10072

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BN/LSC/2013/0104**
Premises	:	**Apartments 1-12,14-17,19,20,23,24,25,27-36 (inclusive), 40 and 41, Pall Mall House, 18, Church Street, Manchester M4 1PN**
Applicant	:	**Pall Mall Residents Association**
Represented by	:	**Nathan James Malam**
First Respondent	:	**Capital Climb Limited**
Represented by:		**Blue Property Management**
Second Respondent	:	**AHL Pall Mall Trading Limited**
Represented by	:	**Asset Trust**
Type of Application	:	**Landlord and Tenant Act 1985 – Sections 27A(1) and 20C ("the Act")**
Tribunal Members	:	**Mrs.C.Wood** **Mr.J.Faulkner** **Dr.J.Howell**
Date of Decision	:	**22 May 2014**

DECISION

Decision

1. The Tribunal determines as follows:

1.1 that the apportionments of the service charge costs payable by each of the leaseholders represented by the Applicant (each a "Leaseholder") by reference to the ratio of the square footage of Pall Mall to the Building (and detailed in the service charge budgets under the headings "Apartments" and "All Units") is reasonable and in accordance with the terms of the Underlease;

1.2 however, to the extent that the First Respondent has not applied these apportionments consistently, the resulting cost, or any excess over what otherwise would have been payable by a Leaseholder, is unreasonable eg electricity costs should not be apportioned on the "All Units" basis as the commercial unit on the ground floor, currently occupied by Tesco, is separately metered;

1.3 repairs: the following items have been incorrectly charged as service charge payable by each Leaseholder:

(i) in the service charge year 2010/11: £91 (page 85 of the First Respondent's Statement of Case): this amount was incorrectly charged as a Pall Mall cost where it should have been treated as Building expenditure and apportioned accordingly; £29.38 (page 92): this amount was incorrectly charged as Pall Mall service charge where the individual leaseholder should have been charged;

(ii) in the service charge year 2011/12: £360 (page 299): again this amount has been incorrectly charged as Pall Mall service charge and should be apportioned correctly; £84 (page 324): the First Respondent conceded that this amount had been incorrectly charged; £242.06 (page 381): the First Respondent conceded that this amount required to be apportioned correctly; £108 (page 396) and £41.13: these amounts were incorrectly charged as service charge where the individual leaseholder should have been charged;

(iii) in the service charge year 2012/13: the amount charged of £1455 (pages 628 and 630) is reduced to £1000 as the First Respondent could, and should, have claimed on the insurance;
and the First Respondent is ordered to amend the service charge statements for the relevant years accordingly;

(iv) in the service charge year 2011/12, the amount of £219 (page 397) was properly charged as service charge;

1.4 repair works to the masonry:

(i) the First Respondent's concession that the invoice for the masonry survey, (page 631), should be for £2000 (including VAT) is noted;

(ii) the other costs, and, in particular, the scaffolding costs of £9,848.20 (plus VAT) are reasonable;

1.5 management fees: the management fees for the service charge years 2010/11 2011/12, 2012/13 and 2013/14 are reduced by 10% as follows:

(i) 2010/11: reduced from £15,000 to £13,500;

(ii) 2011/12: reduced from £16,000 to £14,400;

(iii) 2012/13: reduced from £16,000 to £14,400; and,

(iv) 2013/14: reduced from £16,500 to £14,850;

1.6 light bulbs: the charging of a higher hourly rate for time spent by the caretaker changing light bulbs is unreasonable and all charges calculated on this higher rate should be reduced to the caretaker's "standard" hourly rate;

1.7 emergency lighting testing: it is unreasonable to have different hourly rates for carrying out emergency lighting testing, where carried out by employees of the First Respondent and/or its agent; all charges should be reduced to the lower of the rates charged ie £25 per hour (excluding VAT);

1.8 cleaning and cleaning materials: it is unreasonable to have different hourly rates for "normal" cleaning and "extra" cleaning where both services are carried out by employees of the First Respondent and/or its agent; all charges should be reduced to the lower of the rates charged ie £12 per hour. Further, it is unreasonable to charge separately for cleaning materials and all such charges are disallowed;

1.9 electricity accrual: the inclusion of an apportioned figure for electricity charges as an accrual in the service charge year 2010/11 is incorrect if, as appears to be the case, the costs were incurred in the service charge year 2009/10 and possibly in previous service charge years as well. Save to the extent that the apportioned figure has been incorrectly calculated at £2173.76 where it should have been £2138.57 (ie 33% of £6480.52), this is not a determination as to the reasonableness of the charges themselves;

1.10 in the circumstances, the Tribunal considered that it was fair and reasonable to grant the Applicant's application under section 20C of the Act.

