9938

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/31UB/LSC/2012/0067**
Property	:	**27,29, 43 and 55 and 49 Loughland Close, Blaby, Leicester LE8 4PB**
Applicants	:	**Holding & Management (Solitaire) Limited**
Representative	:	**Peverel Property Management**
Respondent	:	**Ajay Datta Bhalla, Flats 27, 29, 43 and 55 Santiago Alfonso Mosquera, Flat 49**
Date of Application	:	**6th August 2012**
Type of Application	:	**Application for a determination of the reasonableness and Payability of Service Charges and Administration Charges (Section 27A Landlord and Tenant Act 1985)**
Date of Hearing	:	**15th April 2014**
Tribunal	:	**Judge John R Morris** **Mr David S Brown FRICS, MCIArb** **Mr Peter A Tunley**

DECISION

The Tribunal having determined all matters that are within its jurisdiction, the case is transferred back to the County Court for a decision on any outstanding matters and costs.

Decision

1. At the Hearing the Parties agreed the Water Charge and the Service Charge of £224.00 specified in the Lease are not in issue so far as these proceedings were concerned.

2. The Tribunal determined that a reasonable charge for gardening is as follows and is payable as apportioned to the Respondents' flats in accordance with the Lease respectively:

Item	2008	2009	2010	2011	2012
	£	£	£	£	£
Gardening	461.06	458.69	479.93	504.82	520.82

3. The Tribunal determined that the insurance premiums for the flats for the insurance years are reasonable as follows and are payable as apportioned for the Service Charge year and to the Respondents' flats in accordance with the Lease respectively:

Item	2008	2009	2010	2011	2012
	£	£	£	£	£
Insurance	4,160.19	3,051.04	4,734.38	4,248.46	4,350.18

4. The Tribunal found that the Parties had agreed that the charge of £111.63 for repairing an aerial in respect of 27 Loughland Close on 16th October 2007 was not a service charge item and not within its jurisdiction.

Reasons

Introduction

1. The Original Application was made on the 6th August 2012 for a determination of reasonableness and payability of the service charges and administration charges incurred for the years ending 31st March 2008, 2009, 2010, 2011 and 2012. The application was made by way of transfer from Leicester County Court of claims numbered 1UC78746 relating to 27, 29, 43 and 55 Loughland Close (1) and1UC777309 relating to 49 Loughland Close (2). These two cases were consolidated and transferred to the Leasehold Valuation Tribunal.

2. The application was delayed for a year whilst the County Court decided whether the Tribunal had jurisdiction. It was decided that it did have jurisdiction.

3. Directions were originally issued on 3rd June 2013 but due to the case being joined with another Directions were amended and issued on 18th June 2013. An amended timescale for these Directions was issued on 26th October 2013, following a postponement at the Respondents' request to give them time to prepare their case and an opportunity to attend the hearing; this was set for the 8th January 2014.

4. On the 6th December 2013 the Respondents requested a further postponement of the hearing that was scheduled for the 8th January 2014 stating that they had not received the accounts and could not satisfactorily prepare their case without them.

5. On the understanding that the parties were not able to proceed on the 8th January 2014 the Tribunal heard an application by the Applicants for the Respondents to be prevented from participating further in these proceedings.

6. The Tribunal decided on the 8th January 2014 not to bar the Respondents.

7. Directions were issued on the 8th January 2014 informing the parties that a hearing would be set for the 4th March 2014. The Tribunal also stated that it was bound by the Upper Tribunal in *Staunton v Taylor* [2010] UKUT 270 (LC) LT Case Number: LRX/87/2009 at paragraph 21 "the UT has no power to permit the pleadings to be amended and thus to widen the scope of the questions that it is required to determine under the transferred proceedings." Therefore the Respondents were limited to the issues raised in the Defence. By the same token the Applicant was restricted to its response to those issues in the case summary lodged with the County Court.

8. The Leaseholders Defence listed a number of issues however not all of these were service charge matters that were within the jurisdiction of the Tribunal. The Tribunal found the following to be service charge items from the list set out in the Defence. The paragraph numbers of the Defence have been retained and the item of the service charge referred to by in the paragraph is identified.

