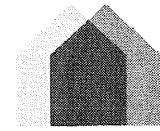




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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AR/LSC/2012/0380

Premises: Various Flats at Western Court Chandlers Way,
Romford, Essex RM1 3JR

Applicant(s): Miss Charlotte Gilder- Flat 5
Mr K and Mr S Bassi- Flat 1
Deltarock Ltd – Flat 2
Miss A Adetoro- Flat 4
Mr R and Mrs H Coley – Flat 6
Mr J Fisher –Flat 7
Mr T Penton –Flat 8
Mr J Allen –Flat 12
Mr M and Mrs N Stack –Flat 17

Representative: none

Respondent(s): Ground Rent (Regis) Ltd

Representative: Countrywide Managing Agent("CMA")

Date of hearing: 25th October 2012

Appearance for Applicant(s): Charlotte Gilder
Jason Fisher
Heather Coley
Aderonke Adetotro

Appearance for Respondent(s): Louise Vidgeon (Client Account Manager CMA)
Hannah Ventom (Property Manager CMA)
Tanya Baldock (Observer CMA)
Mrs N Dhanani LLB(Hons)

Leasehold Valuation Tribunal: Mr A Lewicki BSc(Hons) FRICS MBEEng
Mrs R Turner JP BA

Date of decision:

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years ending 31 March 2009, 2010, 2011, 2012 and 2013.
2. The Applicants seek an order under S.20C of the 1985 Act for the limitation of the landlord's costs in the proceedings.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The persons named on the front of this decision appeared at the hearing on behalf of the Applicants and the Respondent was represented by Louise Vidgeon. Ms Hannah Ventom appeared as a witness on behalf of the Respondent.

The background

5. The properties which are the subject of this application are two bedroom flats situated in a purpose built block of flats known as Western Court with a car parking area. Western Court comprises three separate blocks with six flats in each block. There are a total of 18 flats at Western Court.
6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Applicants each hold a long lease of their respective flats which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The relevant provisions of the leases are identical and the parties produced a copy of the lease relating to Flat 2 Western Court as a specimen lease ("the Lease"). The specific provisions of the Lease and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
- (i) The liability to pay and the reasonableness of service charges for years ending 31 March 2009, 2010, 2011, 2012 and 2013 relating to:
 - a. Audit fees for each of the five years in issue,
 - b. Cleaning for years ending 31 March 2009, 2011, 2012 and 2013,
 - c. Electricity for years ending 31 March 2011 and 2012,
 - d. Gardening for years ending 31 March 2010 and 2011,
 - e. General repairs and maintenance for each of the five years in issue,
 - f. Grounds and garden maintenance for years ending 31 March 2009, 2011, 2012 and 2013,
 - g. Health and Safety report for years ending 31 March 2010,
 - h. Management fees for years ending 31 March each of the five years in issue,
 - i. Professional fees for years ending 31 March 2010 and 2011,
 - j. Refuse for years ending 31 March 2009, and 2011,
 - k. Refuse Bin hire for years ending 31 March 2011, 2012 and 2013
 - l. Insurance valuation fee for year ending 31 March 2010,
 - m. Reserve fund for years ending 31 March 2011, 2012 and 2013
 - n. Property integrity report for year ending 31 March 2012, and
 - o. Pest control for year ending 31 March 2009.
 - (ii) The parties agreed that subject to the provisions of Section 18 and 19 of the 1985 Act, the Lease allows the Respondent to recover from the Applicants as a service charge the sums in relation to the various items in issue.

- (iii) The parties agreed that the following items were no longer disputed:
- a. The Respondent accepted the sum of £270.19 in respect of the Audit fee for the service charge year ending 2009.
 - b. Cleaning charges for service charge year ending 2010 in the sum of £1337.91 is agreed.
 - c. Electricity repair charges of £121.97 in respect of the service charge year ending 2010 are agreed.
 - d. Electricity charges of £586.26 for the service charge year ending 2009, and of £500 for the service charge year ending 2013 are agreed. The credit in the sum of £80.43 in the service charge year ending 2010 is agreed as it relates to an over charge in respect of Electricity charges in the previous service charge year.
 - e. The Applicants accepted the revised total of £5451.07 in respect of the General Repairs and Maintenance charges for the year ending 31 March 2011.
 - f. Electricity Gate Maintenance as this charge had been removed from the service charge accounts,
 - g. The out of hours emergency service charges for all the years in question have been agreed.
 - h. The sum of £684.20 in respect of the Refuse is agreed for the service charge year ending 2010.
 - i. The water and sewage charge of £207 is agreed for the service charge year ending 2010.
 - j. The reserve fund was agreed and not in issue.
 - k. The telephone charge of £112.48 for the service charge ending 2009 is no longer disputed as it has been removed from the service charge account.
 - l. The Bank Interest Received is no longer disputed.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

