9190

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00HN/LIS/2013/0020**
Property	:	**Flat 6, 19 Lansdowne Road, Bournemouth, BH1 1RZ**
Applicant	:	**Mr Valiant Patrick Dickson**
Representative	:	**The Applicant in person**
Respondent	:	**Sorda Limited**
Representative	:	**Mr Salim Mehson**
Type of Application	:	**Service Charges : Sections 27A and 20C of the Landlord and Tenant Act 1985 ("the 1985 Act")**
Tribunal Members	:	**Judge P R Boardman (Chairman), Mr K M Lyons FRICS, and Mr R T Dumont**
Dates and venue of Hearing	:	**3 and 10 July 2013** **Room 8, Bournemouth County Court, Deansleigh Road, Bournemouth, BH7 7DS**
Date of Decision	:	**16 July 2013**

DECISION

Introduction

1. This application by the Applicant/Leaseholder is for the Tribunal to determine the payability of certain items of service charge under a lease dated 8 November 1985 and made between Anglo City Property Group Limited (1) and Katrina Elizabeth Borthwick (2)

Documents

2. The documents before the Tribunal are :
    a. the application
    b. the Applicant/Leaseholder's bundle, pages 1 to 108 and four unpaginated appendices; in this decision, page numbers in that bundle are referred to as A1 page 1, A1 page 2, and so on
    c. the Respondent/Landlord's bundle, pages 1 to 44; in this decision, page numbers in that bundle are referred to as R page 1, R page 2, and so on
    d. the Applicant/Leaseholder further bundle, pages 1 to 15 and one unpaginated appendix; in this decision, page numbers in that bundle are referred to as A2 page 1, A2 page 2, and so on

The issues

3. The parties' respective cases in relation to each issue, as set out in the Applicant/Leaseholder's statement of case dated 20 March 2013, the Respondent/Landlord's statement of case dated 12 April 2013, and the Applicant/Leaseholder's response dated 8 May, were as follows

Year 2010/2011

4. **Electricity cost £217.49**

5. The Applicant/Leaseholder stated that £87.68 was charged by Southern Electric, £146.80 was paid to Southern Electric, and the amount charged to 19 Lansdowne Road was £217.49 (half of £524.44). Part of this was £59.12 charges from the previous year, which were more than 18 months before the Applicant/Leaseholder was informed of them, and therefore should not be allowed. The correct amount was £87.68

6. The Respondent/Landlord stated that four bills had been received and paid during the year ending 31 March 2011 totalling £217.49

7. The Applicant/Leaseholder responded that his previous statements and calculations were correct

8. **Buildings insurance £2877.96**

9. The Applicant/Leaseholder stated that he had requested many times proof of the insurance cost, details of which parts of the building it covered and how it was apportioned between the 4 original flats, the 4 new flats, and the commercial property below. If the insurance was for the whole of 19 Lansdowne Road then he should be liable for no more than one eighth of the cost of insuring the building minus the cost of insuring the commercial area, or one twelfth of the whole. He also wanted to ensure that the best value insurance was being sought

10. The Respondent/Landlord stated that there was a balancing refund of £86.27 payable to the Applicant/Leaseholder, made up as follows :

Incorrect charge to Flat 6	719.49
Correct charge to Flat 6	477.20
Refund	242.29
Less already refunded	156.02
Balance of refund payable	86.27

11. The Applicant/Leaseholder responded that the Respondent/Landlord had not produced the insurance summary. The Applicant/Leaseholder's previous statements were correct

12. **Management charges £960**

13. The Applicant/Leaseholder stated that these were above average. He had received a quote for £125 a flat plus VAT, totalling £150, which was more reasonable

14. The Respondent/Landlord stated that the building had not been an average building for the last 3 years because of the large scale building works carried out in redeveloping the roof, creating a further 2 floors, extending the building from 4 storeys to 6, plus a new attached building housing a new internal stairway to service the existing flats and the 4 new flats and a lift shaft building. The managing agents had carried out considerable extra work in connection with the redevelopment work. Most managing agents had a minimum charge of £1000 if they managed a small block of flats such as this. Other managing agents' charges in the area were :
    a. Napier Management Service Limited : £204 a flat from 2009 (block of 8 flats)
    b. Owens & Porter : £169.20 a flat (block of 54 flats = reduction for scale)
    c. Foxes Property Management : £183.11 a flat (block of 28 flats = reduction for scale)

15. Salmore Property's fee was reasonable in view of the circumstances at the property with all the construction work being carried out and the additional work entailed. However, now that the building work was

almost complete, Salmore had informed the Applicant/Leaseholder that they would charge £150 a flat from 2013

16. The Applicant/Leaseholder responded that the building was considerably less complex than other blocks, with very small communal areas, no communal gardens, and no lift, and had had very little actual maintenance during the years in question. The work carried out by the Respondent/Landlord in relation to the sale of the roof space did not constitute work as managing agents for the lessees. In any event, their charge of £240 a flat had been similar in previous years. None of the charges of the other managing agents referred to was as high as the £240 charged by the Respondent/Landlord

17. **Book keeping and accounts fees £420**

18. The Applicant/Leaseholder stated that the accounts had been done by Nadia Mehson, a director of Salmore Property and the daughter of Mr Salim Mehson, and the invoices were from Salmore Property. That was contrary to section 28 regulations requiring an independent accountant. In any event, the lease did not require leaseholders to contribute to an accountancy fee, and, again in any event, the charges were not reasonable, particularly in addition to a management fee

19. The Respondent/Landlord stated that Ms Mehson had professional accountancy qualifications awarded by the Chartered Institute of Management Accountants and by the Association of Accounting Technicians. She had been employed by several national companies, including the leading global law firm, whose clients included the most prominent global corporations and financial institutions, Britain's leading national house builder listed on the Stock Exchange, and also a Ministry of Defence company. Salmore Property was an independent company, and there was no reason why it should not do the bookkeeping. Paragraph 4 of the fourth schedule to the lease required the lessee to pay the costs charges and expenses of managing agents appointed by the lessor to manage the property and to carry out the lessor's obligations of the lease. The bookkeeping fee of £420 was Salmore Property's charge for carrying out the lessor's obligation to account for money collected and spent during the financial year

20. The Applicant/Leaseholder responded that Ms Mehson was not independent of the management company, and therefore did not satisfy the requirements of section 28

21. **Sundry expenses £100**

22. The Applicant/Leaseholder stated that it was unreasonable to charge a random fixed amount in addition to the management fee

23. The Respondent/Landlord stated that, under paragraph 4 of the fourth

schedule to the lease, the expenses of £100 were Salmore Property's charge for carrying out the lessor's obligations during the financial year. The two leading managing agents in the area, Foxes Property Management and Owens & Porter, both charged sundry expenses in addition to their management fee, as did other companies who charged fees for their services, such as solicitors, surveyors and architects and charged extra for disbursements such as postage, stationery, printing and travel expenses

24. The Applicant/Leaseholder responded that he had no additional points

25. **Cleaning £528.77**

26. The Applicant/Leaseholder stated that the communal area had never been cleaned since he purchased Flat 6. There were no details of payments to a cleaner or statement by an employer detailing the cleaning done. In any event, £75 was an exorbitant amount for a very small communal area comprising stairs and a landing. 3 of the invoices were for cleaning in the year 2009. The 18-month rule was important

27. The Respondent/Landlord stated that at no time had any amount been charged for cleaning during the period the Applicant/Leaseholder had been resident. The works he was disputing had been carried out in January, February and March 2010, as clearly stated on the invoices. The invoices dated 15 March 2010 and 6 April 2010 were within the 18-month period to 31 March 2011. Salmore had confirmed to the Applicant/Leaseholder that in future they would employ outside contractors

