

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE****LEASEHOLD VALUATION TRIBUNAL**

**Subject Property:** 36 – 46 Flowerhill Drive, Wellingborough, Northamptonshire NN8 4GF

**Applicants:**

Miss Harriet Nassolo	Flat 44
Miss La Vern Haye	Flat 36
Ms AJ Robson	Flat 38
Mr TJ Douglas	Flat 40
Mrs Chandra Chudasama	Flat 42
Mr Adam Knox	Flat 46

**Respondent:** Burrows (Wellingborough) Management Company Limited

**Respondent's  
Managing Agent:** Residential Management Group (RMG), RMG House, Essex Road,  
Hoddesdon, Hertfordshire EN111 0DR (Formerly CPM Asset  
Management)

**Landlord &  
Freeholder:** Regisport Limited, 16 – 18 Warrior Square, Southend on Sea, Essex  
SS1 2WS (Not a party to these proceedings)

**Application:** Application for a determination of the reasonableness and liability to  
pay Service charges (Section 27A Landlord and Tenant Act 1985)

Application under section 20C of the Landlord and Tenant Act 1985 for  
the limitation of service charge arising from the landlord's costs of  
proceedings

**Case number:** CAM/34UH/LSC/2010/0012

**Date of Application:** 19<sup>th</sup> January 2010

**Tribunal**

Mr JR Morris LLB LLM PhD (Chair)
Mr JR Humphrys FRICS
Mr D Reeve

**Date of Hearing:** 22<sup>nd</sup> July 2010

**Attendance:**

**Applicants:** Ms Harriet Nassolo Flat 44 Applicants' Representative

**Respondent:** Mr James S Latta MRICS RMG Technical Adviser  
Mrs Brenda Reilly RMG Technical Analyst  
Mr Stephen Brown RMG Property Manager  
Mr Paul Russell RMG Regional Manager

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**DECISION & STATEMENT OF REASONS**

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## Decision:

- The Tribunal found that under the Lease the Applicants were only liable for the costs incurred in relation to the Subject Property. Therefore the Tribunal's determination is limited to the reasonableness of the costs incurred by way of Service Charge for the Subject Property
- The Tribunal determines that for the period ending 24<sup>th</sup> December 2009 the sum of £988.81 is a reasonable Service Charge payable by each of the Applicants as Leaseholders of the Subject Property to the Respondent when lawfully demanded.
- The Tribunal determines that for the period ending 24<sup>th</sup> December 2010 the sum of £779.50 is a reasonable Service Charge payable by each of the Applicants as Leaseholders of the Subject Property to the Respondent when lawfully demanded.
- The Tribunal make no Order under section 20C Landlord and Tenant Act 1985 the Respondent having agreed that the costs of these proceedings will not be charged to the Service Charge Account.
- The Tribunal make no Order requiring the Respondent to reimburse the fees
- The Tribunal requires Miss La Vern Haye, Ms AJ Robson, Mr TJ Douglas, Mrs Chandra Chudasama and Mr Adam Knox as parties to the Application to reimburse 1/6<sup>th</sup> each of the Fees paid by Miss Harriet Nassolo in respect of these proceedings.

## Reasons

### **The Application**

1. The Applicants applied to the Tribunal on the 11<sup>th</sup> January 2010 under section 27A of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002 for a determination as to the reasonableness and payability of the service charges incurred for the period 28<sup>th</sup> September 2007 to year ending 24<sup>th</sup> December 2007 and the years ending 24<sup>th</sup> December 2008 and 2009 and to be incurred for the year ending 24<sup>th</sup> December 2010.
2. The Tribunal made a determination following a Hearing on 12<sup>th</sup> May 2010 only in respect of the costs incurred for the Service Charge relating to the period 28<sup>th</sup> September 2007 to 24<sup>th</sup> December 2007 and year ending 24<sup>th</sup> December 2008. The Hearing was adjourned in respect of the costs incurred for the year ending 24<sup>th</sup> December 2009 and to be incurred for the year ending 24<sup>th</sup> December 2010 until 22<sup>nd</sup> July 2010 when the accounts for the year ending 24<sup>th</sup> December 2009 were available. This Decision and Reasons relate only to the costs incurred for the year ending 24<sup>th</sup> December 2009 and to be incurred for the year ending 24<sup>th</sup> December 2010.