10. Audit Fee:

| Service charge year | 2009 | 2010 | 2011 | 2012 | 2013 |
|---------------------|---------------------------------|---------|---------|---------|---------|
| Amount claimed | £317.63 | £302.26 | £300.00 | £301.01 | £300.00 |
| Tribunal's decision | Respondents accepted £270.19 | £288.65 | £288.65 | £301.01 | £300.00 |

Reasons for the Tribunal's decision

11. The Service Charge is defined under paragraphs 1(1) and 1(2) of the Fifth Schedule to the Lease as including "...the cost of employing any Accountant employed to determine the Total Expenditure and the amount payable by the Tenant....."
12. The Lease requires the Leaseholder to pay one- eighteenth of the Total Expenditure in any Accounting Period (i.e. being the period from 1 April to 31 March in any year) of the Lessors costs and expenses incurred in connection with the Building.
13. **2009:** The Respondent produced invoices in support of a charge of £270.19. As to the balance of £47.44 Ms Vidgeon stated that this related to a charge made on an accrual basis for a period prior to the involvement of Countrywide, when the block was managed by Jason Cooper. She stated that as a result they were unable to provide any further details. There was no evidence produced in support of a charge on an accrual basis. The Tribunal accepted the point made by the Applicants that if the amount related to a charge on an accrual basis the Respondent should now be able to produce invoices as to the actual charges some three years later. The Tribunal does not allow the sum of £47.44. The Tribunal determines the sum of £270.19 is payable by the Applicants to the Respondent as specified in the Lease.
14. **2010:** The Respondent produced an invoice for £290.95 including VAT supporting a charge in the sum of £302.26 including VAT [421]. In relation to the unaccounted sum of £11.31 the Respondent stated that this related to a charge made on an accrual basis for a period when the block was managed by Jason Cooper prior to their involvement. She stated that as a result they were unable to provide any further details. There was no evidence produced in support of a charge on an accrual basis and the Tribunal accepted the point made by the Applicants that since the charge relates to a period in 2010 the Respondent should now be able to produce invoices as to the actual charges. Accordingly the Tribunal does not allow the sum of £11.31. In addition the Tribunal noted that the invoice for the audit fees [421] states that it relates to the "Preparation of 19 service charge apportionments for the year ended 31 March 2009 @ £2.00 each", when in fact there are only 18 flats in the block.

Accordingly the Tribunal determines the sum of £288.65 is payable by the Applicants to the Respondent as specified in their individual Leases.

15. **2011:** The Respondent did not produce any invoices in support of this charge. However the Tribunal noted that the Respondent had produced a copy of the Income and Expenditure account for the year ended 31 March 2011 together with an independent Accountants' report [503-523] confirming that "...the service charge statement presents a fair summary of the service charges levied and relevant costs for the year ended 31 March 2011, is sufficiently supported by accounts, receipts and other documents,...". The Tribunal accepted that the Respondent had incurred an audit fee. On the basis of the charges made in the previous year the Tribunal considered the sum of £288.65 to be a reasonable charge for such a service. Accordingly the Tribunal determines the sum of £288.65 is payable by the Applicants to the Respondent as specified in their individual Leases.
16. **2012 and 2013:** Ms Vidgeon confirmed that the amounts claimed are budgeted amounts based on the actual charges from the previous year. The leaseholder covenants under Clause 4(a) of the Lease to

"Pay the Interim Charge and the Service Charge together with any Value Added Tax thereon at the times and in the manner provided in the Fifth Schedule hereto both such charges to be recoverable in default as rent in arrear"

The Fifth Schedule of the Lease defines "the Interim Charge" as:

"..such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be fair and reasonable interim payment and the said Charge.....".

Accordingly the Respondent is entitled to seek a fair and reasonable interim payment in advance from the Applicants.

Since the application has been made by the Applicants the burden of proof is on them to show that the service charges are unreasonable. If the Respondent had submitted an application requiring a determination that the service charge is payable it would be a matter for them to show not only that the costs had been incurred but also that they had been reasonably incurred.

