

10182



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/41UG/LLC/2013/0003**
BIR/41UG/LIS/2013/0026

Property : **10 Williams Court Bertelin Road Staffordshire
ST16 3SN**

Applicant : **Fairhold Limited**

Representative : **OM Property Management Limited**

Respondent : **Mr Rostam Tavakoli**

Representative : **Mr Shahriar Tavakoli**

Type of Application determination : **1) Landlord's application regarding the liability to pay and reasonableness of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 and**
2) Tenant's application for an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985

Tribunal Members : **Mr Vernon Ward FRICS
Mr Paul Hawksworth Lawyer**

**Date and venue of:
Hearing** : **20 March 2014
at the Tribunal Hearing Suite
Fifth Floor Prioory Courts
33 Bull Street
Birmingham B4 6DS**

Date of Decision : **21 JUL 2014**

DECISION

Introduction

1. This first application is by the Lessor, Fairhold Limited ("the Applicant") for a determination of the reasonableness of service charges relating to 10 Williams Court Bertelin Road Staffordshire ST 16 3SN ("the Property") in respect of the Service Charge Years commencing 29 September 2007, 29 September 2008, 29 September 2009, 29 September 2010, 29 September 2011 and 29 September 2012 for payment by the Lessee, Rostam Tavakoli ("the Respondent").

2. The application was commenced by the Applicant in the Altrincham County Court under Case Number 3X176780 and in accordance with paragraph 3(1) of the Commonhold and Leasehold Reform Act 2002 was transferred to the Leasehold Valuation Tribunal by Order dated 4 June 2014.

3. By virtue of the Transfer of Functions Order 2013 the functions of the Leasehold Valuation Tribunal are now exercised by the First tier Tribunal Property Chamber (Residential Property) ("the Tribunal").

4. The jurisdiction of the Tribunal is derived from section 27A Landlord and Tenant Act 1985 ("the Act").

5. Subsequent to a Pre-Trial Review on 12 September 2013, Directions were issued on 16 September 2013. Following the principles established in the cases of *Staunton v Kaye and Taylor (2010) UKUT 270* and *John Lennon v Ground Rents (Regisport) Limited (2011) UKUT 330 (LC)* the matters to be considered were limited to those contained in the tenant's pleadings in the County Court, as follows:

- a) Insurance.
- b) Standard of repairs.
- c) Duplication of repairs.

6. It should be noted that no application had been made to the Court for leave to amend the pleadings as above and thus, the Tribunal could only consider costs relating to these items for the service charge years indicated.

Inspection

7. On 29 January 2014 the Tribunal attended at Williams Court ("the Development"). They were accompanied by the Respondent, the Respondent's father

and representative Mr Shahriar Tavakoli ("Mr Tavakoli) and on behalf of the Applicant, Mr Neil Taylor, Regional Property Manager ("Mr Taylor"), Jeetindar Gill, Property Manager ("Mr Gill"), Mr Sean Doherty, Accountant ("Mr Doherty"), and Ms Janina Lamb, Solicitor ("Ms Lamb") all of OM Property Management Limited. Also present were Mr and Mrs D Carpenter owners of 6 Williams Court.

8. Williams Court comprises a development of 14 maisonettes of which we understand the original elements were constructed in 1993. The properties are approached by a private driveway off Bertelin Road. Boundaries to the development are generally fenced and bins are stored on the side of the roadway. There is a separate building standing upon the site which we understand was the original sales office relating to the development. This building from the inspection available did not appear to be used.

9. The Tribunal, during its inspection, noted the following:

- a) There was damage to dwarf walls and pillars within the communal areas of the development;
- b) Many of the slabbed paths were uneven;
- c) The external joinery to the dwellings was in poor condition and
- d) The rear elevation fences were in poor condition.

The Tribunal noted other matters in connection with the development which have relevance to the Determination and these points are raised at the appropriate point below and in the Scott Schedule attached.

The Law

10. The Act provides:

Section 27A Liability to pay service charges: Jurisdiction

- 1) An Application may be made to a Leasehold Valuation Tribunal (now the First-tier Tribunal Property Chamber (Residential Property)) 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 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.

4) No Applications 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 as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to these Applications.

Section 20c Limitation of service charges: costs of proceedings

- 1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before...a leasehold valuation tribunal...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 person specified in the application.

The Hearing

11. Subsequent to the Tribunal's inspection, the Hearing was held at Stafford Magistrates Court. Present at the Hearing were those indicated in 7. above.

12. It was quickly apparent to the Tribunal during the Hearing that the extensive amount of information that had been submitted in evidence was not in any logical order nor was this order common to all the bundles held by the parties. It was, therefore, impossible to proceed with the Hearing on this basis. The Tribunal then decided to consider this Hearing as a supplementary case management conference and outlined to the parties firstly, what information was required and secondly, how it was to be

arranged and in that regard the parties were requested to agree a Scott Schedule. The presence of Charles Bettinson of Estates & Management Limited who arranged the insurance on behalf of the Applicant was requested at the reconvened Hearing.

13. The reconvened Hearing was held on 20 March 2014 at the Tribunal Hearing Suite, Priory Court, Birmingham. Present at the Hearing were the aforementioned who had been present in Stafford plus Mr Charles Bettinson ("Mr Bettinson") of Estates & Management Limited ("E & M") who arrange the insurance on behalf of the Applicant.