### **The Law**

3. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

4. Section 18 Meaning of "service charge" and "relevant costs"

- (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, improvement 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 of 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 period*

5. Section 19 Limitation of service charges: reasonableness

- (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.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

6. Section 21B Notice to accompany demands for service charges

- (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*

(6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*

7. Section 27A Liability to pay service charges: jurisdiction

(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.*

**Description and Inspection of the Subject Property**

8. The Tribunal had inspected the property under the management of the Respondent including the Subject Property in the presence of Ms Harriet Nassolo and Miss LaVern Haye representing the Applicants and Mr Stephen Brown RMG Property Manager and Mr Paul Russell RMG Regional Manager for the Respondent on the 12<sup>th</sup> May 2010. At that inspection the conditions as set out below were found. There was no indication that there had been any alteration to affect the determination to be made in the present case and therefore no further inspection was made on the 22<sup>nd</sup> July 2010.
9. The Tribunal found that the property under the management of the Respondent (The Managed Property) comprises:
- 6 flats numbered 11, 15, 17, 19, 21 and 23 referred to in the Certified Accounts and the Detailed Expenditure Analysis for 2009 as Block 1, together with the access, car park and areas shared with houses 9, 24 and 25 and 35, 37, 39 and 41 referred to in the Certified Accounts and the Detailed Expenditure Analysis for 2009 as the Shared Access
  - 6 flats numbered 36, 38, 40, 42, 44 and 46 referred to in the Certified Accounts and the Detailed Expenditure Analysis for 2009 as Block 2 (the Subject Property).
10. The Subject Property includes a three-storey purpose built block of 6 flats built circa 2006. The block is constructed of brick under a pitched tile roof and has upvc windows, doors and rainwater goods. Around the Subject property are communal grounds with a mixture of shrubberies and hard landscaping. At the rear of the Subject Property there is a car park and the flats have allocated spaces. The car park

has an automated gated entrance. There is a gate for pedestrians at the side of the car park giving access to the bin store, outside tap and the road.

11. The Development was generally well maintained. The shrubberies were reasonably stocked and the hard landscaping and car parks were swept and clear of litter. Externally the Blocks being new buildings were in generally good condition.
12. Access to the internal communal areas was via a door entry system. There is a front and rear entrance to the block with a hall way and stairs to the upper floors where there are landings on each floor. The block is equipped with fire detection equipment. There is a storage heater on the ground floor. A push button timed switch operates the lights. The areas appeared to have been cleaned within the past week. The standard was no more than fair.
13. The Tribunal then externally inspected the other Managed Property. This was found to comprise a virtually identical block of flats to the subject Property. However there was a significant difference in relation to the communal grounds in that although the car park with automated gate was similar to that of the Subject Property it provided parking and access for a number of neighbouring properties. In addition the pathways and garden areas were much more extensive than those around the surrounding under the Subject Property.

#### The Lease

14. A copy of a Lease dated 28<sup>th</sup> September 2007 between David Wilson Homes Limited (1) and Harriet Assumpta Nassolo (2) and The Burrows (Wellingborough) Management Company Limited (3) was provided. All flats in Block 2 are believed to have similar leases.
15. Clause 1 sets out a number of definitions. Unfortunately the definitions are very broad and the narrative alone does not assist in the identification of particular areas of the Estate of Development, which are to be maintained by the Service Charge. In particular:
  - 1.2 "Block" the Block comprising the flats
  - 1.9 "Flat development Communal Areas" the Flat development other than the Flats and any other lettable parts of the Flat Development
  - 1.17 "Maintained Areas" those parts of the Estate which are more particularly described in the Fourth Schedule.
  - 1.26 "Shared Access Way" the area shown cross hatched whether or not superimposed by any other symbol on the Plan which forms or is intended to form the site of an access drive any footpath jointly serving the Property any and adjoining or neighbouring dwellings on the Estate but not intended to become public highway and such expression shall include (for the avoidance of doubt) those areas which run beneath any building constructed by the Landlord above ground level