    Paragraph 4 – Charge for repair of aerial
    Paragraph 5 – The service charge referred to in the Lease is not the same as that charged in subsequent years
    Paragraph 7 – Insurance
    Paragraph 8 – Gardening
    Paragraph 9 – Insurance Commission
    Paragraph 10 – Water rates

9. On 24th February 2014 Mr Bhalla e-mailed the Tribunal stating that he was unable to attend on the 4th March 2014 on health grounds. The Tribunal requested medical evidence, which was provided on the 27th February 2014. On the 28th February 2014 an email was received from Mr Mosquera stating that he also was unwell and not able to attend the hearing. These e-mails and documents were not forwarded to the Applicant, as the information contained in them was confidential.

10. The Tribunal considered the evidence and accepted that the Respondents would not be able to attend in person. Due to the proximity of the hearing the Tribunal was of the opinion that the Respondents could not reasonably be expected to instruct a representative for the hearing on the 4th March 2014.

11. The Tribunal was mindful of Article 6 of the Human Rights Act and the Respondents were put on notice that the hearing would proceed on the 5th April 2014 and the Respondents were required to arrange to:

- Attend and present their case in person, or
- Instruct a representative to present their case, or
- Rely upon the written representations already made and contained in the bundle delivered to the Tribunal.

12. In the event the Respondents attended in person.

The Law

13. Section 27A of the Landlord and Tenant Act 1985

(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 arbitration agreement to which the tenant was a party
(c) has been the subject of a determination by a court

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

Lease

14. Copies of the Leases were provided and the terms were found to be the same in respect of the Service Charge.

15. Under Clause 3 of the Lease the Tenants covenant to pay the Service Charge in accordance with the Fourth Schedule. This specifies that an advance payment based on an estimate of the costs likely to be incurred for the Maintenance

Year for purposes mentioned in the Fifth Schedule must be made and that at the end of the Maintenance Year the Tenant will be allowed any amount by which the estimated service charge exceeds the actual costs or required to pay any amount by which the estimated charge falls short of the actual costs.

16. The Fifth Schedule is divided into two parts. Part 1 relates to services attributable to the Block and Part 2 services attributable to the Estate. The item of Insurance (Paragraph 9) is in Part 1 and the Maintenance of the Grounds (Paragraph 1) is in Part 2. Only the Tenants in the Block contribute to Part 1 costs but all Tenants on the Estate contribute to Part 2 equally. There are 31 Tenants on the Estate and so each contributes 3.23%. There are 21 Tenants in the Blocks of flats although their contribution varies depending on the size of the flat. Mr Mosquera is the Tenant of Flat 49 which has a contribution of 4.88%. Mr Bhalla's Flats have the following contributions: Flat 27 is 5.12%, Flats 29 and 43 are 4.88% each and Flat 55 is 4.54%.

Inspection

17. The Tribunal inspected the Estate in the presence of the Applicant's Representatives, Mrs M Khan, and Miss E Welsh and one of the Respondents, Mr AD Bhalla

18. The Estate comprises three detached blocks of flats containing 21 units (the Blocks) and six pairs of semi-detached houses and maisonettes (the maisonettes), together with two bin stores and a bicycle store, ranged around a central parking area in which, each residential unit has one allocated parking space and the remainder are for visitors. There had been some doubt about the boundary of the Estate in 2012 when the Tenants were establishing an RTM Company. Mrs Khan provided coloured copies of the plan from the Leases which identified the perimeter of the Estate in yellow. The Estate was bounded by the external walls of the blocks of flats and houses and maisonettes on the South and East side. On the North and West sides there were relatively small areas of grass between the buildings and the road. There was a large area of grass beyond the buildings on the South and East side which was not within the yellow line on the plan and it was agreed that this did not form part of the Estate

19. The Blocks were modern and in fair to good condition. The grounds were in fair condition for the time of year. The grass and shrubs appeared to have been cut at during the previous season. A few weeds were appearing in the beds and it was noted that the bark needed replenishing. The hard landscaping was in good condition as was the car park which was free of litter.

Attendance at the Hearing

20. The Applicant was represented by Mrs M Khan, the Legal Representative and Miss E Welsh, the Property Manager for Peverel Property Management. Also present for the Applicant was Mr Bettinson a witness and Mr S Doherty teh Applicant's internal accountant. The Respondents Mr AD Bhalla and Mr SA Mosquera, represented themselves.

Hearing

Preliminary Matters

21. In the course of the hearing the Respondents raised several points which are dealt with here as preliminary matters as they reflect upon the way the hearing was dealt with.