14. The matters to be addressed were dealt with by the Tribunal on a line by line basis in the Scott Schedule. The Tribunal have been forced to adapt the Scott Schedule in order to accommodate their comments and make it readable in the context of the Decision as a whole. For this reason any comments over issues or matters that the Tribunal did not have jurisdiction over were removed. This included invoices for the period proceeding 29 September 2007. The document has also, out of necessity, been reformatted; however the comments made by the parties in respect of the individual items remain unchanged.

15. For ease of reference the Tribunal has attached an additional Schedule which details the buildings insurance premium in any one year and the commission earned.

16. The buildings insurance premiums relating to the development were a contentious point and the Tribunal had requested Mr Bettinson attend at the hearing due to this fact. Mr Bettinson, both at the Hearing and in his witness statement, confirmed he was employed as head of insurance at E & M who act as insurance agent for the freeholder. He confirmed that Tysers act as the nominated insurance brokers for Williams Court and they are registered and regulated by the Financial Conduct Authority to carry out insurance related activities. The premium cost per unit has, during the period in question, ranged from £184 to a current premium of £270 per property per annum. He explained that the premium had increased in later years as a result of the claims experienced at the development. His witness statement contained a letter from Tysers giving details of the historic market testing that took place in 2006 and every two years thereafter in order to ensure that the premiums charged are in line with market levels. He stated that to the best of his knowledge that at no time prior to this dispute being raised had the Respondent raised insurance cost as an issue of concern and further, E & M would be happy to consider any alternative quotations which would be reviewed, a policy comparison carried out and then referred to insurers for consideration.

17. Mr Tavakoli took exception to this statement and said that he had been in contact with OM Property Management and E & M in connection with insurance and that his two principle concerns in respect of insurance were firstly the amount of the premium itself and secondly the level of commission being earned by E & M.

18. Mr Bettinson said that the commission earned by E & M reflected their involvement with matters relating to insurance in respect of the development, in that they were involved with all claims, which were monitored through to settlement, they dealt with Loss Adjustors, had an on-site presence if necessary and dealt with any administrative queries that arose.

19. Mr Tavakoli had produced evidence of an alternative development known as "The Willows" where accounts for the year ending 31 December 2007 indicated an insurance premium that equated to £63.08 per property. The Tribunal were advised that "The Willows" comprised of 130 flats. Within his evidence Mr Tavakoli provided details of alternative quotations that he had obtained for Williams Court which indicated premiums in the sum of £1431.56 and £1414.74 for the development. However, Mr Bettinson indicated that these quotations probably did not take account of the claims history in respect of the development which would have obviously affected the premium.

20. Mr Bettinson concluded by saying that the average price of insurance over the country was £211 per property and that at £270.17, approximately £60 over the national average, he did not think the insurance of Williams Court was unreasonable.

The Tribunal's determination

21. The Tribunal's Determination in respect of the individual points is contained in the appropriate column within the Scott Schedule. Additional comments are as follows.

22. The Tribunal notes the alternative insurance quotations that the Respondent has provided; however, they cannot be considered as direct comparisons due to the fact that it appears that the claims history had not been provided to the alternative brokers who were providing the quotations. They cannot, therefore, realistically be considered as direct comparisons. The Tribunal also notes Mr Bettinson's comments in justification of the commissions his company has earned in respect of insurance premiums. Whilst, because in this case the landlord, in effect, has and is providing a brokerage type service e.g. dealing with claims, loss adjusters etc, it is considered reasonable that they earn and retain a reasonable level of commission. The Tribunal considers that the percentage commission earned during the years 2008 – 2010 is excessive, particularly in view of the fact that the claim that was dealt with, was not dealt with competently, in as much as the excess appears to have been charged to the leaseholders twice. As will be noted from the insurance costs table attached to the Scott Schedule, the Tribunal has reduced the E & M remuneration for these years down to 15%, leaving the amount in the subsequent years at its existing level. The revised insurance costs have then been entered in the appropriate column within the Scott Schedule. The Tribunal was, however, satisfied that when reviewing the insurance arrangements for the development, a regular "testing" of the market by the landlord as envisaged in *Forcelux v Sweetman* (2001) 2 E.G.L.R. 173 took place.

23. There does not appear to have been any effective management of this development particularly in respect of the control of contractors, the works they carry out and their invoicing. The condition of the development at the time of inspection was, considering the level of service charge, poor and on balance the Tribunal feels that the Respondent and other leaseholders are paying a high service charge and receiving a substandard service. The Tribunal is limited to the items that can be considered in this matter, although were it able to consider the service charge as a whole it would question the management fees of the agents.

24. In respect of the points of dispute where the Applicant both in the Scott Schedule and also in the Hearing provided no reasonable justification for the works or any background to the same the Tribunal has disallowed the costs.