28. The Applicant/Leaseholder responded that the communal area had never been cleaned during his time at the property. He was only contesting the charges which were more than 18 months before his being informed of them. The 2 invoices he was objecting to covered 3 months' charges, because one invoice covered 2 months. They were outside the 18 month period because he had not been provided with details or informed of these costs until October 2011

29. **Rubbish clearance £408.34**

30. The Applicant/Leaseholder stated that the charges were exorbitant. They were charged each year with astonishing regularity. He challenged whether the work had been done. During his time here he had never seen Salmore Properties or their agents picking up fly-tipped rubbish, and neither had neighbours. He was attaching witness statements from them to that effect. In any event, the lease did not require leaseholders to contribute to this

31. The Respondent/Landlord stated that all the invoices for rubbish clearance predated his moving in in November 2010. Fly tipping at the

rear of the property had indeed been a problem. The Respondent/Landlord was attaching a photograph of a sofa dumped under the stairs leading to Flat 6. The only reason why Salmore Property had carried out the work in-house during the service charge year ending 31 March 2011 was simply to save lessees money. Their fees for doing so were recoverable under paragraph 4 of the fourth schedule to the lease. Salmore Property had not provided this service since August 2011, and had confirmed to the Applicant/Leaseholder that in future they would employ outside contractors

32. The Applicant/Leaseholder responded that he had been informed that a different sofa currently underneath the stairs had been from the second floor flats and had been dumped there by an associate of the Respondent/Landlord. It was not reasonable for the Respondent/Landlord to charge exorbitant fees to remove rubbish dumped from their own flats by their associates. However, he was not saying that the sofa shown on the Respondent/Landlord's photograph had been from Salmore Property's flats. The Respondent/Landlord had produced an invoice from General Builders and Maintenance for £40 for removal and disposal of a washing machine and microwave, scraping away old adhesive ands cleaning hall and stairs afterwards, so it was not reasonable to charge £240 for doing much less

33. **Carpet £663.88**

34. The Applicant/Leaseholder stated that the invoice was from Salmore Properties dated 6 April 2010. However, the carpet had been very old and worn when he had inspected in July 2010, and was in a terrible state of repair when he moved in in November 2010. He did not think it plausible that the carpet had been new in April 2010. Also the amount charged was exorbitant bearing in mind the size of the communal area, the type of budget cord fitted, and the DIY nature of the fitting, with fraying at the edges, and bits of carpet placed, not glued or fitted down, in a jigsaw-like manner to fit the odd shaped corner area by the stairs

35. The Respondent/Landlord stated that the old carpet was removed in January 2010, the hallway was redecorated in February 2010, and the new carpet was laid in April 2010, all before the Applicant/Leaseholder moved in in November 2010. Neither he, nor Ms Bray (who moved in in June 2010) had ever made any mention to the Respondent/Landlord or to Salmore Property of the carpet being in a poor state of repair in November 2010

36. The Applicant/Leaseholder responded that he had first seen the invoice for the carpet in October 2011. There was then a fire in the communal hallway which extensively burned the carpet and damaged it further. The Applicant/Leaseholder challenged whether the carpet had been a new carpet when fitted. The cost was more than the cost of carpeting the whole of Flat 6

Year 2011/2012

37. **Management charges £1000**

38. The Applicant/Leaseholder made similar points to those for the previous year

39. The Respondent/Landlord made similar points to those for the previous year

40. The Applicant/Leaseholder responded with similar points to those for the previous year

41. **Book keeping and accounts fees £400**

42. The Applicant/Leaseholder made similar points to those for the previous year

43. The Respondent/Landlord made similar points to those for the previous year

44. The Applicant/Leaseholder responded with similar points to those for the previous year

45. **Sundry expenses £150**

46. The Applicant/Leaseholder made similar points to those for the previous year

47. The Respondent/Landlord made similar points to those for the previous year, and stated that there had been far more than the average amount of telephone calls, faxes, stationery, postage and travelling expenses because of the additional work caused by the building works. As the majority of telephone calls were to contractors, surveyors, Health and Safety officers, scaffolders and the developer, all of whom worked out on site, the telephone calls were to mobile telephone numbers at greater cost

48. The Applicant/Leaseholder responded that he had no additional points

49. **Rubbish clearance £240**

50. The Applicant/Leaseholder made similar points to those for the previous year

51. The Respondent/Landlord made similar points to those for the previous

year

52. The Applicant/Leaseholder responded with similar points to those for the previous year. The invoices did not predate his occupation

53. **Roof repairs (renewing of flat roofs above bay windows) £1000**

54. The Applicant/Leaseholder stated that the invoice was from Brian Adams dated 9 December 2011, which stated that the works carried "a full 15 year company guarantee". However, he could find no record of his company, the landline was listed as Havana Wine bar, he had tried many times to get through on the mobile number on the invoice but with no success, and the address on the invoice was that of a car dealership that had been there for many years. Also, the building developer, Richard Finnimore, had stated in an e-mail dated 1 November 2012 that it was he who had renewed the felt roof on the flat roofs. Also, he was challenging the cost, namely the round figure of exactly £1000, which was the exact limit above which section 20 consultation was required. In any event, these items were the responsibility of individual leaseholders to repair, and not the responsibility of the freeholder or recoverable through the service charge

55. The Respondent/Landlord stated that Richard Finnimore had now confirmed to the Applicant/Leaseholder that contractors employed by Salmore Property had actually carried out the felt work, using his scaffolding for access. The demised premises did not include the roof and it was not part of the leaseholder's responsibility, but was the Respondent/Landlord's responsibility. The Respondent/Landlord acted in the best interests of the lessees by arranging for the work to be done whilst the scaffolding could be used free of charge to the lessees. The Applicant/Leaseholder was obliged to pay a contribution by way of service charge under paragraph 1(a) of the fourth schedule to the lease

56. The Applicant/Leaseholder responded that although Richard Finnimore had now retracted his e-mail to him, all the other points in the Applicant/Leaseholder's statement of case were correct

57. **Bay repairs (window cladding) £1000**

58. The Applicant/Leaseholder made similar points to those for the previous item

59. The Respondent/Landlord stated that the external wood panels to the bays were in very poor condition, as stated at paragraph 1.03 of the schedule of condition, and as shown in the photographs. The Respondent/Landlord acted in the best interests of the lessees by arranging for the work to be done whilst the scaffolding could be used free of charge to the lessees. The Applicant/Leaseholder was aware that the works were going to be carried out and indeed had allowed the contractor access to Flat 6 to carry out the work and had given permission for the

works to be carried out, whereas if he had objected to the works he should have refused the contractor access and objected to the Respondent/Landlord or Salmore Property. The Applicant/Leaseholder's £250 contribution to the cost of this item was considerably cheaper than the cost to him of instructing his own contractors to erect scaffolding and carry out the works

60. The Applicant/Leaseholder responded that it was correct that the bays were in need of decorative repair. However, double glazing installers had informed him that the repair of the bay window fascias would be included in the job and that the fascia cladding cost to them was minimal. The contractors were on the scaffolding outside his window very regularly, and he did not remember them doing the windows. The first time he was informed that Salmore Property had done the windows was when he was shown the invoices in November 2012. It was very clear in the lease that this was not chargeable as maintenance costs

61. **Communal entrance and windows £856**

62. The Applicant/Leaseholder stated that this was a charge for an improvement to double glazing for the sake of modernisation. The windows were not in need of repair when replaced, and in any event were in place for only a few weeks before they needed to be replaced because of a fire. The lease did not require leaseholders to pay for improvements

63. The Respondent/Landlord stated that the window had been the window originally installed when the building had been erected in Victorian times. As stated at paragraph 7.07 of the schedule of condition, and as shown in the photographs, it was approximately 110 years old, it was damaged, the fanlights were inoperable and did not shut, the single glazed glass was cracked and, as it was in a communal stairway, did not conform to current safety regulations. The cost of repairs would have been as much, if not more, than the cost of renewing. The Respondent/Landlord acted in the best interests of the lessees by arranging for the work to be done whilst the scaffolding could be used free of charge to the lessees. Salmore Property deemed the work to be necessary, which, under clause 4(ii), was final and binding on the lessee. Under paragraph 1(f) of the fourth schedule to the lease the Applicant/Leaseholder was obliged to contribute to the expense of maintaining and renewing all other parts of the property used in common with occupiers of other flats.