22. The Respondents, whilst accepting the Tribunal only had jurisdiction to deal with the matters raised in their Defence, felt aggrieved because:
    1) They were not able to raise other items in the service charge which they felt were unreasonable and which they would have included had they appreciated the situation when raising their defence.
    2) They were not able to adduce further evidence from that which they had identified following the Directions Orders issued firstly on the 21st June 2012 or those issued on 3rd and 18th June 2013.
    3) Greater weight seemed to be placed on the Applicant's evidence than the Respondents'.

1) Outstanding Service Charge Items

23. With regard to the first point the Tribunal explained that a claimant (court) or applicant (tribunal) had an initial advantage in that he or she decided what matters were to be put in issue. The defendant (court) or respondent (tribunal) could redress the balance up to a point by counter claiming or raising points in defence, however, the defendant would always be limited to what was relevant to the claimant's/applicant's claim/application. The case before the court or tribunal was always that of the claimant or applicant.

24. In the present case the Respondents had considered the Service Charges unreasonable and that the Applicant had not acted in accordance with the Lease or legislation and therefore they had refused to pay the Service Charge. The Applicants had therefore made a claim in the County Court for payment of the Service Charge. The Respondents in their defence had to justify their position by showing that the Service Charge was unreasonable. In addition they had to show that the other issues they raised were linked to their non-payment of the Service Charge. In their defence they only mentioned some of the items of the Service Charge and so were limited to these. They also referred to other matters but these which were questionably related to the refusal to pay the Service Charges.

25. The Tribunal said that the provisions relating to the determination of reasonableness of service charges were even handed to landlords and tenants and that either may take the initiative and make an application. If the Respondents, as tenants, had felt the charges unreasonable then they were able to list the items for each year which they wanted to put in issue and then gather their evidence by viewing the invoices etc and taking copies (as provided under sections 21 and 22 of the Landlord and Tenant Act 1985) and collating letters, e mails and taking photographs. The matter might be settled between the parties at that stage but if not either party may apply to a tribunal. If the Respondents, as tenants, applied they would have identified

the issues and have evidence to adduce. In the present situation they were only in that position to a limited extent.

2) Timing of Evidence

26. Secondly, the proceedings are to settle the dispute between the parties. They are not to punish a party but to ensure that a reasonable cost is paid for services provided to a reasonable standard. Each party must adduce evidence to prove its case and this evidence must be shared in good time before the hearing so the parties are in an equal position. The Applicants in this case have a *prima facie* case because they have produced invoices for services provided. It is now for the Respondents to agree or adduce its own evidence to challenge this. The dispute can then be settled either before or as a result of the hearing. Therefore, there has to be a 'cut off point' for the receipt of evidence which is specified in the Directions. In the present case the Respondents were required to provide their evidence in respect of the issues raised in their defence by 4.00 p.m. on 3rd July 2012 in the Directions issued on 21st June 2012. Due to the length of time taken in determining the jurisdictional point they were given a second opportunity to provide their evidence by 4.00 p.m. on 12th July 2013 in the Directions issued on 18th June 2013. The production of this evidence was to prove the issues referred to in the Defence and was not dependant on the provision of the accounts by the Applicants.

3) Weight of Evidence

27. Thirdly, having received evidence the Tribunal assesses what weight to give it. There were two particular pieces of evidence referred to by the Respondents which were the subject of general comment. With regard to the landscape maintenance the Applicants' Representatives said that they had not received any "formal" or "written" complaints about the standard of maintenance and had not noted any poor workmanship on inspections. The Property Manager accepted the Respondents had made comments but there had been no other complaints. The Respondents said that they had complained orally and sent e mails and that they had not been the only ones. The Respondents asked what more evidence could they adduce other than their oral statements. The Tribunal said it would look for such evidence as photographs, copies of detailed written formal complaints from several tenants (but these needed to be provided in accordance with the Directions). The Respondents were submitting that the cost was unreasonable because the work was either not done at all or not done to a reasonable standard and therefore the cost should be reduced or not paid which is a significant sanction requiring substantial evidence.

28. The second piece of evidence was in relation to the reasonableness of the insurance. The Applicants produced a letter from their broker stating how the insurance was placed. The Respondents said that the Tribunal appeared to place greater weight on this than a quotation that they had obtained. In assessing what weight to give to one piece of evidence as opposed to another the Tribunal has to consider which is more probable. In the present case the Tribunal took into account the independence and accuracy of the evidence.

