge to the reasonable management charge appears to have been explicit. It is a matter the Respondent suggested had been agreed, and is one which the tribunal considers must be visited when it is asked to determine under s.27A what service charges are payable.

92. Mr Bates submitted that individual apportionment errors had been recognised and rectified in August / September 2010 (before the County Court proceedings were transferred and before Mr Beller's application to the LVT). The management fee for the flats amounts to a charge of £252.99 to Mr Beller in 2010, which Mr Bates argued was reasonable given the amount of

paperwork generated by him and to which the managing agents have had to respond.

Tribunal's Decision and Reasons regarding Management Fees

93. It appears to the tribunal that the judgements of the management company with regard to the apportionment of the service charges between the flats, garages and parking spaces, have been largely reasonable. The only area upon which the tribunal significantly departs from the judgment of CRM is with regard to the attribution of service charges to mast leases – but it is not clear that this was a matter within their control, as opposed to their client's.

94. However, the tribunal concludes that there were material shortcomings in the management company's performance, including failure to attribute costs effectively until mistakes were corrected respectively; very delayed accounts, which Mrs O'Leary admitted was unsatisfactory; the absence of a contract with caretaker at any stage; no description of duties until late on and even then not made available to the leaseholders; failure to declare the insurance commission; and the provision of incorrect information to Mr Beller on the terms of the lease relating to his windows. The tribunal therefore concludes that the chargeable Management Fees should not exceed £200 per year plus VAT to Mr Beller for each of the years 2006 - 2010.

Fees and Costs

95. The tribunal has the power to make an order for costs to the limit of £500 in the circumstances set out in Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The tribunal will consider any application for costs it receives within 28 days of the date of issue of this decision, and submissions must be served on the other party. They will, as agreed by the parties, be determined on consideration of the papers. The tribunal considers it appropriate to indicate to the parties however that, on the basis of careful consideration of all of the documentary and oral evidence over a four day hearing, and taking into account the conduct of both parties, the various arguments raised, and the outcome of the application it is not minded to make an order for costs against either.

96. In view of Mr Beller's significant success in respect of a number of parts of his application, the tribunal orders that the Respondent should reimburse to him the tribunal fees of £350 paid in respect of this application. Mr Beller made an application under section 20C of the 1985 Act seeking an order prohibiting the landlord from recovering the costs of these proceedings through the service charge account. No such costs are recoverable in any event under the terms of the lease, but for the avoidance of doubt the tribunal makes the order sought.

Chairman: _____

Ms F Dickie

5 April 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

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

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

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

LON/00AG/LSC/2011/0276 & 0438 – 11 Waverley Court, 41 Steeles Road, London NW3 4SB.
Schedule to the decision of the Leasehold Valuation Tribunal

Date	Description	Amount	Landlord's Case	Tenant's Case	Tribunal's decision and reasons	Adjustment
2006						
30/12/05	Classic Security Services Ltd.	264.38	Maintenance of garage security gates, charged to garage leaseholders only	Not payable by residential lessees	Not recoverable from residential lessees and in any event satisfied no charge was in fact made to them.	
29/09/06	Simplex Security Systems	88.13	Maintenance of garage security gates, charged to garage leaseholders only	Not payable by residential lessees	Not recoverable from residential lessees and in any event satisfied no charge was in fact made to them.	
06/07/06	Larry Goldberg	60	Maintenance of garage gate charged to residential lessees in error. Proportionate refund made to Mr Beller, and to be made to all other residential lessees	Not payable by residential lessees, and duplicates annual maintenance contract	As conceded by landlord, not recoverable from residential lessees.	
10/01/06	Evansmith	47	Repair to stop cock for residents' water supply, allocated to residential lessees		Payable by residential lessees	
	Larry Goldberg		Monthly invoices for LG's days of attendance, including daily cleaning, and provision of rubbish bags and supply/ fitting light bulbs. Rubbish bags left on landings for leaseholders.	Rubbish bags and lightbulbs could be purchased in bulk much more cheaply and stored on site. Services in delivering the bags to the flats and changing the lightbulbs are janitorial services which should be included in his basic caretaking charge.	The overall cost for caretaking and these services is reasonable, as is the way in which the charges have been structured. The actual cost to the individual leaseholders is in the tribunal's experience low for the benefit of these services. Regardless of whether there is limited space for storage of such materials on site, the overall cost of their provision is reasonable. For example, the charge of £11.00 for a flourescent lightbulb, including fitting, is reasonable, and given the low daily attendance fee it is appropriate that such items were charged separately, notwithstanding that there was no evidence of a formal written contract defining the caretaking services within that fee.	
	Larry	48	Repair to bin store door	Work should have been	Correctly charged to residential lessees as a reasonable	