64. The Applicant/Leaseholder responded that he had no additional points

65. **Fire risk safety assessment £203.38**

66. The Applicant/Leaseholder stated that £8.38 was paid for a fire sign, which he considered reasonable. However, Salmore were also seeking to charge for a fire safety assessment which had been carried out by them. This was unreasonable, bearing in mind all their additional charges

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67. The Respondent/Landlord stated that the Dorset Fire and Safety Officer demanded an up to date fire safety risk assessment to be carried out, and confirmed that the Respondent/Landlord or its agent could carry it out. He confirmed that the assessment carried out was a valid assessment. Carrying out a fire safety risk assessment was not part of a managing agent's day-to-day management duties, and it was reasonable to make a separate charge for the service, as other agents in the area did, such as Foxes and Owens & Porter

68. The Applicant/Leaseholder responded that he had no additional points

69. **Buildings insurance £566.95**

70. The Applicant/Leaseholder made similar points to those for the previous year

71. The Respondent/Landlord stated that the Applicant/Leaseholder had been provided with the insurance details. The new flats had not been included because at that date they had not even been under construction. Building works under construction were covered under the builder's insurance policy. When the builder handed the completed new flats to the developer, Richard Finnimore, they would be added to the Respondent/Landlord's policy

72. The Applicant/Leaseholder responded with similar points to those already raised

Year 2012/2013

73. **Buildings insurance**

74. The Applicant/Leaseholder stated that Salmore Property originally charged £445.42, but had then stated that they had changed to a new insurer who charged £489.85 for the year. The Applicant/Leaseholder also made similar points to those for the previous years

75. The Respondent/Landlord stated that the insurance broker, P&C (Insurance Brokers) Ltd, renewed the buildings insurance when due on 10 June 2012. However, the excess was £50000, which was obviously unacceptable, and not in the lessees' best interests. It took the broker a long time to find an insurer willing to provide cover with a lower excess. Only one company would do so, and cover was moved to them on 18 July 2012. The brokers wrote a very detailed letter to the lessees, including the Applicant/Leaseholder, on 12 September 2012, explaining the dates, premiums and refunds for time on risk. An invoice was sent to the Applicant/Leaseholder for the new premium, giving a refund for the return premium, deducting the £445.42 previously paid by the

Applicant/Leaseholder, and leaving a balance of £91.79 payable by the Applicant/Leaseholder. The Applicant/Leaseholder agreed the calculation and paid on 17 December 2012. The policy did not include on renewal on 12 June 2012 the 4 new flats being built. A surveyor for the new insurers, Lloyds of London, inspected the building and confirmed that the 4 new flats being built did not need to be included in the Respondent/Landlord's policy until the building works were complete

76. The Applicant/Leaseholder responded with similar points to those already raised

Other submissions in the Respondent/Landlord's statement of case

77. The Respondent/Landlord stated that the Applicant/Leaseholder had moved in in November 2010. The building had been in a very poor state of repair. A schedule of condition had been prepared in March 2011 by Sibbett Gregory. The cost of the works was estimated at about £200000. If the works had been carried out, the leaseholders would have had to pay a service charge contribution of £25000 each. However, Respondent/Landlord had instead paid planning, surveying and architects costs of in excess of £25000, and had redeveloped the roof at its own expense. This had meant that the necessary repairs and maintenance to the building had been carried out at no cost to the Applicant/Leaseholder

78. Salmore Property owned Flats 7 and 8

79. Mr Mehson was merely a director, and did not have any shares in the Respondent/Landlord company

The lease

80. For the purposes of these proceedings the material parts of the lease are as follows :

Preamble

> ***(1)*** *The Lessor is the registered proprietor.....of the property known as 15-19 Lansdowne Road Bournemouth.....(hereinafter called "the Building") which comprises inter alia eight self-contained flats and all of which said premises are hereinafter called "the said property".....*

Clause 1 [demise]

> *.....ALL THAT.....Flat No 6 15-19 Lansdowne Road.....including the floors and ceilings of the Flat (and the joist and beams to which the said floors and ceilings are attached)*

Clause 3: [Lessee's covenants]

(c) not to make any structural alterations or additions to the demised premises.....without the previous consent of the Lessor in writing first obtained such consent not to be unreasonably withheld

Clause 4 *:* [Lessee's covenants *with the Lessor and with the owners or lessees of the other Flat [sic] comprised in [sic] the Building*]

(i) keep the demised premises (other than the parts thereof comprised and referred to in paragraph (b) of clause 5 hereof) and all windows.....thereto belonging.....in good and substantial repair and condition and in particular.....

(a) so as to support shelter and to protect the parts of the building other than the demised premises

(b) to replace when necessary the joists and beams included in this demise.....

(ii) contribute and pay to the Lessor from time to time.....one equal eighth part of the costs and expenses mentioned in the fourth schedule hereto.....

Clause 5 *:* [Lessor's covenants]

(b) .....the Lessor will

(i) as and whenever necessary during the term hereby created maintain and repair

(a) the roof (including the timbers).....

(b) the exterior walls of the Building

(c) the entrance porch.....

(d) the drains.....

(e) the foundations of the Building below the level of the joists supporting the Ground Floor Flat [sic] of the Building

(f) all other parts of the said property used in common by the Lessee with the Lessor or the owners or occupiers of the the other Flat [sic] forming part of the said property

(ii) paint the exterior of the said property.....

(iii) at all times during the said term keep the Building insured.....

First Schedule [rights included in this lease]

7(a) the right of access at all times on foot only over the driveway and pathways coloured brown on the said plan numbered 2

(b) the right between Monday and Friday in each week between the hours of 6.00 pm and 8.30 am in each

successive period of twenty four hours only to park one private motor vehicle.....on the parking place edged green on plan numbered 2.....and the same right at all times between 8.30 am on every Saturday morning and 8.30 am on each Monday morning only

Fourth Schedule
Cost and expenses.....in respect of which the Lessee is to contribute under clause 4(ii) of this lease

1. *The expenses of maintaining repairing and renewing :*
   a. the roof (including the timbers) the gutters rainwater pipes and chimneys of the Building
   b. the exterior walls of the Building
   c. the entrance porch boundary walls fences driveway and paths of the said property
   d. the drains water and gas pipes and electric cables and wires under or upon the said property and enjoyed or used by the Lessee in common with the occupier of the other flat forming part of the said property
   e. the foundations of the Building below the level of the joist supporting the ground floor of the building
   f. all other parts of the said property used in common by the Lessees with the Lessor or the owners or occupiers of the other flat comprised in the said property
2. *The expenses of painting the exterior of the said property.....*
3. *The expenses of insuring the said property pursuant to clause 5(b)(iv)* [sic] *of this lease*
4. *The costs charges and expenses of managing agents appointed by the Lessor to manage the said property and to carry out the Lessor's obligations under the lease*
5. *The costs of the paladin referred to*

Inspection

81. The Tribunal inspected the property on the morning of the hearing on 3 July 2013. Also present were Mr Dickson and Mr Mehson