It is difficult to challenge the reasonableness of a service charge budget based on previous year's actual expenditure. Ms Vidgeon confirmed that the service charge budgets had been based on the previous year's actual service charges and in the absence of any evidence to the contrary, the Tribunal considers the budget sums to be reasonable and payable by the Applicants. The Tribunal noted that the Fifth Schedule of the Lease provides that if the interim charge

exceeds the actual service charge the surplus is to be carried forward into the following accounting period.

The parties should note that the determination in respect of the 2012 and 2013 service charge budgets does not preclude an application in respect of the actual service charges for these years once they are known.

17. **Cleaning:**

| Service charge year | 2009 | 2010 | 2011 | 2012 | 2013 |
|---------------------|----------|--------|----------|----------|----------|
| Amount charged | £2316.16 | Agreed | £2345.10 | £2382.34 | £2400.00 |
| Amount payable | £1000.00 | | £2000.00 | £2382.34 | £2400.00 |

Reasons for the Tribunal's decision

18. The Respondent's agent produced a copy of the cleaning specification in support of the charges together with invoices. During the course of the hearing Ms Ventom conceded that the cleaning service provided had not been at the appropriate level. She explained that she took over the Respondent's portfolio of properties in January 2011 and found a problem with the level of service provided by Lee Brothers across the portfolio and so she arranged to change contractors. She stated that the Applicants should notice an improvement in the cleaning service but she could not comment on the level of cleaning in the period prior to January 2011.
19. **2009:** The Respondent produced invoices in support of a charge of £1,158.08. Ms Ventom confirmed that the charge related to the weekly cleaning service provided in accordance with the cleaning specification [389]. The Respondent admits that they are missing 6 invoices for the other months of the year but stated that doubling the sum of £1,158.08 amounts to the sum charged of £2316.16.
20. The Applicants submitted that simply doubling the total of 6 invoices does not provide an accurate figure for the cost of the cleaning in the year. The Applicants pointed out that the evidence produced shows that the cleaning charge was £194.39 per month from June 2008 to November 2008 and that from December 2008 to January 2009 a lower sum of £190.26 was charged. The Applicants stated that the cleaners did no more than simply mop three floors in each of the three blocks and that the level of cleaning service provided was poor. They produced emails and photographs in support. The Applicants considered the sum of £1300.00 to be reasonable for the level of service provided.

21. The Tribunal noted that it is agreed by the parties that the level of cleaning service provided by Lee Brothers was below a reasonable level. The Tribunal accepted the Applicants evidence that even in 2009 the cleaning service fell below a reasonable level for the sum charged. The Tribunal on the evidence before it and using its general knowledge and experience considered a charge of £1000.00 to be reasonable. Accordingly the Tribunal determines the sum of £1000.00 is payable by the Applicants to the Respondent as specified in their individual Leases.
22. **2011:** The Respondent was able to produce invoices in support of the full amount charged of £2345.10 but as Ms Ventom accepted that the level of cleaning fell short of the expected standard, the Tribunal considered a charge of £2000.00 to be reasonable. The Tribunal determines that the Applicants are liable to pay to the Respondent the appropriate proportion of £2000.00 as specified in their individual Leases.
23. **2012 and 2013:** Ms Ventom confirmed that a new cleaning contractor had started and the sums claimed are budgeted amounts based on previous year's actual expenditure. The comments made at paragraph 16 above apply equally here. Accordingly the Tribunal considers the budgeted sums to be reasonable and payable by the Applicants to the Respondent as an Interim Charge on account at the appropriate proportion as specified in their individual Leases.
24. **Electricity 2011 and 2012:**
25. **2011:** Ms Vidgeon accepted on behalf of the Respondent that the invoices produced were not full copies of the electricity charges. Ms Ventom confirmed that a credit of £1800 had been received from the electricity supplier "e-on", but it had been received after the end of the service charge year and had not yet been included in the accounts.
26. The Applicants pointed out that there were only 9 internal and 9 external lights with no heating or lift service at Western Court and so as a result the charges seemed excessive. The Applicants stated that the internal light switch had been damaged and this may account in part for the excessive charges. The Applicants pointed out that a prudent property manager would have noticed the discrepancy and addressed it.
27. Ms Vidgeon accepted the criticism made by the Applicants but stated that she was not the property manager at the time as it was managed by another property manager employed by Countrywide. In view of the fact that Ms Ventom has stated that a credit of £1800 is due to the Applicants and the fact that the Tribunal did not have a full set of invoices from the electricity supplier, the Tribunal was unable to make a determination as to the amount payable. The Tribunal is of the view that this is a matter that is best resolved between the electricity supplier and the managing agent. The credit of £1800.00 should be accounted for and the managing agent should produce invoices from the electricity supplier showing the credit applied and the amount due. Upon

production of a full set of invoices for the amounts the Applicants should pay the amount due.