Background

2. By an application dated 21 June 2013, ("the Application"), Mr.N.J.Malam of Apartment 14, Pall Mall House on behalf of the Applicant applied to the Tribunal for a determination of the liability to pay and reasonableness of service charges for the service charge years 2010/11, 2011/12, 2012/13 and 2013/14.

3. Pursuant to directions dated 11 September 2013, ("the Directions"), the following documentary evidence was submitted to the Tribunal by the parties:

3.1 the First Respondent's Statement of Case dated 2 October 2013.

3.2 the Applicant's Statement of Case.

4. The hearing which commenced on 25 November 2013 at 1130am, ("the First Hearing"), was adjourned until 27 January 2014 ("the Adjourned Hearing") in order to allow the parties to complete submission of their oral evidence. Following conclusion of the Adjourned Hearing, the Tribunal issued further directions on the same date, pursuant to which the following further documentary evidence was submitted to the Tribunal by the parties:

4.1 under cover of a letter dated 4 February 2014, information/copy documentation from the Respondent in respect of electricity charges, extra cleaning services, emergency lighting testing and light bulb replacements;

4.2 Applicant's Response received on or about 6 February 2014;

4.3 the First Respondent's Response dated 13 February 2014.

5. The Tribunal re-convened to determine the matter on 24 February 2014.

Inspection

6. The Tribunal inspected the internal communal areas of Pall Mall House ("Pall Mall") and the Lighthouse Building ("Lighthouse") at 1000am on 25 November 2013. Amongst those in attendance at the inspection were Mr.N.Malam for the Applicant; Mr.P.Evans and Ms.T.Gifford of Blue Property Management Ltd who are the First Respondent's managing agents, and Mr.R.Derbyshire, Counsel for the First Respondent. The Tribunal noted the following:

6.1 the Premises comprise 23 of the 60 residential apartments arranged over 9 floors within Pall Mall. Pall Mall itself is part of a larger development which also includes Lighthouse. (In this Decision, Lighthouse and Pall Mall are together referred to as "the Building");

6.2 in addition to the 60 residential apartments at Pall Mall, there is a commercial unit on the ground floor which is currently occupied by Tesco and an office in the basement used by the First Respondent and its managing agent;

6.3 there are 107 residential units at Lighthouse arranged over Floors 1-9, whilst the floors above are hotel apartments let on a short-term basis;

6.4 there are 2 lifts serving Pall Mall;

6.5 there is an entrance lobby accessed by a door-entry system; the letterboxes for the individual flats are located here;

6.6 there is no communal heating in the internal common parts. The landings are carpeted throughout; some staircases are carpeted, whilst others are of bare concrete. There is lighting and emergency lighting in all of these areas;

6.7 there is a bin store on every floor which it was said is emptied daily;

6.8 there are no external common parts, no car parking facilities generally available for Pall Mall (although reference was made to a private arrangement for car parking which had been made with one of the leaseholders in Pall Mall) and no outside refuse area. There is a refuse storage area in the basement of Lighthouse which is used for both;

6.9 there is a shared water supply for both Pall Mall and Lighthouse and a shared electricity supply for the internal communal areas of the residential floors of both. It was stated that there are separate electricity meters for the hotel reception, the restaurant and the gym in Lighthouse and for Tesco.

Leases

7. By a lease dated 8 September 2006 and made between the First Respondent as Landlord (1) the Second Respondent as Tenant (2) Pall Mall House (Manchester) Management Limited as Company (3) and Stonehurst Estates Limited as Guarantor (4),("the Headlease"), the First Respondent leased the "Demised Premises" to the Second Respondent for a term of 125 years from 8 September 2006.