82. The property was a flat on the first floor in 19 Lansdowne Road, which itself formed part of a block comprising 15, 17 and 19 Lansdowne Road. The ground floor comprised commercial units, such as Downes Wine bar. The property was one of four flats in 19 Lansdowne Road, the others being flats 5 (also on the first floor) and 7 and 8 (on the second floor). Each of those four flats had two windows, one flush with the exterior wall, and the other a bay window. The bays extended over two floors, one for flats 6 and 8, and the other for flats 5 and 7. There was a small flat roof over the bay for flats 6 and 8. The edging round the windows for flats 6, 7 and 8 were clad in UPVC. The facing of the exterior wall on the first and second floors was painted brickwork

83. The block had a third floor, with a rendered exterior wall, and, a fourth floor with a mansard roof

84. At the rear was a tarmac car park. There was evidence of dumping at the southern end of the car park. There were 3 brick-built bin stores, one of which was unfinished. At the rear of 17 Lansdowne Road was a lift shaft. At the rear of 19 Lansdowne Road was a metal staircase, leading to, amongst others, a communal landing on the first floor of about 4 square metres for flats 5 and 6. Stairs led to a further landing for flats 7 and 8. The landings and stairs were carpeted. The carpet was in good condition. There were two UPVC windows. The window sills were dirty. There was a crack in the ceiling

Procedural matters at the hearing

85. The Tribunal indicated that Mr Lyons was a principal of Foxes Property Management, but did not consider that there was any conflict of interest in Mr Lyons being a Tribunal member in this case, as Foxes Property Management did not manage, and had no interest in, the block, and had simply been mentioned by the parties by way of example of local agents' management costs

86. The parties agreed, and had no objection to Mr Lyons sitting as a Tribunal member in this case

87. The Tribunal also indicated that as there were no service charge accounts or details for the year ending 31 March 2013 or subsequent years, the only service charge item for those years in respect of which the Tribunal would be able to make a determination would be the insurance premium for the year ending 31 March 2013, as that was the only such item in respect of which the parties had placed any evidence before the Tribunal

88. The Tribunal asked for clarification about the ownership of the block, and the way in which the service charge provisions in the lease had been operated

89. Mr Mehson said that the freeholder of 19 Lansdowne Road had been Sorda Limited since 15 April 2011, as shown in the Land Registry entries (A2 page 11). The previous freeholder had been Jordan Future Limited. The freehold of 15 and 17 Lansdowne Road had been sold to an independent buyer about 5 years ago, and certainly before the start of the service charge year 1 April 2010 to 31 March 2011, and before Mr Dickson purchased flat 6 in November 2010. There had been 8 flats in 15 to 19 Lansdowne Road. There were now four of those flats in 19 Lansdowne Road. New flats had been built on the third and fourth floors of 15 to 19 Lansdowne Road, of which four were in 19 Lansdowne Road, but they had not yet been completed. The car park at the rear had been owned by Sorda Limited until recently, when it had been transferred to Jordan Future

Limited. In answer to a question from the Tribunal Mr Mehson said that there had been no deed of variation of the service charge provisions in the lease. However, the service charge accounts in issue before the Tribunal related to costs incurred only in respect of 19 Lansdowne Road

90. Mr Dickson said that Mr Mehson's statements did not accord with invoices he had received as follows :
    a. Salmore Property Limited 15 March 2012, stating that his landlord was Jordan Future Limited (A1 page 75)
    b. Salmore Property Limited 23 March 2010 (addressed to the previous owner of flat 6), stating that his landlord was Salmore Property Limited (A1 page 78)
    c. Salmore Property Limited 12 September 2012, stating that his landlord was Jordan Future Limited (A1 page 85)

91. The Tribunal adjourned the hearing for some 15 minutes to enable the parties to consider how the service charge provisions in the lease were now said to operate, bearing in mind that they provided for the Applicant/Leaseholder to pay a one eighth share of expenses in relation to 15 to 19 Lansdowne Road, whereas 15 to 17 Lansdowne Road had been sold before the relevant service charge years

92. On the resumption, Mr Dickson said that he should have to pay one quarter of expenses relating solely to the four flats on the first and second floors of 19 Lansdowne Road. He should not have to pay one quarter of expenses, such as insurance, which related to the whole of 19 Lansdowne Road, including the commercial premises, because the commercial premises were on two floors, namely ground floor and basement. He should be liable for only one sixteenth of other items which related to the whole of 15 to 19 Lansdowne Road, such as the car park

93. Mr Mehson said that the service charges in issue related only to the residential part of 19 Lansdowne Road, and not to the commercial premises or to 15 or 17 Lansdowne Road, and Mr Dickson was being charged only one quarter of those service charges

94. The Tribunal indicated that :
    a. the service charge provisions in the lease provided for the Applicant/Leaseholder to pay one eighth of the costs and expenses in the fourth schedule
    b. the fourth schedule costs were costs relating to the "building" and the "said property" which were defined in recital (1) on page 1 of the lease (A1 page 86) as "the property known as 15-19 Lansdowne Road.....which comprises inter alia eight self contained flats"
    c. the application before the Tribunal was an application under section 27A of the 1985 Act, and not, for example, an application to vary the lease under the Landlord and Tenant Act 1987
    d. as such, the Tribunal's powers in this application were limited to

determining the reasonableness and payability of the cost of each service charge item in issue, whereas in relation to those costs which did not apply to the whole of 15 to 19 Lansdowne Road the Tribunal was unable to determine the proportion payable by the Applicant/Leaseholder in the absence of a deed of variation of the lease

The issues

95. The parties' further submissions, and the Tribunal's decision, in respect of each issue, were as follows

The hearing on 3 July 2013

Year 2010/2011

96. **Electricity cost £217.49**

97. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 4(i)(f) of the fourth schedule to the lease. Mr Dickson said that he was not disputing that electricity charges were in principle payable by way of service charge

98. Mr Dickson said that the electricity was for the lighting in the communal landings and stairway. There were now 3 bulbs internally and one externally, but in the service year in question there had been a maximum of only 2, and none at all for a large proportion of that year. The electricity paid for electricity consumed in that year had been £87.68 :

A1 page 9		16.59
A1 page 10		30.50
A1 page 11	14.57	
Less discount	0.57	14.00
A1 page 12		26.59
		87.68

99. Mr Mehson said that the amounts paid during the year in question were as follows :

R page 32	16.59
R page 33	30.50
R page 34	85.71
R page 35	84.69
	217.49

100. Any overpayment had been credited in future service charges

101. Mr Dickson said that future service charges had not reflected any credits. A1 page 11 showed a credit due of £70.69, but the next invoice, namely the amended invoice at A1 page 10, showed that the overpayment had not been credited, and so had presumably been paid back in cash

102. Mr Mehson said that the service charge had reflected the figures paid during the service charge year in question

103. *The Tribunal's decision*

104. The Tribunal finds that it is clear that the amounts paid for electricity consumed in the year totalled £87.68, and that the balance claimed by the Respondent/Landlord represented overpayments

105. The amount payable by way of service charge for this item is therefore £87.68, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

106. **Buildings insurance £2877.96**

107. In answer to questions from the Tribunal, Mr Dickson said that he was not challenging that insurance premiums were payable in principle by way of service charge, despite the reference in the fourth schedule paragraph 3 to clause 5(b)(iv), whereas in fact the Applicant/Landlord's insurance obligation was in clause 5(b)(iii), and there was no clause 5(b)(iv)

108. However, he was challenging the liability to pay in principle on another ground, namely that the Applicant/Landlord was obliged under clause 5(b)(iii) to produce a receipt for the premium. The Applicant/Landlord had not done so. The Respondent/Leaseholder was liable to pay the insurance premium under the fourth schedule paragraph 3 only for insuring the property pursuant to clause 5(b). The Applicant/Landlord had not complied with clause 5(b) and so could not claim the insurance premium