28. **2012:** In view of the fact that there are only 9 external lights and 9 internal lights serviced by the electricity supply, and there is no heating or lifts, the Tribunal considers the budgeted sum of £1000.00 for service charge year ending 31 March 2012 to be unreasonable and determines that this should be reduced to a sum of £500 in line with the amount budgeted in 2013. Accordingly the Tribunal considers the sum of £500 to be reasonable and payable by the Applicants to the Respondent as an Interim Charge on account at the appropriate proportion as specified in their individual Leases

29. **Gardening 2010 and 2011:**

2010: The Applicants stated that the gardens consist of 6 extremely overgrown trees and a few flowerbeds with no flowers and as a result they consider the charges to be excessive. In addition the Applicants pointed out that there should not be an additional charge for weed killer and cutting back of shrubs as this falls within the gardening specification. Ms Vidgeon accepted that the charges for weed killer and cutting back of shrubs should be removed. The Respondent produced invoices to support a charge of £1,655.45. Ms Vidgeon conceded the sum of £287.50 should be removed from the gardening charges leaving a balance of £1,367.95 supported by the invoices produced.

The Tribunal using its general knowledge and experience considered that the small garden area with no lawn, just shrubs and 6 trees should take no longer than an hour or so to maintain on a regular basis. The Tribunal considered that for the period from April to October in each year (the months when the garden probably requires more maintenance than during the winter months) the sum of £100 inclusive of VAT per month, to be reasonable. The Tribunal considered that for the period from November to March when the garden should require less maintenance the sum of £50 inclusive of VAT per month is reasonable. Accordingly the Tribunal determines that the sum of £950 inclusive of VAT to be reasonable in respect of the gardening charges for the service charge year ending 31 March 2010. The Tribunal determines that the Applicants are liable to pay to the Respondent the appropriate proportion of £950.00 as specified in their individual Leases.

30. **2011:** The invoices produced support a charge of £1397.48. The Applicants agreed that a charge of £1000 is reasonable for the service provided. The points made in the paragraph above apply equally to this year. Accordingly the Tribunal considers the sum of £1000 inclusive of VAT to be reasonable and determines that the Applicants are liable to pay to the Respondent the appropriate proportion of £1000.00 as specified in their individual Leases.

31. **General Repairs and Maintenance:**

| Service charge year | 2009 | 2010 | 2011 | 2012 | 2013 |
|---------------------|-----------|----------|----------------------------------|----------|----------|
| Amount charged | £2414.08 | £2349.63 | £5979.01 | £5000.00 | £5000.00 |
| Amount payable | £1,186.50 | £2138.13 | Agreed revised total of £5451.07 | £5000.00 | £5000.00 |

Reasons for the Tribunal's decision

32. **2009:** The Respondent produced invoices to support a charge of £1,186.50 [391-394]. There was no evidence produced as to the works undertaken in support of the remainder of the charges. The Tribunal noted that the Accountants report for the year ended 31 March 2009 confirmed the sum of £918.08 in respect of General Repairs and Maintenance on an accrual basis [371-374]. The Applicants had not claimed that the works had not been undertaken but challenged the amounts charged as they considered them to be excessive. The actual invoices support a charge of £1,186.50, the Tribunal having examined the invoices and on the evidence considered the sum of £1,186.50 to be reasonable and determined this amount as payable by the Applicants. The Tribunal determines that the Applicants are liable to pay to the Respondent the appropriate proportion of £1,186.50 as specified in their individual Leases.
33. **2010:** The invoices produced support a charge of £2138.13. The Tribunal noted the comments made by the Applicants regarding the repeated call outs of contractors to undertake a temporary fix of a problem as opposed to addressing the cause of the problem, particularly in relation to the external leaks and damp issues. The Tribunal considers that it is reasonable for the managing agent to call a specialist contractor to attend to leaks from the roof and pipe work. The Tribunal notes that the managing agent did arrange for a survey and report in relation to the damp. In addition the Applicants queried the reasonableness of the sum of £345 [650] charged in respect of repairs and replacement of perimeter fencing after storm damage. The Applicants contend that at most two new fence panels were replaced and repaired. The Tribunal noted the Applicants comments regarding the repairs to the fence panel however the sum was incurred in undertaking the repairs as evidenced by the invoice. The burden of proof is on the Applicants to show that the charge is unreasonable, and in the absence of any evidence showing the charge to be unreasonable, the Tribunal find the sum charged to be reasonable. The Tribunal considers the total sum of £2138.13 charged to be reasonable and allows this amount. The Tribunal determines that the Applicants are liable to pay to the Respondent the appropriate proportion of £2138.13 as specified in their individual Leases.