The broker deals with numerous clients and has no reason to favour one over another. It is therefore likely to be relatively independent. It evidence is also factual rather than opinion. The broker is also an expert and therefore likely to provide accurate information.

Issues

29. For convenience the items of the Service Charge in issue were dealt with in the following order:
    - Water rates
    - The service charge referred to in the Lease is not the same as that charged in subsequent years
    - Gardening
    - Insurance
    - Insurance Commission
    - Charge for repair of aerial

Water

30. The Applicant stated that the water charge had not actually been made. The Applicant stated that initially it was understood that there was to be a water supply for the Tenants' use on the site but in fact this was not provided. An estimated amount of £150.00 was put into the account in 2008. This was noted as an item of expenditure in 2009 but was credited to the Tenants in 2010 and is shown in the accounts as "Prior Year Adjustment" in 2010. This was accepted by the Respondents as not having been charged.

Amount Service Charge

31. The Respondents stated that the service charge referred to in the Lease is not the same as that charged in subsequent years. The Respondents referred the Tribunal to page 2 of the Lease which sets out the Particulars of the Lease as required by the Land Registration Acts 1925 and 1997, now the Land Registration Act 2002. Paragraph 11 of the Particulars states:

    Current Service Charge £224.00 per annum

32. Mr Bhalla said that he had bought a flat on 26th November 2004 when the Lease commenced on 1st April 2004. He said that from 'day 1' the service charge was significantly more than £224.00. Both Respondents enjoined that although 2004 is not a year in issue they questioned why the Service Charge was not £224.00 for the years in issue as they had been led to believe that this would be the Service Charge. Mr Mosquera added that he bought his flat some time after Mr Bhalla but the "Current Service Charge" at Paragraph 11 was still "£224.00 per annum."

33. The Tribunal appreciated that the operation of the Service Charge is not always clearly explained to prospective tenants by estate agents, surveyors or lawyers. The current service charge is an amount that is sometimes put into the lease by the developer on the advice of the lease drafter. It is to try and

ensure that from the first day of the lease there is a sum of money available for providing services. The Tribunal agreed this was not the clearest expression of the arrangement. Some leases make it quite clear that the specified sum is only payable in the first year or is payable on account and is subject to the actual costs. The use of the word "current" might be considered ambiguous although it would be interpreted as being current at the commencement date of the Lease. In this respect the Tribunal agreed that Mr Bhalla might have a claim if he was charged more than this in 2004. However, this was not a year in issue and so was not within the Tribunal's jurisdiction.

34. With regard to the question of why the Service Charge was still not £224.00 the Tribunal said that it should be noted that the sum was the *Current* Service Charge (emphasis added) i.e. at the commencement of the Lease. For all subsequent years the Service Charge provisions are as set out in Paragraph 12 of the Particulars of the Lease and Parts I and II of the Fourth and Fifth Schedules. These provisions allow for an estimated charge for the actual cost of the services for the year to be made This is followed by a balancing payment, referred to in the Lease as a "Maintenance Adjustment" which the Tenant must pay if there is a shortfall from the estimate or will be credited with if the estimate exceeds the actual expenditure.

35. The Respondents accepted this explanation.

Gardening

36. The Gardening costs in the Accounts were as follows:

Item	**2008**	**2009**	**2010**	**2011**	**2012**
	£	**£**	**£**	**£**	**£**
Gardening	1,383.20	1,512.00	1,498.50	2,256.80	3,528.00

37. The Applicants provided invoices for the gardening although the first invoice for the years 2008 and 2009 were missing. The charge was made in twelve monthly instalments. The monthly charges were
2008 £115.15
2009 £126.90 reducing to £124.20
2010 £124.20 increasing to £126.90
2011 £126.90 increasing to £270.26 for November and December and to £276.00 for January to March 2012
2012 £294.00

38. The Tribunal asked the Applicants why the charge had increased so significantly in November 2011 but the Representatives did not know.

39. The Respondents stated that they considered the cost of the general upkeep was high. They said that even if the standard of the work was good the cost was still not justified taking into account the area that was meant to be looked after.