109. In relation to the amount of the premium, Mr Dickson said that the policy document shown to his solicitors when he purchased in November 2010 was at A1 page 32. It showed the premises as 19 Lansdowne Road, the buildings sum insured as £793411, and the loss of rent as £28500, but had the premium blanked out. He had visited P & C, the insurance brokers acting for the Respondent/Landlord just after his purchase, and they had confirmed that the property was insured and had shown him the same document as at A1 page 32, but with the premium shown, which was £1536.02, according to the note he made the following day

110. The policy document produced to him in October/November 2011,

when he had first been shown any invoices, was at A1 page 33. It showed the premises as 15-19 Lansdowne Road, the buildings sum insured as £2380236, the loss of rent as £135000, and the premium as £3817.57. The Applicant/Landlord was claiming that if the insurance premium for the commercial premises at 19 Lansdowne Road were deducted, then the balance of the premium attributable to the four flats at 19 Lansdowne Road was £2877.96, of which Mr Dickson's one quarter share was said to be £719.49

111. However, he should have to pay no more than one eighth of £1536, namely about £192, because £1536 related to 19 Lansdowne Road, the commercial premises at 19 Lansdowne Road were liable for one half of that premium, and Mr Dickson, being one of the four flat owners in the residential part, was liable for only one quarter of the remaining half

112. In answer to questions from the Tribunal, Mr Mehson said that :
    a. the receipt for the premium of £2877.96 was not before the Tribunal
    b. he did not know how the amended figure of £477.20 had been calculated; his daughter had given him the figures; however, one eighth of £3817.57 was £477.19
    c. the loss of rent figure would have included loss of rents from sub-lettings, as recommended by the broker

113. *The Tribunal's decision*

114. The Tribunal finds that :
    a. the Tribunal has taken account of the fact, as the Tribunal finds, that there are several examples of poor drafting in the lease, such as the references in clause 5(b)(i) to "the other flat" (in paragraph 5(b)(i)(d)), "the Ground Floor Flat" (in paragraph 5(b)(i)(e)), and "the other Flat" (in paragraph 5(b)(i)(f)), despite the reference in recital (1) to "eight residential flats"
    b. the reference in the fourth schedule paragraph 3 to clause 5(b)(iv), whereas in fact the Applicant/Landlord's insurance obligation is in clause 5(b)(iii), and there is no clause 5(b)(iv), is simply another example of poor drafting, and the Tribunal accordingly construes the reference in the fourth schedule paragraph 3 to clause 5(b)(iv), as a reference to 5(b)(iii),
    c. there is a conflict of evidence before the Tribunal about the premium paid by the Respondent/Landlord
    d. the Tribunal has taken into account :
        - Mr Mehson's evidence that the insurance schedule at A1 page 33, relating to 15-19 Lansdowne Road with a buildings sum insured of £2380236 and a loss of rent cover of £135000, was the actual insurance schedule for the year, and that the premium paid was £3817.57
        - the fact, according to the Land Registry entries, that Sorda

Limited became the owner of 19 Lansdowne Road on 15 April 2011, which the Tribunal finds to be near to the end of the service charge year in question

- however, Mr Mehson's evidence that 15 and 17 Lansdowne Road were sold to an independent purchaser about 5 years ago, which the Tribunal finds to have been well before the service charge year in question
- Mr Dickson's evidence that the insurance schedule at A1 page 32, relating to 19 Lansdowne Road with a buildings sum insured of £793411 and a loss of rent cover of £28500 and with the premium blanked out, was the document produced to his solicitors on his purchase in November 2010, and that he saw the same document at the offices of P&C but showing a premium of about £1536
- the letter from Salmore Property Limited dated 14 June 2011 at A1 page 35 stating that the insurance cover (for the following year) was £833082, which, although addressed to Mr Dickson at "Flat 6 15-19 Lansdowne Road", the Tribunal finds to be an indication that by that time the insurance cover related only to 19 Lansdowne Road, and not to the whole of 15-19 Lansdowne Road
- the fact that the service charge account for the year ended 31 March 2010 at A1 page 25 was headed "Anglo City House 15-19 Lansdowne Road", whereas the service charge account for the year ended 31 March 2011 at A1 page 48 was headed "Anglo City House 19 Lansdowne Road", is, as the Tribunal finds, an indication that the insurance premium for the year in question would also have related just to 19 Lansdowne Road, and not to 15-19 Lansdowne Road

e. having considered all the evidence before the Tribunal in the round, the Tribunal finds that :

- the insurance premium payable by way of service charge for the year in question would also have related just to 19 Lansdowne Road, and not to 15-19 Lansdowne Road
- the buildings sum insured for 19 Lansdowne Road was approximately one third of the buildings sum insured for 15-19 Lansdowne Road, according to the documents at A1 pages 32 and 33, although the loss of rent cover for 19 Lansdowne Road was approximately one fifth of the buildings sum insured for 15-19 Lansdowne Road, according to the documents at A1 pages 32 and 33
- the premium for insuring 19 Lansdowne Road alone is therefore likely to have been in the order of one third of the premium for insuring 15-19 Lansdowne Road
- the only evidence before the Tribunal about the amount of that premium is Mr Dickson's recollection of seeing a figure of about £1536 at the offices of P&C
- that figure is a little more than one third, namely about two fifths, of the premium of £3817.57 for insuring 15-19

Lansdowne Road

- in all the circumstances £1536 is a reasonable sum for the cost of insuring the four flats and the commercial premises at 19 Lansdowne Road in the year in question

115. The amount payable by way of service charge for this item is therefore £1536, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

116. **Management charges £960**

117. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 4 of the fourth schedule to the lease

118. Mr Dickson said that he had been charged one quarter of £960, namely £240

119. In answer to questions from the Tribunal Mr Mehson said that :
   a. the charges included protecting the lessees' interests while the redevelopment work was being carried out
   b. he was unable to find a specific provision in the lease allowing the Applicant/Landlord to include in the service charge management fees relating to redevelopment works, but it was extra management work which the Applicant/Landlord had a duty to carry out, and not everything which a landlord had a duty to could be spelt out specifically in a lease
   c. the managing agent was Salmore Property Limited
   d. there were no invoices for management charges before the Tribunal

120. *The Tribunal's decision*

121. The Tribunal finds that :
   a. according to the service charge account for the year in question at A1 page 48 this item just relates to 19 Lansdowne Road
   b. the small number of service charge items in the account indicates that the extent of the management services provided was no more than average for a block of this size
   c. there is no express provision in the fourth schedule of the lease to enable additional management costs relating to the redevelopment of the upper floors at 19 Lansdowne Road to be included in the service charge, and, in any event, it would be unreasonable to do so because such extra costs had been caused by the redevelopment works, not by any additional work in managing the building, as such
   d. drawing on the Tribunal's collective knowledge and expertise in this area, a reasonable management fee for the work carried out in

the year in question would be £150 a flat, namely £600, plus VAT if Salmore Property Limited were registered for VAT

122. The amount payable by way of service charge for this item is therefore £600, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

123. **Book keeping and accounts fees £420**

124. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 4 of the fourth schedule to the lease as a cost charge or expense of the managing agent. The invoice had been from his daughter to Salmore Property Limited, but was not before the Tribunal. His daughter was not employed by Salmore Property Limited. She was freelance. Although there was no express obligation to prepare accounts in clause 5 of the lease, the Applicant/Landlord had a duty to do so

125. Mr Dickson said that there was an invoice before the Tribunal (A1 page 50), and it was from Salmore Property Limited, not Mr Mehson's daughter