25. At the hearing the Tribunal requested investigations to be carried out to ascertain who owns the site boundaries as they are currently fenced with wooden fences and repairs to these fences have formed part of the service charge costs. By letter dated 26th June (with copy plan attached) from Miss Lamb of Peverel, it appears that all the boundaries to the site are the responsibilities of adjoining owners and not the landlord. A copy of Peverel's letter of 26th June and plan attached thereto is annexed for completeness. Notwithstanding the ownership position, however, the Tribunal considers it to be a benefit to the tenants to have the boundaries fenced and the fences kept in repair and as such where repairs to fencing have been claimed as part of the service charge, the Tribunal have considered the merits of the amount claimed and have allowed these costs minus a 25% deduction as there does not appear on site to have been evidence that the number of panels indicated have actually been replaced.

26. Substantial costs have been incurred by the Applicant with regard to the external electrical installation at the site which essentially comprises external lights. The Tribunal is advised that there are only eight external lights at the site, however there have been numerous bulb changes, inspections and other works incompatible with an installation of only that size. There was even an instance of a time clock being replaced when there is not a time clock connected to the installation. This is an example of the poor control of contractors at the site by the Applicant. Accordingly the Tribunal has disallowed 50% of costs in this regard.

27. There have been numerous works to the former sales office and further, there was a substantial insurance claim in respect of that structure which was generally poorly handled by the Applicant. This building is of no beneficial use to the leaseholders in the development. It is not used as a bin or cycle store and none of the leaseholders have a key in respect of the same. The Tribunal would have considered it prudent, therefore, if the building had simply been secured but is at a loss to understand why for instance

numerous locks were changed on the building when no-one needs to enter it. The Tribunal has therefore disallowed 75% of costs in this regard.

28. Following the findings above, the Tribunal has adjusted the service charge as per the schedule entitled Adjusted Service Charge contained within the Appendices to this Decision. In its Determination, the Tribunal has relied upon the Statement of Account dated 9 November 2012 which was included in the original Court Papers rather than a later Statement provided by the Applicant which showed a discrepancy. In its calculations the Tribunal has disregarded any charges other than those entitled "Service Charge" or "Service Charge Reserve".

29. The Adjusted Charges can be summarised as follows:

Period	Original Amount Demanded	Adjusted Service Charge
29/09/2007 28/09/2008	£ 690.28	£ 625.97
29/09/2008 28/09/2009	£ 1,045.35	£ 835.92
29/09/2009 30/09/2010	£ 1,187.21	£ 865.15
29/09/2010 30/09/2011	£ 1,115.21	£ 876.28
29/09/2011 30/09/2012	£ 1,066.99	£ 778.60
29/09/2012 31/03/2013	£ 668.14	£ 668.14

Costs

30. The second Application before the Tribunal is by the Respondent and is for an order in accordance with section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Applicant in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

31. The guidance given in previous cases is to the effect that an order under section 20C is to deprive the landlord of a property right and it should be exercised sparingly see *Veena SA v Cheong Lands Tribunal [2003] 1 EGLR 175*. However, in this case the Respondent has enjoyed some success in their challenge to items in dispute and it would not be just and equitable to allow the landlord to recover the costs of proceedings via the service charge.

Accordingly, the Respondent's section 20C application succeeds and the Applicant may not recover the costs of these proceedings from the Respondent via the service charge.

Appeal

32. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Vernon Ward
(Chairman)

BIR/41/UG/LLC/2013/0003

10 Williams Court Bertelin Road Staffordshire ST16 3SN

Appendices

1. Scott Schedule
2. Insurance Costs
3. Service Charge Adjustments
4. Letter of 26 June 2014 from Peverel Property Management re Boundaries

1. Scott Schedule



Item	Page No	Total Cost Per Account	Cost per tenant	Disputed share	LANDLORD COMMENTS	PAGE REF	LEASER/OWNER COMMENTS	TRIBUNAL DETERMINATION	AWARD
Insurance			7,832.00						
Total for year	109-211 / 415-443	£ 2,647.74	£ 189.12	£ 117.70	The costs under this header are payable under the terms of the lease. The applicant will rely on the witness statement of Charles Bettinson.	415-443; 371A-371E, 371F, 371G, 371H, 371I-1, 371I-2, 371I-3	Refer to quote from AXA & ZUNICH & AIG. All quotes above include the brokers fee and the IPT. The quotes obtained are available from any reputable insurance broker. This sum is the cost per flat of its flat. 43.8% of premium went to two brokers. Ref # 723. See reply to witness statement of Charles Bettinson ref 1001. See comment at Sept 07.	See Paragraph 22	£ 167.47
Repairs									
PPM	459	£ 178.25	£ 12.59	£ 12.59	The invoice relates to external lighting repairs carried out in January 2008. The Applicant considers the cost to be reasonable.	459	6 inspection below @ £50 each are contained ref 454, 457, 460-463.	See paragraph 26	£ 6.30
PPM	455	£ 265.55	£ 18.97	£ 18.97	External lighting repairs as previously mentioned above. The Applicant considers this cost to be reasonable.	455	3 bulbs & 1 photocell replaced	See paragraph 26	£ 8.49
PPM	457	£ 176.25	£ 12.59	£ 12.59	This invoice relates to the replacement of 3 bulbs. The Applicant considers this cost to be reasonable.	463	inspection only	See paragraph 26	£ 6.30
PPM	463	£ 176.25	£ 12.59	£ 12.59	Invoice relates to the replacement of light bulbs. The Applicant considers this cost to be reasonable.	457	1 bulb replaced. Credit against invoice 951 p.457 for £32.01 (there are only 8 BULBS on site and 2 PHOTO CELLS. COUNTY ESTATE MANAGEMENT have authorised 11 BULBS and 2 PHOTO CELLS to be changed and 6 INSPECTION visits). An Approved electrician should have been authorised to look at the electric.	See paragraph 26	£ 8.30
PPM	460	£ 58.75	£ 4.20	£ 4.20	Inspection carried out. The Applicant considers this cost to be reasonable.	460	Inspection only	See paragraph 26	£ 2.10
PPM	454	£ 84.60	£ 6.04	£ 6.04	Replacement of light bulbs. The Applicant considers this cost to be reasonable.	454 / 460 / 457	1 bulb replaced, CAMP FULL OF GRUBS- Why this was not noticed when PPM carried out the inspection on 11.04.08 or 27.03.08.	See paragraph 26	£ 3.02
PPM	461	£ 58.75	£ 4.20	£ 4.20	19 May 2008 inspection. The Applicant considers this cost to be reasonable.	461	What is this inspection for? This inspection should have been carried out by the property manager on a monthly visit.	50% Allowed	£ 2.10
PPM	461	£ 58.75	£ 4.20	£ 4.20	5 May 2008 inspection. The Applicant considers this cost to be reasonable.	462	What is this inspection for? This inspection should have been carried out by the property manager on a monthly visit.	50% Allowed	£ 2.10
TDB	456	£ 564.00	£ 40.29	£ 40.29	Value of site survey. The Applicant considers this cost to be reasonable.	456	What is this survey? Copy of survey report not provided	This was apparently for a Re-valuation Cost Assessment. Allowed	£ 40.29