40. They went on to say that the standard was not good. They said that both grass and shrub cuttings were left. Miss Welsh, the Respondent's Property Manager,

said that she had visited the site every 4 to 6 weeks and found the gardening to be of a good standard and had seen the gardeners working there. She had not found cuttings left on site. Mr Bhalla said that was because he had cleared them away. Miss Welsh said that she had not received any complaints. The Respondents said that they had complained orally to her and e mailed her to express their dissatisfaction. They accepted that they had not made any formal complaints and that no resident had made an application to the Tribunal in respect of the gardening service charge. Miss Welsh conceded they had complained to her but there had not been any formal written complaints.

41. The Respondents said that they had spoken to the gardeners, questioning them as to why they did not clear the cuttings and the gardeners claimed that they had not been paid and that clearing away was not in the budget. The Respondents said that there had been three different contractors, one of whom, Ratcliff's, were based in Staffordshire and therefore had to travel and so were bound to be more expensive than a local firm.

42. The Applicant's Representatives said that only Ratcliff's had been employed for the period in issue and they had a locally based workforce and so there were no added travelling costs. It was also said that they employed the most cost effective contractor. Clearing away was included in the specification.

43. The Applicant provided a Gardening Specification which included:
- Lawns to be cut and trimmed fortnightly March to November with cuttings to be removed
- Hard surfaces to be swept and debris removed
- Drain gully covers to be lifted debris removed once in April and October
- Shrubs to be pruned and borders to be cultivated and turned over and weed free
- Lawns to be sprayed once in March/April
- Paths to be sprayed twice a year in April and August

44. The Respondents said that the specification had not been met. No gardening had taken place in 2008 and they had never seen the drains being lifted. In addition no spraying had taken place for weeks. They added that they had obtained alternative quotations for managing and maintaining the site from Ivan Lloyd and Wards Surveyors, Hinckley who had quoted £840 – 900 per flat and £2,860 respectively per annum which was significantly less than Peverel. This included 22 visits for gardening and was as complete a specification as that provided by the Applicant.

45. It was added that no evidence had been adduced to show that the gardening had not occurred in 2008 or that it was not of a reasonable standard with debris being left uncollected. No photographs had been provided in defence at the County Court.

46. The Applicant provided a marked and coloured plan of the Estate which was annexed to each Lease and which delineated the area to be maintained. As noted at the Inspection this was bounded by the external walls of the blocks of flats and maisonettes on the South and East side. On the North and West sides

there were relatively small areas of grass between the buildings and the road. However, there was a large area of grass between the buildings on the South and East side. The Respondents conceded that for the years in issue they had maintained this area. It was accepted that it should not have been maintained and the cost should not have been included in the Service Charge.

47. The Respondents said that the additional cost of cutting this grassed area was unreasonable and not payable.

48. No evidence was adduced as to the cost of maintaining the site less the grassed area which should not have been part of the contract nor was an hourly or similar rate proposed.

Insurance Premium and Commission

49. Mr Charles Bettinson MSc, ACII FIRM gave evidence stating that he had 18 years experience and was Head of Insurance for Estates and Management Limited (E & M) who acts on behalf of the Respondent. He said that Oval Insurance Brokers Limited act and that they were one of the largest insurance brokers and specialises in property owners insurance. He said Oval and E & M work together to annually review the insurance arrangements prior to each renewal. In addition they regularly undertake a remarketing exercise. The last four reviews were in 2007, 2010, 2011 and 2013. Prior to renewal in 2013 the following insurers were approached: Allianz, Aviva, Mitsui, Travellers, Axa, Sumitomo, Zurich, Aspen, Ecclesiastical and Toikio Marine. In placing the insurance Mr Bettinson said that the principles in *Havenridge Ltd v Boston Dyers Ltd* [1994] 49 EG 11 and *Forcelux v Sweetman* [2001] EGLR 173 in that the premiums had been reasonably incurred and properly tested in the market. It was also submitted that the remuneration for placing the insurance was reasonable, *Williams v LB Southwark* 2000 LGR 646.