126. Mr Mehson said that his daughter owned 100% of the shares in Salmore Property Limited

127. *The Tribunal's decision*

128. The Tribunal finds that :
    a. there is no express provision in the fourth schedule of the lease to enable a fee for book keeping and accounts to be included in the service charge
    b. there is no implied provision in that respect, because :
        - it would have been very easy for such a provision to have been included if the parties to the lease had so intended
        - on the contrary, the detailed list of items in the fourth schedule implies that the list is exhaustive
        - the expression "costs charges and expenses of Managing Agents appointed by the Lessor to manage the said property and to carry out the Lessor's obligations under the Lease" in paragraph 4 of the fourth schedule are not wide enough to impliedly include a fee for book keeping and accounts because there is no obligation under the lease for the landlord to carry out book keeping or to prepare accounts
        - the mere fact that a landlord has a duty to do something by statute does not of itself imply that the landlord can include the cost of compliance in a service charge

129. This item is not payable by way of service charge

130. **Sundry expenses £100**

131. Mr Dickson said the figure was shown in the notes to the accounts at A1 page 51

132. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 4 of the fourth schedule to the lease. It was a round figure. No one was going to calculate each individual item. He owned half the flats and was accordingly going to pay a proportion of the service charge, including this item

133. *The Tribunal's decision*

134. The Tribunal finds that this item has not been particularised by the Respondent/Landlord and the Tribunal is not satisfied that this item is payable in addition to the management fees which the Tribunal has found to be payable by way of service charge

135. This item is not payable by way of service charge

136. **Cleaning £528.77**

137. Mr Dickson said that the invoices were as follows :

A1 page 57	15 March 2010	January and February	176.25
A1 page 58	6 April 2010	March	88.13
			264.38

138. He was not challenging the amount, as such, but his liability under the 18-month rule in section 20B of the 1985 Act. He had received no notification of this item until receipt of the service charge statement at A1 pages 48 to 49 in late October/November 2011, more than 18 months after the invoices. The only service charge demands had been unspecific, namely for £800 on account at A1 page 78

139. In answer to questions from the Tribunal. Mr Mehson said that :
    a. he did not know when Mr Dickson had first seen the invoices at A1 pages 57 and 58, but he found it very convenient that the date mentioned by Mr Dickson, namely late October/November 2011 just happened to be outside the 18-month rule
    b. he did not know when the service charge account at A1 page 48 had been sent to Mr Dickson
    c. the reference to Salmore Property Limited being the landlord in the service charge demand at A1 page 78 was simply an error; they

owned many properties

d. he did not know why the invoices at A1 pages 57 and 58 had been included in the service charge for the year in issue, when the work had been carried in the previous service charge year; his daughter prepared all the accounts

140. *The Tribunal's decision*

141. The Tribunal finds that:

a. the invoices relating to this item were dated 15 March 2010 and 6 April 2010

b. the costs in each respect were incurred by the Respondent/Landlord for the purposes of section 20B of the 1985 Act on the dates of the respective invoices

c. Mr Dickson's evidence that he did not see the invoices until more than 18 months after the date of the invoices is consistent with the correspondence before the Tribunal namely :

- a letter from Mr Dickson dated 23 September 2011 requesting receipts and other documents relating to the year in question (A1 page 37)
- a letter from Mr Dickson endorsed with the manuscript words "although undated this letter was sent 18 October 2011" starting with the words "further to my inspection of documents" (A1 page 38)

142. The sum of £274.38 in respect of this item is not payable by way of service charge by virtue of section 20B of the 1985 Act

143. **Rubbish clearance £408.34**

144. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 1(f) of the fourth schedule to the lease, namely the cost of maintaining repairing and renewing the parts of the property used in common, because that included maintaining the tidiness of the property. It would not be possible to use the car park unless it were kept free of rubbish. The invoices were at A1 pages 52 to 55, which totalled £816.64. Half of that sum had been charged to the four flats at 19 Lansdowne Road. The car park was owned by Jordan Future Limited, and the building at 19 Lansdowne Road was owned by Sorda Limited

145. Mr Dickson said that there was a dispute about whether or not he was entitled to use the car park

146. *The Tribunal's decision*

147. The Tribunal finds that :

a. the expression "maintaining repairing and renewing" in the preamble to paragraph 1 of the fourth schedule to the lease, coupled with the expression "all other parts of the said property used in common by the Lessees with the Lessor or the owners or occupiers of the other Flat comprised in the said property" in paragraph 1(f) is wide enough to include the clearance of rubbish from the car park
b. although the Tribunal has taken account of the evidence of Mr Dickson and the statements of his other witnesses that they have not seen rubbish clearance being carried out, the Tribunal is satisfied, having considered all the evidence before the Tribunal in the round, that the work referred to in the relevant invoices was indeed carried out
c. although the figure is high, and considerably higher than the invoice at R page 41, it is not so high as to be unreasonable for the work carried out

148. The amount payable by way of service charge for this item is therefore £408.34, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

149. **Carpet £663.88**

150. Mr Dickson said that the invoice was at A1 page 56

151. Neither party had anything to add to their written submissions

152. *The Tribunal's decision*

153. The Tribunal finds that :
a. having considered all the evidence before the Tribunal in the round, the Tribunal accepts that the carpet was replaced in April 2010
b. however, the communal areas involved are relatively small, and there is no invoice before the Tribunal from the carpet supplier
c. drawing on the Tribunal's collective knowledge and expertise in this area a reasonable sum for replacing the carpet in April 2010 would have been £400

154. The amount payable by way of service charge for this item is therefore £400, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

Year 2011/2012

155. **Management charges £1000**

156. The parties agreed that the issues were the same as for the previous year

157. *The Tribunal's decision*

158. The Tribunal finds that a reasonable management fee for the year in question would have been no more than the fee which the Tribunal has found to be payable for the previous year, namely £150 a flat, namely £600, plus VAT if Salmore Property Limited were registered for VAT, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

159. **Book keeping and accounts fees £400**

160. The parties agreed that the issues were the same as for the previous year

161. *The Tribunal's decision*

162. The Tribunal finds that this item is not payable by way of service charge for the same reasons as for the similar item for the previous year

163. **Sundry expenses £150**

164. The parties agreed that the issues were the same as for the previous year. In answer to questions from the Tribunal, Mr Mehson said that the charges were greater than the previous year because the lessees had been complaining about the building works

165. *The Tribunal's decision*

166. The Tribunal finds that this item is not payable by way of service charge for the same reasons as for the similar item for the previous year

167. **Rubbish clearance £240**

168. Mr Dickson said that he had been in residence during the whole of the year in issue and would have seen rubbish clearance if it had actually been carried out

169. Mr Mehson said that the rubbish was not coming from flats in their ownership, but in any event, the rubbish was being cleared

170. *The Tribunal's decision*

171. The Tribunal finds that this item is payable by way of service charge for the same reasons as for the similar item for the previous year, and that the

Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

172. **Roof repairs (renewing of flat roofs above bay windows) £1000**

173. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraphs 1(a) and 1(b) of the fourth schedule to the lease, in that the roofs above the bay windows were roofs, and they were also part of the exterior wall. The wording of the description of the flat, namely including floors and ceilings, made it clear that only the interior of the flat was being demised, not the roof above the bay

174. Mr Dickson said the invoice was at A1 page 67. The lease of Flat 5, at A1 page 96, had a clearer definition of what was included in the flat, including window frames. In any event, the fact that the definition in the lease of flat 6 was not clear did not mean that the bay and the roof above the bay were not included in the demise