Item	Page No	Total Cost Per Account	Cost per tenant	Disputed share	LANDLORD COMMENTS	PAGE REF	LEASEHOLDER COMMENTS	Tribunal DETERMINATION	AWARD
			£ 7,428.71						
Total for year	109-233 / 456	£ 2,523.00	£ 180.23	£ 180.23	The costs under this header are payable under the terms of the lease. The Applicant will rely on the witness statement of Charles Bettison.	456, 371A, 371B, 371C, 371E, 371F, 371G, 371H, 371I, 371J, 371K	Refer to quote from AXA & Zurich & WGL. All quotes obtained include the broker fees and the IPT. The quotes obtained are readily available from any reputable insurance brokers. This was a cost per flat of £4.45. 45.9% of premium went to two brokers. Ref a 233. See reply to witness statement of Charles Bettison.	See Paragraph 22	£ 173.62
Repairs									
4 Sbs	502	£ 117.50	£ 8.39	£ 8.39	This costs relates to the Green Vision survey report of the common areas of William Court carried out in April 2008. The Applicant considers this cost to be reasonable.	501	What is this survey? Copy of survey report required. Report not provided by DM property management.	No copy of survey report provided nor any reasonable explanation as to what it was for. Disallowed	£ -
Hunnington	503	£ 155.25	£ 11.09	£ 11.09	Costs relate to drain repairs. The Applicant considers this cost to be reasonable.	503, 503A, 506	This work was not carried out or it was a poor job as it was clear on the visit on 29th January 2014 by the Tribunal Officers that it was still in the same condition as when I purchased the flat 10, William Court in August 2007. Four small problems still present.	Evidence of some work was noted although not of a good standard. 50% Allowed	£ 5.55
PPM	505	£ 3,525.00	£ 251.78	£ 251.78	External redecoration works to the windows. All windows sanded down and painted. The Applicant considers this cost to be reasonable.	505	Rule 71 states neither. Painting carried out Dec 2008. Complaints about poor quality. Unable to get action until it was noted by Mayowa Adamoye in minutes of meeting 12/01/13 that he would provide final quotes for redecoration. We were told but not received that payment had been withheld. This was 16 months later. Preparation, filling and replacement of weatherboards not carried out as specified.	The Landlord was unable to provide any quotes or background nor was there any evidence of 20 Consultation procedures being followed. It is accepted that there were some works on site but of a poor standard. 50% Allowed.	£ 125.89
Jl Cleaning	507	£ 100.00	£ 7.14	£ 7.14	Invoice relates to cleaning out of gutters. The Applicant consider the costs reasonable and reasonably incurred.	507	During this year there were three invoices for the cleaning of gutters from three different contractors. P483; p507; p506. Of £100 to £782.	It is reasonable and prudent that the gutters are cleaned however there are several contractors performing this work all at different prices. An amount the Tribunal considers reasonable has been allowed for this item and the one below	£ 21.42
Hunnington	506	£ 782.00	£ 55.86	£ 55.86	This cost relates to the cleaning of the gutters. The Applicant consider the costs reasonable and reasonably incurred.	506	Jl cleaning cleared all gutters on 28.6.09 page 507 at a cost of £200 (Why the large difference?)	See above	£ -
Fedehand	508	£ 60.00	£ 4.29	£ 4.29	Jun 08 - Cost of general inspection and maintenance. The Applicant consider the costs reasonable and reasonably incurred.	508, 508A, 508B	Copy contract required. This necessary does not exist. What are these inspections for? Inspections should have been carried out by the property manager.	The Landlord was unable to provide any background on these invoices. Disallowed.	£ -
Fedehand	509	£ 80.00	£ 5.71	£ 5.71	July 09 - Cost of general inspection and maintenance. The Applicant consider the costs reasonable and reasonably incurred.	509, 508A, 508B	As Above- WHO IS THIS MYSTERY COMPANY. NO RECORD OF SUCH COMPANY	As above	£ -
Fedehand	510	£ 80.00	£ 5.71	£ 5.71	Aug 09 - Cost of general inspection and maintenance. The Applicant consider the costs reasonable and reasonably incurred.	510, 508A, 508B	As Above- WHO IS THIS MYSTERY COMPANY. NO RECORD OF SUCH COMPANY	As above	£ -
Fedehand	511	£ 80.00	£ 5.71	£ 5.71	Sep 09 - Cost of general inspection and maintenance. The Applicant consider the costs reasonable and reasonably incurred.	511, 508A, 508B	As Above- WHO IS THIS MYSTERY COMPANY. NO RECORD OF SUCH COMPANY	As above	£ -
TOTALS			£ 139.59						£ 226.49