34. **2011:** The Applicants pointed out that the sum charged of £5979.01 should be adjusted as the invoice for £250 [573] does not relate to Western Court, and the sum of £138.86 [526] should be charged under gardening. In addition the Applicants stated that the invoice for the supply and fitting of lamps into the light fittings on the common staircase of £139.08 [576] is not payable as the cleaning specification requires that this is done by the cleaning contractors. Ms Vidgeon accepted the submissions made by the Applicants and the parties agreed a revised total of £5451.07 is payable by the Applicants to the Respondent as specified in their individual Leases.
35. **2012 and 2013:** The sums claimed are budgeted amounts and in the absence of any evidence to the contrary the Tribunal considers the sums to be reasonable. The comments made at paragraph 16 above apply equally here. The Tribunal determines that the Applicants are liable to pay to the Respondent the appropriate proportion of £5000.00 for each year as specified in their individual Leases.
36. **Grounds and Garden Maintenance:**

| Service charge year | 2009 | 2010 | 2011 | 2012 | 2013 |
|---------------------|----------|--------------|-------------|----------|----------|
| Amount charged | £2183.30 | Not in issue | See para 34 | £1701.80 | £2000.00 |
| Amount payable | £844.87 | Not in issue | See para 34 | £1701.80 | £2000.00 |

37. **2009:** The service charges for 2009 did not include a separate charge for gardening. The Respondent produced the grounds maintenance specification [390] together with invoices in support of a charge of £1050.53. The Respondent submitted that the invoices produced are for half a year's charges and the unaccounted sum relates to the remaining charges for the year. Ms Vidgeon stated that the missing invoices pre-date Countrywide's involvement. Ms Vidgeon accepted that as the grounds maintenance specification includes a requirement that the contractor "spray and remove weeds from shrub beds and hard surfaces there should not be an additional charge for weed killer and agreed that the sum £176.28 being a charge for weed killer for a period of 6 months should be removed. The Applicants submit that the weed killer charges for a period of 7 months for the period from May to November should be removed as in the following year.
38. The Tribunal noted that the Accountants report for the year ended 31 March 2009 confirmed that the sum of £2183.30 in respect of Grounds and Garden Maintenance on an accrual basis [371-374]. Since the actual invoices support a charge of £1050.53, and the Tribunal is persuaded that the sum of £205.56 in respect of unnecessary weed killer charges should be removed from this sum accordingly the Tribunal determines that the sum of £844.87 to be

reasonable and that the Applicants are liable to pay the appropriate proportion of the charge as specified in their individual Leases to the Respondent.

39. **2011:** The Applicants challenged the sum of £138.86 charged under this head and stated that it ought to have been included under the heading of General Repairs and Maintenance. Ms Vidgeon accepted this and as a result and due to the other agreed adjustments under to charges for General Repairs and Maintenance a revised sum of £5451.07 was agreed as detailed in paragraph 34 above.
40. **2012 and 2013:** The sums claimed are budgeted amounts. There was very little evidence before the Tribunal as to the basis on which the sums had been calculated, except the budget for the years in question which showed the cumulative totals for the two years [598a] and [598b] and the submission that the sums were based on the previous year's expenditure and an assessment of the anticipated general repairs and maintenance by the property managers. The comments made at paragraph 16 above apply equally here. The Applicants have not put forward any evidence to show that the sums budgeted are unreasonable. The Tribunal determines that the sum of £1701.80 budgeted for 2012 and the sum of £2000.00 for 2013 budgeted are reasonable. The Tribunal determines that the Applicants are liable to pay to the Respondent the appropriate proportion of £1701.80 for 2012 and £2000.00 for 2013 as an Interim Charge as specified in their individual Leases
41. **Health & Safety Report 2010:** The Applicants sought a determination as to the reasonableness of the sum of £483 charged for a Health& Safety Report. The Applicants stated that none of the Report's recommendations had been implemented by the Respondent. The Respondent submitted that they are required by law to undertake a Health& Safety assessment of the communal areas of building to ensure that they are compliant with the requirements of the relevant legislation. Ms Vidgeon submitted that the sum charged is reasonable. The Tribunal using its general knowledge and experience considered the sum charged to be reasonable and determines that the Applicants are liable to pay to the Respondent the appropriate proportion as specified in their individual Leases of the sum of £483.
42. **Management Fees:**