175. *The Tribunal's decision*

176. The Tribunal finds that:
    a. there is no express provision in the fourth schedule of the lease to enable the cost of renewing the flat roofs above the bay windows to be included in the service charge, in that :
        - paragraph 1(a) refers only to "the roof", not to "roofs", and, as the Tribunal finds, refers only to the main roof of the building, and not to the coverings on the tops of the bays
        - paragraphs 1(b) and 2 draw a distinction, as the Tribunal finds, between "the exterior walls of the Building" and the "exterior of the said property", and, whilst the bays could be regarded as part of the "the exterior" they cannot, by the ordinary and plain meaning of the words, be regarded as part of the "exterior walls" any more than any of the other windows and frames in the building could be so regarded
        - they do not form part of "all other parts of the said property used in common" for the purposes of paragraph 1(f) because they are not in any sense used in common and, contrary to Mr Mehson's submission, the roofs of the bays protrude from, and do not provide support for, any other part of the building
    b. there is no implied provision in that respect, because :
        - it would have been very easy for such a provision to have been included if the parties to the lease had so intended
        - on the contrary, the detailed list of items in the fourth schedule implies that the list is exhaustive
        - the mere fact that a landlord has carried out work which has

benefited a tenant does not of itself imply that the landlord can include the cost of doing so in a service charge

177. This item is not payable by way of service charge

The hearing on 10 July 2013

178. **Bay repairs (window cladding) £1000**

179. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 1(f) of the fourth schedule to the lease, as part of the common parts of the building, in that it provided support to other parts of the building. When asked whether he was suggesting that the window bay was part of the exterior wall of the building, Mr Mehson said that he had no comment. When it was put to him by the Tribunal that if the cost of maintenance repair and renewal of the whole of the exterior of the building could be included in the service charge, then there would be no need for the individual parts of the building which could be so included to be specified in the various sub-paragraphs of paragraph 1 of the fourth schedule, Mr Mehson merely said that he would leave it to the Tribunal to decide. Mr Mehson also said that the lessee's responsibility under clause 4(i) of the lease included a specific reference to "windows", but no reference to window frames. There was a photograph of the bay at R page 25. The expression "window" comprised the glass and the immediate frame, but not the main frame of the bay in which the window sat. When asked whether there was a specific obligation on the lessor to maintain repair and renew windows under clause 5(b) of the lease, Mr Mehson said that it was under clause 5(b)(f), namely the other parts of the building used in common. Mr Mehson said that "maintenance" included the prevention of disturbance to something, and the wooden parts of the frame of the bay had been rotten and had needed repair, as shown in the photograph at R page 25. The wood had then been clad with UPVC

180. Mr Dickson said that the invoice was from a Mr Baker at A1 page 68. The two items of work to the bay, namely this item and the previous item, had been carried out at the same time, and should both be regarded as one set of works from the section 20 consultation point of view. However, in answer to a question from the Tribunal Mr Dickson accepted that the two invoices were from different contractors. Mr Dickson said that the word "window" was not confined to the glass or even to the immediate frame. The whole bay structure was "windows". It was part of the demised premises, it was not used in common with anyone else, it did not provide support for any other part of the building, and it was not part of the "exterior walls" of the building. As such, the cost of its maintenance could not be included in the service charge

181. Mr Mehson said that the pillars in the bay structure provided strengthening for the rest of the building. In any event, on reflection, the work fell within paragraph 2 of the fourth schedule, namely the expense of painting the exterior of the building. When asked whether the cladding work carried out amounted to "painting", he said that the cladding work avoided the costs of further painting. When it was put to him that the lessee had a clear obligation under clause 4(i) to repair the windows before the landlord painted them under clause 5(b)(ii), Mr Mehson made no comment except to note the Tribunal's question

182. *The Tribunal's decision*

183. The Tribunal finds that this item is not payable by way of service charge for the same reasons as given in respect of the previous item

184. **Communal entrance and windows £856**

185. In answer to questions from the Tribunal, Mr Mehson submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 1(f) of the fourth schedule to the lease. The original windows were shown in photograph 29 at R page 36

186. Mr Dickson said that the disputed element of this charge was the invoice for £850 at A1 page 69. The windows had been from the 1960s or 1980s, not the Victorian era. He had not seen any evidence of disrepair. The original glazing had been single glazing. The Respondent/Landlord regarded the replacement of single glazing with double glazing as an improvement when insisting that lessees needed the Respondent/Landlord's consent to do so, so the replacement of the communal single glazing with double glazing also amounted to an improvement. In answer to questions from the Tribunal about the report at paragraph 7.07 (R page 22) stating that the "window decorations had been extensively cracked and crazed, puttywork well worn and missing to many places; fanlights inoperable/stuck open; approximately four panes of glazing cracked to single glazing", Mr Dickson said that he could not be sure whether or not the fanlights would not shut and he had not seen any cracked glazing. The description applied to all the windows at the rear of 15-19 Lansdowne Road, not just the windows in question, although Mr Dickson said that none of the windows at Flat 6 had been broken or stuck open, so that the report description must have related to other windows. In answer to questions from the Tribunal about the windows not conforming to current safety regulations, Mr Dickson said the lower part of the windows was fixed, and he was unaware of any such regulations applying to fanlights at such a height and that no one could fall out of them. In any event, they had not been replaced with reinforced glass. If, contrary to Mr Dickson's submissions, the Tribunal were to find that the original window was out of repair, then a repair, as opposed to the improvement which had actually been carried out, would have cost no more than about £200

187. Mr Mehson said that he had no additional comments

188. *The Tribunal's decision*

189. The Tribunal finds that:
    a. having considered all the evidence before the Tribunal in the round, the Tribunal accepts that the window was out of repair, in that fanlights would not shut and panes of glass needed repair
    b. however, there is no evidence before the Tribunal to support Mr Mehson's assertion that the cost of replacement was no more than the cost of repair
    c. the windows are not unduly large or complex or difficult to access, and the Tribunal is not persuaded that any health or safety issues would increase the cost of repairs
    d. drawing on the Tribunal's knowledge and expertise in this area, a reasonable sum for repairing the fanlights and broken panes would have been £250

190. The amount payable by way of service charge for this item is therefore £250, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

191. **Fire risk safety assessment £203.38**

192. In answer to questions from the Tribunal, the Respondent/Landlord submitted that this item could be included in the service charge payable by the Applicant/Leaseholder under paragraph 1(f) of the fourth schedule to the lease. It was work carried out under a statutory duty to keep the common areas fit for purpose

193. Mr Dickson said that the amount in dispute was the invoice for £195 from Salmore Property Limited at A1 page 70. The work was a normal part of management and should not have been charged in addition to the management fee. The charge could not be described as an expense of the managing agent for the purposes of paragraph 4 of the fourth schedule to the lease because the managing agent had carried out the work itself. However, in answer to questions from the Tribunal, Mr Dickson conceded that the "expenses" referred to in the preamble to paragraph 1 of the fourth schedule were expenses of the landlord, not expenses of the managing agents. In any event, the costs were too high. The normal fee would be about £55 for an area as small as the communal landings and stairways at 19 Lansdowne Road

194. In answer to questions from the Tribunal, Mr Mehson said that the assessment itself was not before the Tribunal. The assessment was part of "maintenance" of the common parts because the fire officer had required it and the common parts could not have been used without obtaining the

report. The £195 had been calculated at 4 hours work at £50 an hour, including preparing the report and liaising with the fire officer

195. Mr Dickson responded that 4 hours was too much for a non-expert to prepare a report on such a small area. A professional company would have charged far less. The invoice from Salmore Property Limited was addressed to the lessees, and so was not an expense of the Respondent/Landlord for the purposes of paragraph 1 of the fourth schedule to the lease

196. *The Tribunal's decision*

197. The Tribunal finds that :

a. the expression "maintaining repairing and renewing" in the preamble to paragraph 1 of the fourth schedule to the lease, coupled with the expression "all other parts of the said property used in common by the Lessees with the Lessor or the owners or occupiers of the other Flat comprised in the said property" in paragraph 1(f) is wide enough to include the cost of carrying out of a fire risk safety assessment
b. although the figure is high, it is not so high as to be unreasonable for the work carried out