	Goldberg		charged to residential lessees	part of the basic caretaking fee	charge for additional maintenance services which would not be expected within the normal fee notwithstanding the absence of a written contract.	
Aug-06	Larry Goldberg	20	Incorrectly charged to residential lessees for LG's time dealing with police re garage break-in - has been recredited to Mr Beller	Not payable by residential lessees	As conceded by LL, not recoverable from residential lessees, and to be recredited to the remainder of them.	
Sep-06	Larry Goldberg	40	Incorrectly charged to residential lessees for LG's time dealing with police re garage break-in - has been recredited to Mr Beller	Not payable by residential lessees	As conceded by LL, not recoverable from residential lessees, and to be recredited to the remainder of them.	
2007						
25/10/07	Sandberg	646.25	Investigation into water penetration. Conceded by LL as incorrectly charged to residential lessees.	Not payable by residential lessees	As conceded by LL, not recoverable from residential lessees, and to be recredited to the remainder of them.	
28/11/07	Aacwater	258.5	Overflow leaking into garage. Plumber noted internal plumbing problem to flat 1 and cost of its rectification (£110.30) recharged to the relevant leaseholder. Net amount for investigation of leak charged to service charges.	Whole of this invoice should be charged to lessee of flat 1	Balance of invoice, being a charge of £148.20 is reasonable and payable by the residential lessees as a service charge for the cost of leak investigation.	
	Larry Goldberg		Monthly invoices for LG's days of attendance and services - see 2006.	see 2006	see 2006	
29/05/07	Larry Goldberg	12	LG waiting on site for builder coming to give fence estimate	Charge for LG providing an estimate not reasonable as he is not a builder	Reasonable charge for LG's attendance time on the builder providing an estimate	

29/11/07	Larry Goldberg	25	Purchase and install temporary lock on bin store door	Challenge to installation cost which should have been included within his basic daily fee	Reasonable charge for this service in view of the LG's low daily fee, which would not be expected to include a service of this type in spite of the absence of a written contract.	
28/02/07	Pest Control Services	100	Pest control within flat 14 - silverfish attracted to damp. Flat inhabited and in good order at the time. Treatment on internal surface of exterior wall within the demised flat.	Not payable by residential lessees - control of infestation with the demised premises is the responsibility of the leaseholder of flat 14	Presence of damp was the prime cause of this infestation, to which it was the landlord's responsibility to attend. Reasonable to treat the infestation to prevent it spreading to other flats. This invoice is payable by the residential lessees through the service charge.	
2008						
31/01/08	MDR Properties UK Ltd.	1204.2	£814.80 for installation and wiring new in-wall lighting for outdoor walkway charged to residential lessees. £389.40 for installation and wiring of weatherproof lighting in car park charged to garage lessees.	£389.40 payable by garage lessees not residential lessees	The landlord had correctly charged £389.40 to the garage lessees and the balance to the residential lessees.	
17/07/08	MDR Properties UK Ltd.	2136.74	Fitting door entry system - invoice produced at hearing. Cost included 32 key fobs, distributed to residential lessees, the landlord and a stock retained by the agent	No supporting invoice within the bundle. No charge for fobs made to landlord.	It is likely each of the two mast leaseholders was issued with a fob, and a charge to the landlord for the cost of £29.38 including VAT should have been made, and was not reasonably charged to the service charge account. Other than that charge, the tribunal is satisfied the expenditure was incurred, and properly charged to residential lessees	29.38
23/09/08	Sterdy Communications Ltd.	458.25	Service call connecting new proximity door entry system	Not challenged	Allowed	
06/03/08	Sterdy Communications Ltd.	129.25	Repair to door entry system Flat 13, disputed by that leaseholder who contended it was an issue with their	Payable by leaseholder of flat 13	LL's evidence did not demonstrate to the tribunal's satisfaction that this was recoverable as a service charge. From the remark on the invoice that "flat refurbished" it appears likely that this was the tenant's	129.25