| Service charge year | 2009 | 2010 | 2011 | 2012 | 2013 |
|---------------------|----------|----------|----------|----------|----------|
| Amount charged | £4201.77 | £4046.91 | £5556.29 | £4200.00 | £6000.00 |
| Amount payable | £2700.00 | £2790.00 | £2880.00 | £3600.00 | £3600.00 |

43. **2009:** Ms Vidgeon stated that the invoices produced supported a charge of £3906.87 and fell short of the total charged by £294.90. She stated that they

- had a generic management agreement with the Respondent for a number of properties managed on their behalf. She referred to the extract produced which specifies the services provided [396-397]. In addition she confirmed that they comply with the RICS guide as to the duties of a management company. She stated that she assumed the previous managing agent would have managed the property on similar terms. She stated that she considered the sum of £233.43 per unit inclusive of VAT charged by the previous managing agent to be a reasonable fee for a block of this size.
44. The Applicants stated that the management fee represented just under 30% of the total service charge for the year and asked the Tribunal to determine whether it was reasonable in the light of the failings in proper management shown by the evidence already presented.
45. The Tribunal considered the sum of £233.43 per unit inclusive of VAT to be somewhat on the high side. The Tribunal is not persuaded that it can be assumed that the previous managing agent provided the same service as is specified in the generic management agreement provided by Countrywide. In the light of the findings in respect of the other items of service charge for the year in question the Tribunal finds that the Applicants did not receive the level of service that would be expected for a fee of £233.43 per unit. The Tribunal using its general knowledge and experience considers a fee of £150 per unit inclusive of VAT to be a reasonable sum for the service provided. Accordingly the Tribunal determines the sum of £2700.00 is payable by the Applicants to the Respondent in the appropriate proportion as specified in the individual Leases.
46. **2010:** Ms Vidgeon stated that she considered the fee charged to be reasonable and relied on the management duties detailed in the extracts from the management agreement [396-397]. She stated that the Applicants complaints related largely to issues of maintenance and the managing agents duties do not purport to include maintenance of Western Court. She stated that the managing agent employs professional contractors to undertake the maintenance of Western Court and the managing agent's fee represents a charge for an administration role rather than a maintenance role. She stated that a lot of the duties are back office duties such as being on hand on the telephone and email and a vast majority of the work is paper and telephone based. In relation to the complaints about the lack of response to emails and telephone calls Ms Ventom explained that she had moved to a different job and no longer managed this block so perhaps as a result there was a breakdown in communication.
47. The Applicants stated that the level of service provided was very basic and to illustrate this they referred to the fact that they had been charged for an invoice relating to a totally different property. The Applicants stated that the managing agents do not appear to be supervising any of the contractors, and although they claim to liaise and communicate with leaseholders, numerous emails have still not been responded to and when they did respond it would often take two weeks or more to get a reply. Ms Gilder stated that after she

sent a letter of complaint to the managing agents in December 2011 they stopped responding to phone calls. Ms Gilder gave several examples in support. She stated that they had not been informed about a change in Property Manager which is yet another failing on the part of the managing agent. The Applicants stated that the fee charged is just under 30% of the total service charges for the year and is unreasonable.