8. The Headlease contains the following terms:

8.1 in clause 2.1, the following terms are defined as:

(i) "Accounting Period": "...the yearly period ending on 31 December in any year or such other period as the Company may in its absolute discretion from time to time determine and of which it shall notify the Tenant";

(ii) "Building" : "...the building of which the Demised Premises forms part";

(iii) "Common Parts": "...the entrance halls landings staircases lifts lift shafts refuse facilities plant rooms pedestrian areas footpaths and drives or access roads and other areas of landscaping forming part of the Building (whether within or outside the Demised Premises) and intended to enhance the appearance of the Building or to be amenity areas for the benefit of the owners and lessees for the time being of all Dwellings on (sic) the Building";

(iv) "Commercial Unit": "...the part of the ground floor of the Building designated for non-residential use";

(v) "Demised Premises" : "...the premises shown edged red on the Demise Plan and forming part of the Building...";

(vi) "Dwellings": "...the apartments including the Demised Premises (including also the live/work units and the Commercial Unit (if any)) and the expression "Dwelling" refers to any such Dwelling, and the expression "other Dwellings" refers to Dwellings outside the Demised Premises";

(vii) "Estate": the land now or formerly comprising the whole of title number GM338623;

(viii) "Service Charge": "...the sum calculated and payable in accordance with the provisions of clause 5.2 and schedule 4";

(ix) "Service Charge Percentage": "75.9%"; and,

(x) "Structure": "...the parts of the Building comprising the foundations all concrete floor slabs...all exterior and other load bearing walls (including the window frame but not including the glass...) the ceiling joists above the top floor level the roof...and all drains cisterns tanks pipes cables and wires serving more than one Dwelling...";

8.2 under clause 5.2, the Tenant covenants "...[T]o pay the Interim Charge and the Service Charge (as defined in Schedule 4) at the times and in the manner provided in schedule 4...";

8.3 under clause 6, the Company covenants with the Landlord and the Tenant to perform the services to the Building specified in the clause which include:

(i) to insure the Structure of the Building and all Dwellings (including, without limitation, the Common Parts and the Demised Premises);

(ii) to maintain and keep in good and substantial repair and condition and (where appropriate) to clean:

(a) the Structure (except for any glass in both windows and doors forming part of the Demised Premises) of the Building and all Dwellings and the Common Parts;

(b) all such water pipes tanks drains radio and television aerials security systems fire alarms and electric cables and wires in under and upon the Building as are enjoyed or used in common by the owners or lessees of the Dwellings in the Building...;

(c) all walls screen walls and fences within or on the boundaries of the Building;

(iii) in 2011 and every 5th year thereafter to paint and/or stain the outside wood and metalwork of all buildings and other structures forming part of the Building;

(iv) when required (and not more frequently than every 7th year) to paint the interior Common Parts of the Building;

(v) to keep the Common Parts clean and properly lit;

(vi) to keep the exterior windows and the exterior glass in the balconies of the Building clean and to furnish the main entrances stairways and passages as thought fit;

(vii) to employ on reasonable terms and conditions of employment such people as are necessary to ensure performance by the Company of its covenants;

(viii) to do all such works installation acts matters and things which the Company in its absolute discretion thinks necessary or advisable for the proper maintenance safety and administration of the Building and pay a reasonable proportion of the expense incurred in making supporting repairing cleansing and amending of all walls and structures common sewers public sewers and drains belonging to the Building (but excluding those exclusively comprised in or serving the Demised Premises) or which shall be used in common with other premises adjoining or near thereto;

(ix) to pay and discharge any rates assessed on the Dwellings or the Building.

8.4 Schedule 4 sets out detailed provisions relating to the computation and administration of the Service Charge as follows:

(i) "Total Expenditure" means all costs and expenses incurred by the Company in any Accounting Period in carrying out its obligations under clause 6;

(ii) "Service Charge" means 75.9% of the Total Expenditure;

(iii) "Interim Charge" means the amount as determined by the Company to be a fair and reasonable interim payment on account of the Service Charge;

(iv) the Interim Charge is payable in equal three monthly instalments on 1 January, 1 April, 1 July and 1 October in each year;

(v) as soon as practicable after the expiration of each Accounting Period, the Company, or its agents, shall serve a certificate upon the Tenant containing the following information:

(a) the amount of the Total Expenditure for that Accounting Period;

(b) the amount of the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus accumulated from previous Accounting Periods;

(c) the amount of the Service Charge in respect of that Accounting Period and of any excess or deficiency of the Service Charge over the Interim Charge;

(v) the Company may, in circumstances which it reasonably regards to be relevant and having first notified the Tenant and given due consideration to the views and wishes of the majority of tenants and occupiers of the Building, vary the Service Charge Percentage in such manner as it deems fair and appropriate upon giving written notice to the Tenant; the variation shall take effect from the date of the notice.