50. Mr Bettinson provided a schedule of the commission and charges paid to E & M and Oval. The average remuneration was 22% per annum. The schedule stated as follows:

	2008	**2009**	**2010**	**2011**	**2012**
	£	**£**	**£**	**£**	**£**
E & M Remuneration	1,211.08	1,307.96	1,273.69	755.81	625.84
Oval Remuneration	144.65	156.22	152.13	143.63	148.16
Total cost	**4,039.02**	**4,362.14**	**4,247.83**	**4,182.00**	**4,344.26**

51. Mr Bettinson itemised the work that was carried out for the remuneration including:
- Assist in negotiating competitive terms at inception
- Assist the broker with the debt recovery of the premium
- Endeavour to maintain the policy by funding the premium if service charge not in funds
- Arrange insurance valuation
- Provide information to tenants and answer queries
- Provide insurance documentation

- Liaise between leaseholders and brokers and assist insurers in relation to claims

52. The Tribunal identified some tasks that it considered to be included in the list twice e.g. assisting in negotiating competitive terms and providing claims assistance. Also some matters were management tasks e.g. attending site visits. The Respondents submitted that the list had been padded to make it appear that a lot of work was done.

53. Mr Bettinson said that the level of remuneration was low when compared with some commissions. He said that E & M were not regulated by the Financial Services Authority and so had to place the insurance through Oval who were regulated. However, E & M did much of the work in negotiating the premium and assisting in claims. The Respondents said that there had been no claims and that the charges were high. Mr Bettinson said that two claims had been notified but had not been pursued.

54. Mr Bettinson confirmed that although it was a block policy the buildings on it were individually valued and the premium allocated accordingly taking into account the individual claims record. The valuation was undertaken every 3 to 5 years. In response to a question from the Tribunal Mr Bettinson said that the E & M remuneration included the cost of the valuation by a RICS surveyor.

55. The Tribunal noted the Insurance costs in the Accounts were as follows:

Item	2008	2009	2010	2011	2012
	£	£	£	£	£
Insurance	4,160.19	4,503.91	7,184,83	6,271.54	4,350.18

56. The Tribunal asked Mr Bettinson why the amounts in the Accounts did not correspond to the amounts in his Schedule. Mr Bettinson said firstly the differences were due to the insurance year being from 1st March to 28th February and the accounting year being from 1st April to 31st March. Secondly he said that the Accounts for the years 2009, 2010 and 2011 did not identify the allocation of the premiums to the maisonettes and flats. He provided an oral reconciliation in this respect stating that:

- In 2009 the sum of £4,503.91 appears in the accounts. This premium is divided as £1,452.87 to the maisonettes and £3,051.04 to the flats.
- In 2010 the sum of £7,184.83 appears in the accounts. From this is taken the sum of £846.61 as the cost of the valuation of the maisonettes and the flats. £273.10 is for the maisonette valuation and £573.51 for the flats. The premium of £6,338.22 is divided as: £1,603.84 to the maisonettes and £4,734.38 to the flats. The total amount for the flats of premium plus valuation for the year comes to £5,307.89.
- In 2011 the sum of £6,271.54 appears in the accounts. This premium is divided as £2,023.08 to the maisonettes and £4,248.46 to the flats.

57. The insurance premiums for the flats for the insurance years are therefore:

Item	2008	2009	2010	2011	2012
	£	£	£	£	£
Insurance	4,160.19	3,051.04	4,734.38	4,248.46	4,350.18

58. The Tribunal stated that Mr Bettinson had said that the service provided by E & M included the cost of the valuation. Therefore the valuation fee of £573.51 for the flats should be deducted from the amount payable by the Respondents as tenants for 2010 leaving the premium of £4,734.38 only payable. The Tribunal therefore said that the valuation fee of £573.51 for the flats should be deducted from the amount of £5,307.89 payable for 2010.

59. The Respondents submitted that they had obtained a lower quotation through Ward Surveyors from Zurich with the same excesses and a lower premium of £2,632.00 although it had subsequently been withdrawn. The Respondents said the Wards had not come across a situation where payments were made for providing a service which would normally be provided by the insurer.

60. The Tribunal expressed surprise that Zurich would give a quotation on a property which they already insured and this may have been the reason for the withdrawal. It was also said that it was common for commission to be paid as remuneration for brokering insurance. The lower premium may be for a number of reasons such as a new business discount therefore the quotation was not considered cogent evidence.

Charge for repair of aerial

61. Mr Bhalla had complained about a charge of £111.63 for a repairing an aerial in respect of 27 Loughland Close on 16th October 2007. He said that he had reported a fault and workmen arrived at his flat and following an investigation carried out work but did not tell him what they had done or what the fault was. He subsequently found that it was inserting a 'splitter box' in the lounge of the property. He said this item was within the Demised Premises and therefore is not a service to the Block's common parts. He submitted that when they had found the fault they should have told him that he would have to employ his own contractor to fix it. They should not have repaired it and charged him.