48. The Tribunal considered the management fee of £4046.91 which equates to £185 per unit to be unreasonably high for the level of service provided. The Tribunal was not persuaded that the duties set out in the extract management agreement were provided at a level to justify the fee charged. The evidence produced shows that there have been some failings in the management of Western Court. The Tribunal using its general knowledge and experience determines a fee of £155 per unit inclusive of VAT to be reasonable. Accordingly the Tribunal determines the sum of £2790.00 is payable by the Applicants to the Respondent in the proportions as specified in the Applicant's individual Leases.
49. **2011:** Ms Vidgeon stated she could not explain why the management fees for this year had increased by 37% compared to the previous year. The comments made above in relation to the fees charged in 2010 apply equally to this year. In addition as there was no explanation for the increase of the fee when compared to the previous year the Tribunal found the fee to be unreasonable. Accordingly the Tribunal determines a fee of £160 per unit inclusive of VAT to be reasonable. Accordingly the Applicants are liable to pay the Respondent the appropriate proportion as specified in their individual Leases of the sum of £2880.00 inclusive of VAT in respect of the management fees for this year.
50. **2012 and 2013:** The Tribunal considered the sums budgeted for the management fees to be high particularly in the light of the determination made in respect of the previous years. The Tribunal having regard to its general knowledge and experience considers the sum of £200 per unit inclusive of VAT to be a reasonable sum in respect of the budgeted management fees for a property such as Western Court taking into account the type of property, the number of units and its location. The Tribunal's assessment is made on the assumption that the managing agents will provide a reasonable level of service in line with the duties set out in the extract management agreement. The Tribunal considers a sum of £3600.00 inclusive of VAT in respect of the budgeted management fees for each year to be reasonable and payable by the Applicants to the Respondent as an Interim Charge in the appropriate proportion as specified in their individual Leases. The comments made at paragraph 16 above apply equally here.
51. **Professional Fees:**

| Service charge | 2010 | 2011 |
|----------------|------|------|
| | | |

| | | |
|----------------|---------|--------|
| year | | |
| Amount charged | £411.25 | £58.75 |
| Amount payable | £411.25 | Nil |

52. **2010:** The Respondent produced an invoice for £411.25 [658] in support of a charge of £1207.26 for the service charge period ending 31 March 2010. The invoice from Cubit Consulting relates to a report produced in relation to investigations and a survey conducted at Western Court to address problems with damp. Ms Vidgeon stated that as the Property Manager who commissioned the report no longer works for Countrywide they could not find a copy of the report and so they were unable to produce a copy. She explained that the balance of £796.01 relates to pre- payments as shown in the copy service charge transaction listing [482] which shows various pre- payments for professional fees. Ms Vidgeon was not able to explain exactly what the professional fees related to but stated that they may relate to chasing up service charge debts. Since there was no explanation as to what these fees related to the Tribunal did not consider it reasonable to charge the sum of £796.01 to the Applicants. As to the sum of £411.25 in respect of the work undertaken by Cubit Consulting, the Tribunal was not impressed that the Applicants were required to pay for a report that was not available as it could not be found by the Respondent. The sum had been incurred and at the time it was incurred, given the fact that there were issues with damp at Western Court, it was reasonable to commission such a report, but it was most unsatisfactory that a copy of the report could not be produced. Since the sum had been expended and the sum charged is a reasonable sum for such investigations and report the Tribunal allowed the sum of £411.25. Accordingly the Tribunal determines the sum of £411.25 is payable by the Applicants to the Respondent in the proportions as specified in the Applicant's individual Leases.
53. **2011:** Ms Vidgeon explained that the charge for professional fees of £58.75 in the service charge period ending 31 March 2011 related to a charge by the Respondent for approving the service charge budget. The Tribunal is of the view that such a charge is unusual in relation to residential properties. The freeholder employs the managing agents to produce a service charge budget and the leaseholders are required to pay for this service as part of the management fee, so it cannot be reasonable for the leaseholders to be charged an additional sum for the Freeholder to approve the budget. The Tribunal finds the charge to be unreasonable and determines that it is not payable.
54. **Refuse:**

| Service charge year | 2009 | 2010 | 2011 |
|---------------------|---------|---------|---------|
| Amount charged | £725.40 | £684.20 | £442.51 |
| Amount payable | £725.40 | agreed | £442.51 |