9. The underleases granted by the Second Respondent as Tenant ,(each an "Underlease"), are in standard form and provide as follows:

(i) the definitions of "Common Parts" and "Estate" are as defined in the Headlease;

(ii) "the Common Services" are defined as "...the drains pipes wires cables and other service conduits and all other matters or things on the Estate which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with the owners and occupiers of other properties on the Estate...";

(iii) under clause 3.3(c), the Leaseholder covenants "[T]o pay a fair proportion of the service charge payable in accordance with the Headlease";

(iv) under clause 5.6, the Landlord covenants"... to procure the maintenance and repair in good and substantial condition by the Superior Landlord or the Management Company of:

(a) the Structure as defined in the Headlease;

(b) the Common Services;

and the provision of any other services referred to in clause 6 of the Headlease".

The Law

10.1 Section 18 of the Landlord and Tenant Act 1985 provides:

(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.

10.2 Section 19 provides that –

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

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

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

and the amount payable shall be limited accordingly.

10.3 Section 27A provides that -

(1) an application may be made to the appropriate 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 date at or by which it is payable, and

(d) the manner in which it is payable.

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

(3) .....

(4) No application under subsection (1)...may be made in respect of a matter which -

(a) has been agreed by the tenant.....

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

10.4. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

The Evidence

11. The Applicant's submissions contained in the documentary evidence detailed in paragraphs 2-4 above and in oral evidence at the First Hearing and at the Adjourned Hearing are summarised as follows:

11.1 concerns about the apportionment of the service charge as between Pall Mall and the Lighthouse;

11.2 concerns about the inclusion of some charges within the service charge and also as to the reasonableness of certain heads of expenditure within the service charge;

11.3 concerns about the level of management fees as compared with other fees charged for comparable buildings, and also about management failures in complying with the Lease and the RICS Code; and

11.4 concerns about the manipulation of costs to avoid a s20 consultation procedure; and

11.5 that, in the circumstances, the Tribunal should grant the Applicant's application under section 20C of the 1985 Act.

12. The First Respondent's submissions contained in the documentary evidence detailed in paragraphs 2-4 above and in oral evidence at the First Hearing and the Adjourned Hearing are summarised as follows:

12.1 the allegations as to poor and/or mis-management of the Building were denied, as were any failures in compliance with the Headlease;

12.2 that the Building was properly managed to a good standard and that all information and/or documentation was provided to leaseholders as required by the terms of their leases, in accordance with good management practice and/or by law;

12.3 that all services to the Building were charged on a proper basis and had been provided notwithstanding the failure of some leaseholders to make payment of the service charges as required;

12.4 that the management fees charged were average for the market; and,

12.5 that the Tribunal should not grant the Applicant's application under s20C of the 1985 Act.

13. A number of concessions were made by the First Respondent at the First and/or Adjourned Hearings in respect of specific items of expenditure incorrectly included as service charge payable by the Applicants and these are detailed in paragraphs 1.3(ii) and 1.4(i) of the Decision above.

14. Detailed submissions were made in the documentary evidence and at the First and Adjourned Hearings by both parties regarding the question of apportionment of the service charge as between Pall Mall and Lighthouse. In particular, the First Respondent stated as follows:

14.1 under the terms of the Headlease, the Second Respondent was liable to make payment of 75.9% of the Total Expenditure which, as defined, means all of the costs and expenses incurred in any Accounting Period by the management company in carrying out its obligations to provide services to and for the Building as set out in clause 6 of the Headlease ;

14.2 the First Respondent had amended the original Service Charge Percentage of 75.9% to reflect what it considered to be a fairer apportionment of cost as between the occupiers of Pall Mall and Lighthouse. The revised apportionment was calculated according to the respective square footages of Pall Mall and Lighthouse to the Building. As a result, Total Expenditure on the Building should be apportioned as to 67% to Lighthouse and 33% to Pall Mall;

14.3 notice of the change, as required under paragraph 10 of Schedule 4 to the Headlease, had been given by submission of budgets showing the adjusted apportionment;

14.4 further, the liability of an individual leaseholder under clause 3.3c) of the Underlease "[T]o pay a fair proportion of the service charge payable in accordance with the Headlease" was:

(i) in respect of those costs payable only by the residential apartments in Pall Mall, calculated as the percentage which the square footage of the individual apartment bore to the total square footage of the Pall Mall apartments;(ii) in respect of those costs payable by all units in Pall Mall (ie including the commercial units), there was a different percentage which it appears was based on the percentage which the square footage of the individual apartment bore to the total square footage of Pall Mall.