62. The Applicants agreed that if it was a fault within the flat which affected the demised premises alone then it was not the responsibility of the Landlord. The Tribunal concurred.

Decision

Water & Amount of Service Charge

63. The Tribunal found that the Respondents had accepted the Applicant's Representatives' explanation with regard to the Water Charge. The Tribunal had also explained the situation with regard to the amount of the Service

Charge and the figure of £224.00 specified in the Lease. These two matters were therefore not in issue so far as these proceedings were concerned.

Gardening

64. The Tribunal considered the apportionment of the gardening between the large area of grass which should not have been maintained by the Applicants but was included in the service charge (the "excluded area") and the area within the boundary of the Estate that included the car park and landscaping within the courtyard and the relatively small area of grass on the North and West sides (the "maintained area"). On the basis of the Inspection the Tribunal suggested that about two thirds of the gardeners' time would be taken in maintaining the excluded area. Therefore one third would be attributable to the maintained area. Miss Welsh had not been able to comment on that breakdown. The Tribunal then considered how many hours it would take to maintain the relative parts. The Tribunal determined that to maintain the maintained area approximately 24 visits (one a fortnight) of one hour would be needed to cut the grass and prune the shrubs and keep the driveways and paths clear. An additional 8 hours for spraying and flushing the drains would be required giving a total of 30 hours.

65. The Tribunal then considered the gardening costs for 2008 which is the first year in issue. The total cost was £1,383.20. Based on the Tribunal's assessment one third of this cost was attributable to maintaining the maintained area i.e. £461.06. This figure divided by 30 gives an hourly charge of £15.36 which the Tribunal determined would have been reasonable in 2008 for gardening services.

66. The Tribunal determined that it was reasonable for there to be an annual percentage increase in accordance with the retail price index, the annual average being applied, as follows:

Year	RPI	Calculation	Cost £
2008	214.8		461.06
2009	213.7	461.06 x (213.7 ÷ 214.8 = 0.9948789) = 458.69	458.69
2010	223.6	458.69 x (223.6 ÷ 213.7 = 1.0463266) = 479,93	479.93
2011	235.2	479.93 x (235.2 ÷ 223.6 = 1.0518783) = 504.82	504.82
2012	242.7	504.82 x (242.7 ÷ 235.2 = 1.0318877) = 520.91	520.82

67. No evidence was adduced that the gardening was not carried out in 2008. From the Tribunal's inspection the grounds appeared to be in fair condition for the season indicating that gardening of a reasonable standard had been carried out over time.

Insurance

68. With regard to the remuneration of E & M, as stated at the hearing, the Tribunal found there had been some duplication of tasks in the list of duties provided but overall a commission of 22% was reasonable for the work undertaken by E & M and Oval. In the case of *Williams v LB Southwark,* the

case referred to by Mr Bettinson, it was held that reasonable remuneration paid to a landlord for service provided to the insurer can proprerly be included in the service charge for insurance.

69. It was noted that Mr. Bettinson said in evidence that the valuation fee of £573.51 in the year 2010 was included in the remuneration of E & M as part of the service. However, it was noted that in the accounts this had been an additional charge. The Tribunal therefore determined that it was not reasonable for the Respondents to pay a share of the valuation fee of £573.51 and that they should only be liable for their respective portion of the premium for the flats of £4,734.38 for that year.

70. The Tribunal therefore determined that the insurance premiums for the flats for the insurance years are reasonable as follows and are payable as apportioned for the Service Charge year and to the Respondents flats respectively:

Item	**2008**	**2009**	**2010**	**2011**	**2012**
	£	**£**	**£**	**£**	**£**
Insurance	4,160.19	3,051.04	4,734.38	4,248.46	4,350.18

Charge for repair of aerial

71. The Tribunal found that the Parties had agreed that the charge of £111.63 for repairing an aerial in respect of 27 Loughland Close on 16th October 2007 should not have been a part of the Service Charge as it was a fault within the Demised Premises. As it is not a Service Charge item the extent to which Mr Bhalla is liable for the cost of the work is not within the Tribunal's jurisdiction.

Judge JR Morris

Date: 15th May 2014