Item	Page No	Total Cost Per Account	Cost per tenant	Occupied share	LANDLORD COMMENTS	PAGE REF	LEASEHOLDER COMMENTS	TRIBUNAL DETERMINATION	AWARD
Insurance			7.422%						
Total for year	109-213 / 565	£ 3,457.37	£ 243.37	£ 243.37	The costs under this header are payable under the terms of the lease. The applicant will rely on the witness statement of Charles Bettison.	565, 371A, 371B, 371C, 371E, 371F, 371G, 371H, 371J, 371K, 371L, 371V2, 371V3	Refer to quote from Am & Turk & NGC. All quotes obtained includes brokers fee and VAT. The quotes obtained are readily available from any reputable insurance brokers. This was a cost part of the P.C. 13.7% of premium went to two brokers. Ref is 233. See reply to witness statement of Charles Bettison	See Paragraph 22	£ 243.38
Repairs									
Genests	589	£ 372.90	£ 26.64	£ 26.64	Dec 2010: Replacement of two car park bollard lights - one outside number 8 and the other at the site entrance pillar. The Applicant considers this cost to be reasonable.	589, 608	On 31.08.2010 Huntington Ltd (508) replaced 8 bollards on site. Again there are only 6 bollards on site and all working. No sign of any new BOLLARD lights.	See Paragraph 26	£ 13.32
Caroline	591	£ 54.00	£ 3.86	£ 3.86	Invoice read: £51.89 inc vat for the out of hours service. The Applicant considers this cost to be reasonable.	590-595	None of the residents ever had knowledge of such facility. Can DM provide details of which resident has called. Can DM provide details of which flat made such call and used the facility when they don't know such phone number exist.	This invoice is for an out of hours service however the contact details have never been provided to the leaseholders. Disallowed.	£ -
Genests	596	£ 249.55	£ 17.82	£ 17.82	Apr 2011 - works to repair external lighting. The Applicant considers this cost to be reasonable.	596	There is no detail or break down of cost of labour and material. What exactly was carried out and which light was faulty. Who reported the light not working? You will notice it is the text book on every job the contractor either replace the bulbs, or replace the lights, or fix the mercury lenses - work not carried out.	See Paragraph 26	£ 8.51
Genests	598	£ 40.03	£ 2.86	£ 2.86	Repair leatheridge board of gate. The Applicant considers this cost to be reasonable.	598	Which Gate? No signs of any repairs to any gates.	No background could be provided on this repair. Disallowed.	£ -
Genests	597	£ 185.66	£ 13.26	£ 13.26		597, 649	Invoice for £185.66 relating to unblocking of drains. Carried over to April 2011. No details of which flat the problem relates to. Is internal drains demised to each individual property?	No background could be provided on this repair. Disallowed.	£ -
Genests	599	£ 799.41	£ 57.11	£ 57.11	May 2011 - Replace missing fence panels rear of 6 Bertella Road. NB note boundary repairing obligations to be confirmed. If Landlord is so obligated the Applicant would consider this cost to be reasonable.	599, 601, 600, 595A	Having been raised in a previous numerous times since purchasing flat 10 Williams Court as well as other residents the only new fencing ever noticed is on the drive way to Williams Court. This was noticed on the Tribunal site visit on 29.01.2014. However the new fencing to this area has been changed by genests property maintenance ltd. Invoice number	See Paragraph 25.	£ 14.28
Genests	600-601	£ 2,153.57	£ 153.83	£ 153.83	May 2011 - to replace 38 meters of new fencing and replace rail. NB note boundary repairing obligations to be confirmed. If Landlord is so obligated the Applicant would consider this cost to be reasonable.	600, 601, 602A, 601A,	Please refer to the two quotes one from C. S. S fencing for £668.60 and second quote from G. G. G. and fence builders for £2,803 which includes replacing a further 31 panels to the other parts of the complex, you will note the comment made regarding the condition of the fences which have been supplied. This is a total of £2953.88 in order to replace fence panels.	See Paragraph 25. The cost here appears excessive and not supported by physical evidence during the Tribunal's inspection or at the Hearing. 25% Allowed.	£ 38.46
Genests	602	£ 131.23	£ 9.37	£ 9.37	August 2011 - Repair slats of on rear fences. NB note boundary repairing obligations to be confirmed. If Landlord is so obligated the Applicant would consider this cost to be reasonable.	602	There are no signs of any repairs to the rear fences. This work has not been carried out.	See Paragraph 25.	£ 2.34
Genests	603	£ 178.03	£ 12.72	£ 12.72	Remove timber left behind site. NB note boundary repairing obligations to be confirmed. If Landlord is so obligated the Applicant would consider this cost to be reasonable.	603	There must have been a lot of wood for £178.03. The removal of wood should have been the responsibility of the contractor who left it there. Old fencing? None of the residents have ever seen any wood. This work not carried out.	See Paragraph 25.	£ 3.18
Genests	604-605	£ 380.03	£ 11.43	£ 11.43	May 2011 - To secure gutters, investigate and repair guttering at the rear of the blocks and the drainage pipes being property numbers 1 and 14. The Applicant considers this cost to be reasonable.	604 / 604A	More facts to the gutters and more repairs to gutters, the drainage still leaking as per site visit on 29.01.2014. Was there any problem with the gutters to 1-14? One garage has no leak as seen during inspection on 29/1/14.	Little background could be provided to this invoice and there appears to be no justification for the same. Disallowed.	£ -