14.5 In response, the Applicant argued that the apportionment of 67%:33% was unreasonable as it did not adequately reflect the greater usage of services, specifically, electricity, water and a higher insurance premium, in Lighthouse

because the apartments , as an "aparthotel", should be viewed as a commercial usage rather than a standard residential occupancy; in addition, there was the car park which was not used by PM residents.

14.6 The First Respondent countered as follows:

(i) the occupancy rate at the hotel was 65%, lower than in Pall Mall;
(ii) whilst there are dishwashers and washing machines in the apartments, they have a 10% maximum usage which again would be lower than in a comparable fully occupied residential apartment in Pall Mall;
(iii) there are currently 14 apartments in Lighthouse (not forming part of the hotel) which have been vacant for 4-8 months;
(iv) the lighting in the car park is on sensors; the car park is a fire escape route from the Building for PM residents;
(v) in the circumstances, the fairest and most sensible method of calculating the apportionment is based on respective square footages of Pall Mall and Lighthouse.

15. Both parties also made submissions to the Tribunal in respect of certain works required as a result of a piece of masonry falling from the Building as follows:
(i) the Applicant claims that the costs of these works were artificially limited to £15,000 in order to avoid the consultation requirements under s20 of the Act. Particular concerns were expressed at the amount charged for scaffolding: a quote obtained by the Applicant was for £6000 rather than the £9848 paid by the First Respondent; and that there appeared to be some duplication of works covered by the various invoices and a suggestion that some works, indicated on an invoice, had not, in fact, proved to be necessary;
(ii) the First Respondent accepted that they should have sought a reduction on the invoices for works not actually carried out and suggested that this should have been for £2000 (including VAT). With regard to the Applicant's quote for scaffolding works, the First Respondent commented that it was not detailed and it was not possible to know if it was a true comparison of the works that they had carried out. With regard to the claim that costs had been "manipulated" so as not to exceed £15,000, Counsel for the First Respondent commented that it was not unusual for landlords and their managing agents to do this so as to avoid the consultation requirements as, even where dispensation was sought under s20ZA of the Act, it could not be assumed that it would be granted. The suggestion was that this benefitted tenants as the works were undertaken at a lower cost than would otherwise have been the case.

16. Both parties made submissions at the First and/or Adjourned Hearings regarding the management fees as follows:
(i) the Applicant had obtained indications of management fees from 3 other management companies, although at the Adjourned Hearing it was agreed that they would not rely on the information provided by urbanbubble as they had given advice/assistance to the Applicant and may not be regarded as independent;
(ii) commenting on the Mainstay and Premier "quotations", the First Respondent claimed that, although on the face of it both were cheaper than the current management, the services to be provided were not as extensive, and a true comparison would be nearer to £239 per unit (Premier), and £251 per unit (Mainstay) as compared to their estimated fee for 2013/14 of £275 per unit. Further,

it was said that, in determining reasonableness, it did not necessarily mean cheapest but that the charges claimed should come within the band of reasonableness; referring to a Tribunal decision which upheld a charge of £250 per unit, the First Respondent claimed that their agent's charges came within that band having regard to the particular difficulties of managing the Building;

(iii) in reply, the Applicant said that the other management companies to whom he had spoken considered that this was a very basic block as there was no car park, no additional facilities and no external common parts.

17. Other matters which were the subject of specific submissions by both parties included the following:

(i) telephone charges;
(ii) water rates and, in particular, the effect of the accrual made in this respect;
(iii) the unit cost of replacement light bulbs, and the hourly charges of the operative engaged to undertake this work;
(iv) cleaning charges and cost of materials;
(v) accrual of electricity charges;
(vi) insurance;
(vii) emergency lighting tests;
(viii) legal fees.