198. The amount payable by way of service charge for this item is therefore £203.38, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

199. **Buildings insurance £566.95**

200. Mr Dickson said that he had asked frequently for copies of the insurance schedule and receipts for the premium, but the only receipt he had received was the letter from Salmore Property Limited at A1 page 77, stating that £566.95 had been paid on 7 June 2011. The Respondent/Landlord had not insured the building pursuant to clause 5(b)(iii) for the purposes of paragraph 3 of the fourth schedule to the lease, because the obligation in clause 5(b)(iii) was not only to insure but also to provide a receipt on demand, and the Respondent/Landlord had failed to provide a receipt. Therefore the Respondent/Landlord had not complied with clause 5(b)(iii), and therefore the Respondent/Landlord could not recover the cost if insuring through the service charge. When it was put to him by the Tribunal that clause 5(b)(iii) imposed 2 separate obligations, namely first to insure and secondly to provide a receipt on demand, and that it was only the first of those obligations, namely to insure, which was referred to in paragraph 3 of the fourth schedule, Mr Dickson did not agree. He said that if there were any ambiguity it should be construed against the person drawing up the lease, namely the Respondent/Landlord

201. In answer to questions from the Tribunal, Mr Mehson said that the

insurance schedule for the year in question was not before the Tribunal. When asked why not, he said that he had not realised that it was in issue. When it was put to him by the Tribunal that the Applicant/Leaseholder's statement of case very clearly put the matter in issue, Mr Mehson made no further comment. When asked why the insurance premium did not appear in the service charge statement at A1 page 59, he said that it had been dealt with separately. When asked how the figure of £566.95 had been calculated he said that it would have been 25% of the insurance premium apportioned to the 4 flats in 19 Lansdowne Road. He said that according to the letter dated 4 September 2012 from P&C Insurance Brokers at R page 44 the premium for the following year had been £3918.80. One third of that sum would have been billed to the commercial tenants, and two thirds to the residential lessees, ie about £2600. The one quarter attributable to Flat 6 would therefore have been £650. However, in answer to questions from the Tribunal, Mr Mehson said, on reflection, that the commercial premises, being on the ground floor and the basement, were about the same area overall as the four flats on the first and second floors, and that the proportions between commercial and residential were about half and half, ie about £1950 each. The one quarter attributable to Flat 6 would therefore have been about £488. In answer to further questions from the Tribunal, Mr Mehson acknowledged that, according to the insurance schedules for the previous year at A1 pages 32 and 33, loss of rent was an insured risk, that the lease did not contain a specific provision allowing the cost of insuring against loss of rent to be included in the service charge, and that that element of the insurance cover did not benefit the Applicant/Leaseholder

202. Mr Dickson said that the premium of £3918.80 for the following year was after a price increase to reflect a lower excess, and that the AXA premium for the following year had been £3553,48 according to the letter from P&C. The commercial tenants had told him that for the following year their proportion of the £3918.80 premium had been a total of about £2043, namely just over half. Mr Dickson said that this reflected the fact that the total area of the commercial premises was a little greater than that of the four flats above, as the commercial premises had a ground floor extension. The premium charged, namely £566.95, was too high. However, in answer to questions from the Tribunal, Mr Dickson acknowledged that he had not placed before the Tribunal any alternative insurance quotations by way of evidence. However, he repeated his comments in relation to the previous year, namely that he believed that the insurance premium for 19 Lansdowne Road for the previous year had been about £1536, and that he should therefore have to pay no more than one eighth of that figure

203. *The Tribunal's decision*

204. The Tribunal finds that:
    a. there is no copy before the Tribunal of the insurance schedule for the year in question despite, as the Tribunal finds, Mr Mehson knowing that this was a document which was highly relevant to the

issues before the Tribunal

b. the insurance for the year in question related solely to 19 Lansdowne Road, for the same reasons as given in relation to the insurance premium for the previous year
c. the buildings sum insured was £833082, according to the letter from Salmore Property Limited dated 14 June 2011 at A1 page 35, whereas the buildings sum insured for the previous year was £793411, according to the insurance schedule at A1 page 32
d. the Tribunal has found that a reasonable premium for the buildings sum insured of £793411 for the previous year was £1536
e. a reasonable premium for the year in question would therefore be £1641, calculated as follows :

$$\frac{833082}{793411} \times 1536 = 1641$$

205. The amount payable by way of service charge for this item is therefore £1641, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

Year 2012/2013

206. **Buildings insurance £537.21**

207. Mr Dickson said that the demand from Salmore Property Limited dated 12 September 2012, at A1 page 85, referred to the change of insurer from AXA to Lloyds (detailed in the letter from P&C at R page 44) and showed the premium payable as :

Premium proportion from 19 June 2012 to 17 July 2012	47.36
Premium proportion from 17 July 2012 to 17 July 2013	489.85

208. Mr Dickson said that he had received a copy of the insurance schedule for that year, but that it was not in the papers before the Tribunal. When asked why not, he said that he had not realised that it was relevant

209. Mr Mehson said that according to the letter from P&C at R page 44 the total premium for that year was £3918.80, for 19 Lansdowne Road alone, of which Mr Dickson's proportion was one eighth, namely 25% of the half attributable to the residential half of the building

210. *The Tribunal's decision*

211. The Tribunal has taken account of all the evidence and submissions before the Tribunal, and, in particular, the statements in the letter from P&C dated 4 September 2012 at R page 44 that the new Lloyds premium for 19 Lansdowne Road for the year in question was £3918.80, that the

figure already paid to AXA was £3553.48, and that the excess had been considerably reduced

212. However, the Tribunal finds that:

a. the premium figures for the year in question set out in the P&C letter purportedly relating just to 19 Lansdowne Road, are similar to the premium figure for the insurance for the whole of 15-19 Lansdowne Road for the insurance year ending 9 June 2011 set out in the insurance schedule at A1 page 33, only 2 years earlier, and the Tribunal is not persuaded that the figures in the P&C letter do indeed relate solely to the four flats and commercial premises at 19 Lansdowne Road

b. there is no evidence before the Tribunal of the buildings sum insured for the year in question, because :

- there is no copy before the Tribunal of the insurance schedule for the year in question despite, as the Tribunal finds, both Mr Dickson and Mr Mehson knowing that this was a document highly relevant to the issues before the Tribunal
- the letter from P&C does not refer to the buildings sum insured
- the letter from Salmore Property Limited dated 12 September 2012 at A1 page 85 does not refer to the buildings sum insured

c. if the buildings sum insured for the year in question had increased by the same proportion as for the previous year, the buildings sum insured would have increased to £874736, calculated as follows :

$$\frac{833082}{793411} \times 833082 = 874736$$

d. the Tribunal has found that a reasonable premium for the buildings sum insured of £833082 for the previous year was £1641

e. doing the best the Tribunal can on the very limited evidence made available to it, a reasonable premium for the year in question would therefore be £1723, calculated as follows :

$$\frac{874736}{833082} \times 1641 = 1723$$

213. The amount payable by way of service charge for this item is therefore £1723, of which the Applicant/Leaseholder is liable for a proportion which the Tribunal is unable to determine for reasons already given

The Applicant/Leaseholder's application under section 20C of the 1985 Act

214. Mr Mehson said that the Respondent/Landlord would not be seeking to include any charges for these proceedings in any future service charge

215. *The Tribunal's decision*

216. The Tribunal accordingly orders that any costs incurred, or to be

incurred, in connection with these 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 Applicant/Leaseholder

Appeals

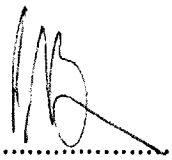
217. A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case

218. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision

219. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal

220. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking

Dated 16 July 2013



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Judge P R Boardman
(Chairman)