Item	Page No	Total Cost per Floorboard	Cost per Board	Disputed	LANDING COMMENTS	PAGE NO	LANDING COMMENTS	REMARKS DETERMINATION	AWARD
Roofs	506-507	£ 142.03	£ 10.24	£ 10.24	26 Aug 2011 - Roof has and repair is not finished. This was reported by phone call by the respondent. The Applicant considers this to be reasonable.	506, 506A	As a bonded concrete with wood joists (partitions) with carpet on the floor has been water protection has been water protection under the building and entering the property.	There is evidence work was carried out however there is a concern over the stand off of the same. See Award.	£ 5.07
Roofs	408	£ 96.00	£ 6.96	£ 6.96	30 Aug 2011 - Lead flashing repair - Reported by the respondent on 19 August 2011. The Applicant considers this cost to be reasonable.	407, 408, 408A	The property and the lead flashing were fixed but it had come away from the side of the concrete window.	See Above.	£ 3.43
General	409	£ 57.00	£ 4.07	£ 4.07		409	General Invoice for £37 for replacement of two doors. Respondent has done the contractors from whom the bills have been sent to provide logs of the removal work. I am sure they must have such a log in place.	See Paragraph 10.	£ 2.04

2012									
Item	Page No	Total Cost Per Account	Cost per tenant	Disputed share	LANDLORD COMMENTS	PAGE REF	LEASER/OWNER COMMENTS	TRIBUNAL DETERMINATION	AWARD
Insurance			£ 7,542.28						
Total for year	108-213 / 625 627	£ 3,904.00	£ 785.20	£ 378.14	The costs under this header are payable under the terms of the lease. The applicant will rely on the witness statement of Charles Bestinson.	825, 871A, 871B	Refer to quote from AXA & LUNN & WOOD. THIS INCLUDES THE BROKERS FEE and IPT. This was a cost per flat of no other flats in the area. 17.8% of premium went to two brokers. Ref p.223. The building sum insured was increased by 34% despite no increase in sale value of the property. The sum insured is NOT the rebuilt cost. A survey was carried out by DM, however DM never provided the copy of the report. See reply to witness statement of Charles Bestinson.	See Paragraph 22	£ 248.52
Barret		£ 480.00	£ 34.29	£ 34.29	The costs under this header are payable under the terms of the lease. The applicant will rely on the witness statement of Charles Bestinson.	826	Valuation Survey. Copy survey not provided despite numerous requests and as per court tribunal order. This should be the rebuild cost valuation and not the property valuation this could have been carried out in-house. Insurance companies provide such service for free as well as DM have got the expertise in-house to assess the rebuilt cost for insurance purposes. i.e. Neil Taylor (R.S.C (Hons) MRIMA, Assoc of RICS) / Charles Bestinson with 17 years experience in the insurance industry.	This was apparently for a Retrospective Cost Assessment. Allowed	£ 34.29
Repairs									
Hunnington Ltd	648	£ 168.00	£ 12.00	£ 12.00		649, 597	"Repairs" not landscape. Invoice for £168.00. Similar work was carried out on 20.04.11 / by Genesis property services ref no - 8m1079 for £185.86. Is this because the problem was not rectified? Is this type of fault deemed to be each individual flat?	Little background could be provided to this invoice and there appears to be no justification for the same. Disallowed.	£
Hunnington	650	£ 216.00	£ 15.43	£ 15.43	31 Mar 2012 - reports of a number of loose / uneven flagstones near no. 10, also inspected to lead flashing on dormer window and inspected regarding reports of a blocked drain. No issue with lead flashing or drain could be found on attendance. Instructed by Paul Owen Ward. The Applicant considers this cost to be reasonable in the circumstances.	650, 650A, 600A	As per site visit the lead flashing is in poor state due to poor repair carried out previously and it is letting water ingress to the property. refer to the picture. Hunnington claim they have replaced 10 number loose flagstones in the pathway to no.10. On site visit on 29th January 2014 no such repair could be seen or ever been carried out, but poor state and unevenness of the flags. Roof drain still present. THIS WORK NOT BEEN CARRIED OUT.	The cost here appears excessive and not supported by physical evidence during the Tribunal's inspection or at the Hearing. 25% Allowed.	£ 3.86
Fok	651	£ 172.80	£ 12.34	£ 12.34	To replace broken photo cell at side of no. 1 electrical cupboard - noted by Paul Richard Smith. The Applicant considers this cost to be reasonable in the circumstances.	651	Another photo cell to be added to the 9th of other photo cells replaced since August 2007 when I have purchased my flat as well as TV aerial needing attention. Was the call out for the TV aerial or the photo cell or both?	See Paragraph 25.	£ 6.17
Genesis	655	£ 124.80	£ 8.91			655	Invoice for £124.80 to fix loose roof tiles. There is no detail of which property / flat.	Little background could be provided to this invoice and there appears to be no justification for the same. Disallowed.	£
Mia	652	£ 1,424.28	£ 101.73	£ 101.73	N/A	652, 653A, 653B, 552, 553, 554, 544A, 544B	The survey in the Sales Office and the production of a Bill of Quantities is considered wasteful as the purpose and purpose was unknown. Also it should have been part of the insurance claim in 2010 following leak in the Sales Office. Quote for a survey by GFA for £408. Quote for a survey by GFA for £500. Neil Taylor should have advised the residence present that there will be costs. He gave the impression he will look into this matter and check the flat if there is any notes regarding subsidence.	See Paragraph 27.	£ 25.43