55. **2009:** The Respondent produced one invoice for the sum of £117.50 [630] for the removal of dumped rubbish. The parties accepted that there is a problem with fly tipping at Western Court. The Applicants state Western Court is situated behind Romford South Street which is the focus of Romford's nightlife and the flats are easily accessible to members of the public as there are no gates or other security systems in place. The Applicants are of the view that they should not be required to pay for the Respondent's failure to properly secure the Western Court to prevent fly tippers gaining access.
56. Countrywide were not managing the block in 2009 but Ms Vidgeon stated that the charge was in line with charges in the following years paid to the Local authority for the removal of dumped rubbish.
57. The Tribunal finds the charges to be reasonable in view of the fact that there is a problem with fly tipping at Western Court and the managing agent would be failing in it's duties if it did not arrange for the clearance of the dumped waste. The installation of gates or a security system is a matter for the Respondent and may of itself result in a further expense for which the Applicants may be liable. The explanation given by Ms Vidgeon in relation to the charges for which no invoice was produced seems reasonable and credible and so the Tribunal finds the sum claimed to be payable by the Applicants to the Respondent in the proportion as specified in their individual Leases.
58. **2011:** The Respondent produced invoices to support the amount charged of £442.51. The Applicants submitted that the charges are excessive for the collection of dumped rubbish, but they did not produce any evidence in support of their claim. The Respondent explained that these charges were for commercial waste removal and were reasonable. The Tribunal using its general knowledge and experience finds the charges to be reasonable and determines that the Applicants are liable to pay the sum of £442.51 to the Respondent in the proportion as specified in their individual Leases.
59. **Refuse Bin Hire:**

| Service charge year | 2011 | 2012 | 2013 |
|---------------------|----------|---------|---------|
| Amount charged | £1313.42 | £420.00 | £500.00 |

| | | | |
|----------------|----------|---------|---------|
| Amount payable | £1313.42 | £420.00 | £500.00 |
|----------------|----------|---------|---------|

60. The Applicants questioned the charges for bin hire as they had not been charged for bin hire prior to 2010. In addition the Applicants criticised the delay in the payment of the 2010 invoice for the bin hire charges resulting in these charges being included in the 2011 service charge.
61. The Respondent explained the charges related to the hire of Paladin bins. Ms Vidgeon was unable to explain why there had not been a charge in previous years. The Respondent relied on the copy invoice [596] in support of the charge. Ms Vidgeon accepted that there had been a delay in paying the 2010 invoice but she said this may have been due to a lack of funds.
62. **2010 & 2011:** The Tribunal considered the delay in paying the 2010 charges to be attributable to bad management. The Tribunal considered the sum charged for the bin hire to be reasonable and therefore determines that it is payable by the Applicants to the Respondent in the proportion as specified in their individual Leases
63. **2012 & 2013:** The sums included in the 2012 and 2013 budget are based on the charges in the previous years and so the Tribunal considers the sums to be reasonable and payable by the Applicants to the Respondent in the proportion specified in the Applicant's individual Leases. The comments at paragraph 16 above apply equally here.
64. **Insurance Valuation Fee:** The charge of £1437.50 was supported by an invoice. Ms Vidgeon explained that this charges relates to the preparation of a Building Insurance assessment Report. The Tribunal is satisfied that it is prudent property management to undertake such an assessment to ensure the property is insured at the appropriate level. The Tribunal finds the charge to be reasonable and determines that it is payable by the Applicants to the Respondent in the proportion specified in the Applicant's individual Leases.
65. **Property Integrity Report:** The Respondent has budgeted the sum of £1620.00 for such a report in the 2012 Budget. The Respondent provided no information as to why the report was necessary and as such the Tribunal does not consider the charge to be reasonable and so no payment is due from the Applicants in relation to this charge.
66. **Pest Control:** In 2009 the sum of £816.63 was charged for pest control. The Respondent produced an invoice in support of a charge of £446.50. Ms Vidgeon was unable to account for the remainder of the charge. Ms Gilder pointed out that the invoice states the location to be Flat 14 and she infers from this that Flat 14 was the only property to have an issue with pests. Ms Vidgeon explained that this is not necessarily the case, the problem may have affected the other areas of Western Court and in line with common practice it

was to supply bait boxes to specific areas only. She stated that pest control is best left to qualified professionals and that in her view the sum of £446.50 for four treatments against rats plus the installation of three external bait boxes was reasonable.

67. The parties confirmed that Flat 14 is a ground floor property. The Tribunal considered the issue of pest control to be an issue for the Western Court as a whole even though the invoice stated that it related to Flat 14. Pests tend to spread to adjoining areas and do not confine themselves to one location. The Tribunal finds the sum of £446.50 to be reasonable for the service rendered. The Tribunal determines that this is payable by the Applicants but the Tribunal does not allow the balance claimed as it is unsupported by an invoice or any other evidence in support of the charge. The Tribunal finds the charge to be reasonable and determines that it is payable by the Applicants to the Respondent in the proportion specified in the Applicant's individual Leases

Application under s.20C and refund of fees

68. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman:

N Dhanani

Date:

4 February 2013

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.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.