			connection		responsibility. The tribunal finds this is not a service charge.	
	Larry Goldberg		Monthly invoices for LG's attendance and services - see 2006	see 2006	see 2006	
Apr-08	Larry Goldberg	30	Combination lock on ladder top floor	Unreasonable charge - labour should have been included in daily caretaking fee. No receipt provided.	Cost is reasonable and payable by residential lessees. Appropriate to charge for fitting in spite of there being no evidence of written contract for LG's services.	
May-08	Larry Goldberg	52	Attending lift contractors on emergency call-out, non-smoking signs, cutting front door key and mailing to agent	Labour should be included in basic daily fee	Cost is reasonable and payable by residential lessees. Appropriate to charge for these services in spite of there being no evidence of written terms of contract for LG's services	
27/05/08	Larry Goldberg	84	BT phone line installed in lift. Agent wanted LG to liaise with and supervise BT - 7 hours engaged	should not have been accounted for as a cleaning cost, and time should have been included in basic daily fee	Cost is reasonable and payable by residential lessees. Appropriate to charge for these services in spite of there being no evidence of written terms of contract	
28/07/08	Larry Goldberg	24	Distributing new key fobs to residents (1 hour) and liaising with Fire Officer (1 hour)	Labour should be included in basic daily fee	Cost is reasonable and payable by residential lessees. Appropriate to charge for these services in spite of there being no evidence of written terms of contract	
28/10/08	Larry Goldberg	30	Printing and distributing letters to residents re. Riser cupboards	Labour should be included in basic daily fee	cost is reasonable and payable by residential lessees. Appropriate to charge for these services in spite of there being no evidence of written terms of contract	
01/01/08	Larry Goldberg	125	£70 for checking and assisting in removal of vagrant from basement garage - 6 hours engaged. £30 printing and delivering environmental health notices, £25 for repairing the bin store doors after break-in	Labour should be included in basic daily fee	Cost is reasonable and payable by residential lessees. Appropriate to charge for these services in spite of there being no evidence of written terms of contract	
22/08/08	Northwood	1762.5	Surveyors appointed to	Should be apportioned to	Determination on apportionment dealt with in body of	

	Collins		inspect and prepare report (re. Major works). Damp coming into building due to its construction.	garage leaseholders as well	decision	
19/09/08	MLM	810.75	Civil and Structural Engineers appointed as CDM coordinator	Duplication of the Northwood Collins invoice of 22/08/08	Tribunal satisfied appointment of CDM coordinator was not a duplication of surveyor's services in inspecting and preparing report, and cost was reasonable and payable as a service charge	
2009						
08/09/08	MDR Properties UK Ltd.	599.84	Key fobs		Cost of additional fobs reasonably incurred, as long as receipt for their future provision at a cost of £12.50 each are credited to the service charge account.	
07/09/09	Attymass Ltd.	790	Work to repair garage doors was charged to garage leaseholders	Cost should have been charged to garage leaseholders	Landlord has correctly charged the cost to the garage leaseholders	
14/11/09	Attymass Ltd.	140	Work to survey water ingress to communal area affecting flat 15	Cost should have been charged to leaseholder of flat 15	Work to communal area was properly charged to residential lessees.	
28/05/09	Rooneys Waste	270	Removal of bulky refuse items from residents' bin store. Items left there by residents. The council would also have levied a charge	Rubbish likely to have included items left by Attymass contractors, since residents do not have access to that area. Should have been collected by the Council	No evidence of alternative cost of removal by Council was produced by Applicant. Tribunal finds this a reasonable cost for removal of items likely to have been left by residents and collected into the bin store by LG	
	Larry Goldberg		Monthly invoices for services - see 2006	see 2006	see 2006	
30/06/09	Larry Goldberg	60	Supervising Vodaphone costs were incorrectly charged to residential lessees and have now been recredited	Should not have been charged to residential lessees	This item has been conceded by the landlord and appropriately recredited	
29/07/09	Larry Goldberg	12	Supervising Vodaphone costs were incorrectly charged to	Should not have been charged to residential	This item has been conceded by the landlord and appropriately recredited	

			not produced in evidence at the hearing.		experience it reduces this charge to £400	
	Larry Goldberg		Daily maintenance charges as in previous years, until new list of duties and revised all inclusive monthly fee was agreed and charged from March 2010. That list excluded attendance on the mast companies and included increased duties, bin bags, cleaning materials and light bulbs. New monthly fee was £600.	Increase in caretaking and cleaning costs was disproportionate and unreasonable	An inclusive caretaking and janitorial service for a block of this size at a cost of £600 is in the tribunal's opinion good value for money. The cost to Mr Beller per month was only £6.23 per week. Whilst costs did increase the tribunal finds this was not disproportionate bearing in mind the additional duties and the historically low charges.	
28/02/10	Larry Goldberg	78	£48 Incorrectly charged to residential leaseholders for attendance on mast companies. £30 for EDF meter exchange	Cost of attendance on mast companies should not have been charged to residential lessees and meter exchange related to Vodaphone	As conceded by landlord, the attendance costs of £48 are not payable by the residential lessees and have been recredited. There was no evidence the meter in question belonged to Vodaphone, and having inspected the premises, including the inside of the meter cupboard, the tribunal finds this is a service charge cost.	