Year	Item	Page No	Total Cost Per Account	Cost per tenant	Disputed share	LANDLORD COMMENTS	PAGE REF	LEASHOLDER COMMENTS	TRIBUNAL DETERMINATION	AWARD
2012	Genesis	654	£ 150.00	£ 10.71	£ 10.71	This invoice relates to the inspection of the three clocks on the development and replacement of faulty sensor. The Applicant considers this cost to be reasonable.	654	Could this have been another development? Lights work by sensors. There is no time clock. May be they should look at their record and see how many photos all they have changed.	See Paragraph 26.	£ 5.36
	Genesis	670	£ 405.60	£ 29.57	£ 29.57	Replace buttons on concrete posts, replace 60 lengths of further cables. Quanta provided and accepted by PM - Dawn Ward. NB note boundary repairing obligations to be confirmed. If Landlord is obliged the Applicant would consider this cost to be reasonable.	670 / 677	There is no evidence on site of replaced wooden battens. No such work has ever taken place. This repair has not been carried out.	See Paragraph 25.	£ 7.24
	Genesis	673	£ 151.20	£ 10.80	£ 10.80		673	Invoice for £151.20 for the cleaning of gutters. There is no details which gutters have been blocked. The residence do not have any knowledge of such problem. OAM need to provide details / log of call when such fault was reported by the residence.	The Landlord stated that this was reported by a resident. Allowed.	£ 10.80
	Genesis	674	£ 168.00	£ 13.29	£ 13.29	July 2012 - the invoice relates to lighting repair. The Applicant considers this cost to be reasonable.	674	Write back to commercial lighting. To whom? There are no commercial lighting but eight outside lights.	See Paragraph 26.	£ 6.05
	Hunnington	675	£ 294.00	£ 21.00	£ 21.00	Install sign for Williams Courts. The Applicant considers this cost to be reasonable.	675, 675A, 675B	As per site visit on 28th January 2014 it was clearly noticeable that there was a good sign already at the property indicating "Williams Court" followed by a further sign in floors next yellow "residents parking only" This was not necessary.	There did not appear to be any justification for a second sign however the works were carried out. 50% Allowed.	£ 10.50
	Hunnington	676	£ 589.00	£ 42.00	£ 42.00	April 2012 - Relay slabs, replacement of lead flashing, replace lock on sales office. The Applicant considers this cost to be reasonable.	676	There are no sign of any slabs been relayed any where at Williams court. This was clearly obvious when tribunal site visit was carried out on 29.01.2014. No slabs has been relayed at Williams court. Again another lock fitted to the outbuilding. 4th charge	Little background could be provided to this invoice and there appears to be no justification for the same. Disallowed.	£
	Hunnington	677	£ 228.00	£ 16.29	£ 16.29	Repair leaking pipe work to rear of Williams Court and lead proofing works. The Applicant considers this cost to be reasonable.	677, 674	You will note Hunnington have already charged for attending to this work on invoice 7470a. The pipe work in question is the condensing boiler pipe to the flats. Such work is the responsibility of the flat owner.	The pipework relates to the plumbing installation of an individual flat. Disallowed.	£
	Protest Hill	678	£ 166.80	£ 11.93	£ 11.93	Replacement of locks. There is an out building which is the old sales office which forms part of the marketed property and estate. The Applicant considers this cost to be reasonable.	678	5th Charge of Locks to Sales Office. This invoice is dated before the 4th lock charge on 676 above.	See paragraph 27.	£ 2.58
	Fair	687	£ 182.40	£ 13.69	£ 13.69	N/A	687, 684	Another photograph to block 1, 14 and repair lights. This is seventh photo call been changed and there are only 2 photo calls on site and another wall lantern.	See paragraph 26.	£ 6.51
	Hunnington	688	£ 164.50	£ 11.75	£ 11.75	N/A	688, 68A, 689	There are only 8 lights on site. They all have failed together at the same time. It has taken over two years for the accountant to notice this invoice when was the bill paid. Proof of payment for all invoices is a must to confirm payments have been made as per accounts. This invoice is marked it has been received at the OAM office on 28th September 2010. However it has taken two years to be followed up for payment. Proof of payment of invoices are required to justify request for payments from the leaseholders.	See paragraph 26.	£ 5.88