Tribunal's Deliberations

18. The Tribunal noted that, in the Application, the Applicant made reference to an application for appointment of a manager under sections 22 and 24 of the Landlord and Tenant Act 1987. As far as the Tribunal is aware, no such application has been made although certain of the submissions made by the Applicant in its documentary and oral evidence were relevant to such an application rather than to an application under s27A of the Act. Insofar as that was the case, the Tribunal disregarded such evidence in reaching its Decision set out in paragraphs 1.1-1.10 above.

19. Nonetheless, the Tribunal considered that certain evidence of poor management practices by the First Respondent's agent were relevant in determining the reasonableness or otherwise of their fees.

20. The Tribunal was not persuaded that notice had been given by the First Respondent and/or its agent of a change in the Service Percentage under the terms of the Headlease but that this was a matter for the parties to the Headlease. It was satisfied that the calculation of the service charge payable by a leaseholder under the Underlease by reference to respective square footages resulted in "a fair proportion" being payable as set out in clause 3.3c) of the Underlease.

21. The Tribunal was very concerned by the comments made by Counsel for the First Respondent that landlords and managing agents routinely "manipulate" the costs of otherwise "qualifying works" in order to avoid the consultation procedure under the Act. In this case, the total costs invoiced were exactly £15,000 which suggested, at best, a coincidence.

22. The Tribunal considered that, having regard to the alternative quotations for management fees provided by the Applicant (allowing for the differences in the level of services to be provided), and to the various management failures in the budgeting,

charging and apportionment of costs, it was appropriate to reduce the management fees by 10% in each of the service charge years in question.

23. The Tribunal considered that, provided that a caretaker had been properly trained and provided with the proper equipment, it was standard management practice to include the changing of light bulbs within the normal range of services undertaken by the caretaker. Consequently, it was considered unreasonable to charge time spent on this at a higher rate than other caretaking activities and the First Respondent would need to review and adjust the charges made.

24. Whilst the Tribunal considered that it had insufficient evidence to make a determination that the unit cost of light bulbs purchased by the First Respondent was unreasonable, the apparent disparity in that cost of £17.61 and the unit cost for identical/comparable light bulbs of £2.87 as submitted in evidence by the Applicant, suggested to the Tribunal that the First Respondent and/or its agent should undertake a review of its purchasing policy so as to ensure that it was sourcing light bulbs at reasonable cost.

25. The Tribunal had considerable difficulty reconciling the worksheets provided for time spent on emergency lighting testing and the associated invoice, not least because there was a failure to differentiate on some invoices between labour and materials costs. The Tribunal concluded that the information supplied suggested different hourly rates charged for the same service, ranging from £25 per hour (excluding VAT) to £48 per hour (excluding VAT). The Tribunal could not see any justification for these differential rates and that all costs should have been calculated at the lower rate.

26. Likewise, the Tribunal considered that there was no justification for charging "normal" and "extra" cleaning at different rates.

27. The further evidence submitted by the First Respondent in relation to the inclusion of an accrual for electricity charges in the 2010/11 service charge was limited to a copy of an electricity bill dated 31 March 2010 and a statement of the same date showing a balance due of £6480.52, and a schedule of electricity invoices dated from 31 March 2010 – 7 April 2011 detailing invoice periods, invoice values and apportionments. It is clear that both the invoice and statement dated 31 March 2010 relate to electricity charges incurred in service charge years prior to the service charge year 2010/11 and that it was therefore incorrect to include an apportionment of these costs as an "accrual" in the 2010/11 service charge. The Tribunal also noted that the apportionment had been incorrectly calculated. The Tribunal had not been requested, and were not making a determination as to the reasonableness of the costs themselves but merely as to their inclusion as an accrual in the 2010/11 service charge.

28. Whilst, on the evidence presented to it, the Tribunal did not consider that there should be any apportionment of the insurance premium by reference to the commercial nature of some parts of Lighthouse, they did consider that it would be prudent of the First Respondent and/or its agent on renewal to check with the brokers whether there was, in fact, any "loading" of the premium because of the differing nature of the uses of the accommodation in Pall Mall and Lighthouse.

29. Whilst the Tribunal considered that it was reasonable for the First Respondent to include as service charge the legal fees incurred in connection with the dispute with Otis, it was surprised that matters had been allowed to progress as far as judgment being obtained, particularly when the non-payment related to the provision of lift maintenance services. Even where there were issues concerning default in payment of service charge by some leaseholders, the Tribunal considered that in allowing this situation to arise in respect of a service of such importance raised some concerns as to management's judgment.