2. Insurance Costs

INSURANCE COSTS - WILLIAMS COURT BERTELIN RD STAFFORD						
Renewal Date	Sum Insured	Total Insurance Cost	Cost per unit Per Unit	Tyser Remuneration*	E&M remuneration*	E&M remuneration as %age of premium
01-Feb-08	£907,989	£ 2,679.16	£ 191.37	£ 275.80	£ 949.99	35%
01-Feb-09	£968,370	£ 2,987.60	£ 213.40	£ 137.27	£ 1,235.40	41%
01-Feb-10	£968,370	£ 2,987.60	£ 213.40	£ 137.27	£ 1,235.40	41%
01-Feb-11	£988,706	£ 3,407.29	£ 243.38	£ 155.72	£ 451.59	13%
01-Feb-12	£1,326,000	£ 3,479.34	£ 248.52	£ 159.12	£ 461.45	13%
01-Feb-13	£1,333,956	£ 3,782.39	£ 270.17	£ 173.41	£ 502.90	13%

INSURANCE COSTS - TRIBUNALS DETERMINATION					
Renewal Date	Total Insurance Cost	E&M remuneration as %age of premium	E&M remuneration*	Cost per unit Per Unit	Comments
01-Feb-08	£ 2,274.52	15%	£ 341.18	£ 162.47	Adjusted on the basis of 15% remuneration
01-Feb-09	£ 2,430.65	15%	£ 364.60	£ 173.62	Adjusted on the basis of 15% remuneration
01-Feb-10	£ 2,430.65	15%	£ 364.60	£ 173.62	Adjusted on the basis of 15% remuneration
01-Feb-11	£ 3,407.29	13%	£ 451.59	£ 243.38	Allowed
01-Feb-12	£ 3,479.34	13%	£ 461.45	£ 248.52	Allowed
01-Feb-13	£ 3,782.39	13%	£ 502.90	£ 270.17	Allowed

* Indicates inclusive within the total premium and not additional

3. Service Charge Adjustments

SERVICE CHARGE ADJUSTMENT FOLLOWING THE TRIBUNALS DETERMINATION

Period		Total Amount Demanded	Amount in Dispute	Tribunal's Determination	Deduction	Adjusted Service Charge
			As per Scott Schedule			
29/09/2007	28/09/2008	£ 690.28	£ 304.78	£ 240.47	£ 64.31	£ 625.97
29/09/2008	28/09/2009	£ 1,045.35	£ 535.91	£ 326.48	£ 209.43	£ 835.92
29/09/2009	30/09/2010	£ 1,187.21	£ 737.82	£ 415.76	£ 322.06	£ 865.15
29/09/2010	30/09/2011	£ 1,115.21	£ 573.34	£ 334.41	£ 238.93	£ 876.28
29/09/2011	30/09/2012	£ 1,066.99	£ 675.45	£ 387.06	£ 288.39	£ 778.60
29/09/2012	31/03/2013	£ 668.14				£ 668.14
		£ 5,773.18	£ 2,827.30	£ 1,704.18	£ 1,123.12	

**4. Letter re 26 June 2014 from Peverel Property Management re
Boundaries**

Peverel
PROPERTY MANAGEMENT

Our ref: JL/LEGAL/CIV2197/SHussain
Your Ref: BIR/41UG/LIS/2013/0026 and BIR/41UG/LLC/2013/0003

26th June 2014

First-Tier Tribunal
Midland Residential Property
3rd Floor Temple Court
35 Bull Street
BIRMINGHAM
B4 6AF

Dear Sirs,

Re: 10 Williams Court, Bertelin Road, Stafford, Staffordshire ST16 3SN
BIR/41UG/2013/0026 and BIR/41UG/LLC/2013/0003

We refer to the above and our letter of 18th June 2014 with enclosures.

We further enclose a map of this development showing T markings where we have established the responsibility for boundary repairs. There were three areas of land where we were unable to establish the responsibility for repair, however following the current T marks it would appear that the plots marked with a handwritten note 1 and 2 are likely to be obliged to repair the boundary and fence of their property bordering the development. With respect to plot numbered 3, the documents we have obtained from the Land Registry do not indicate any T markings, however we would assume that as almost all other properties on the boundary of the development are responsible that this plot marked SF394716 is also responsible for the border accordingly. We hope this is of assistance in clarifying the boundary of responsibilities for the Tribunal.

We look forward to receiving the Tribunal's Determination in due course.

Yours faithfully

Peverel Property Management

Jarina Lamb
Legal Consultant

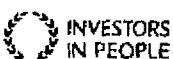
E-mail: Jarina.Lamb@peverel.co.uk
D.D. 01582 397794

End



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