The Fourth Schedule states that

1. The Maintained Areas shall comprise (but not exclusively):
  - 1.1 The Flat Development Communal Areas
  - 1.2 The Shared Access

16. There is a signed Plan referred to in the Lease and annexed to it, which shows Block 2 as a self contained area, which together with 8 neighbouring units is bounded by Flowerhill Drive, Burywell Road and Pym Close. Block 2 and its neighbouring units, which comprise the other part of the property managed by the Respondent, are not shown.
17. Other relevant definitions are:
  - 1.18 "Maintenance Expenses" the monies actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Landlord at all times during the Term in carrying out the obligations specified in the Fifth Schedule.
  - 1.29 "Tenants Proportion" the proportion of the Maintenance Expenses payable by the Tenant in accordance with the provisions of the Sixth Schedule
18. The Fifth Schedule sets out the Maintenance obligations expenses and administration of the Maintained Areas.
19. The Sixth Schedule states that the Tenant's proportion of the Maintenance Expenses "shall be a fair and equitable percentage of the amount attributable to the Management Company's expense and outgoings and other heads of expenditure as set out in the Parts 1 and 2 of the Fifth Schedule.

## **Matters in Issue**

### ***Service Charge***

20. The issues identified in the Application relate to the reasonableness and payability of the service charges incurred for the period year ending 24<sup>th</sup> December 2009 and to be incurred for the year ending 24<sup>th</sup> December 2010. All items in the service charge were put in issue. This was the main matter in issue.

### ***Apportionment***

21. In addition to the main matter in issue the apportionment between the two blocks of flats was put in issue at the previous hearing on the 12<sup>th</sup> May 2010. In respect of the previous determination and the present determination the Tribunal took the view that the Application gave it jurisdiction only to identify the costs relating to the Applicants, who were Leaseholders of Block 2, and assess their reasonableness and payability. The Tribunal found that although the blocks were similar the extent and use of the car park and adjacent paths and grounds, which were part of the Managed Property, were significantly different. The Tribunal found that it was not appropriate for there to be an apportionment of the Service Charge by way of simple half split between the two Blocks of all the costs incurred.
22. The Certified Accounts that had been drawn up for the year ending 24<sup>th</sup> December 2008 had not taken account of these differences. However before the previous hearing the Respondent's Agents had already taken some account of the differences between the Blocks and their respective surrounding areas when managing the properties and had prepared a "Detailed Expenditure Analysis for the Period Ending 24<sup>th</sup> December 2007" and "Detailed Expenditure Analysis for the Period Ending 24<sup>th</sup> December 2008" which set out the costs for each Block. These were referred to as the 'Summary of Costs for 2007' and 'Summary of Costs for 2008' respectively in the previous Reasons and as they identified the actual costs incurred for each Block and

were cross referenced with the invoices provided in the Hearing Bundle the Tribunal used the Summaries as the basis of the determination for the years ending 24<sup>th</sup> December 2007 and 2008.

23. The Certified Accounts that had been drawn up for the year ending 24<sup>th</sup> December 2009 were already in preparation at the time of the previous hearing and there was insufficient time to vary their layout to correspond to the points made in the determination following the previous hearing. However, unlike the previous accounts the Certified Accounts did identify costs that were attributed to Block 1, Block 2 and the Shared Access as well as to the Garage and Flat Over the Garage which are units around the Shared Access and give an apportionment.
24. Mr Latta, one of the Respondent's Representatives produced a revised "Detailed Expenditure Analysis for the Period Ending 24<sup>th</sup> December 2009" hereinafter referred to as the 'Summary of Costs for 2009' at the Hearing. This Summary identified the actual costs incurred for each Block and were cross referenced with the invoices provided in the Hearing Bundle. He said that the total costs incurred corresponded to the Certified Accounts but that he had re-examined the apportionment following the previous Determination and had made some adjustments in the light of it which altered and hopefully made fairer the apportionment set out in the Certified Accounts. In particular on Garden Maintenance made allocated 40% of the total cost to the Subject Property rather than 50%, to take account of the smaller area and had sought to ensure that where specific costs were incurred by one Block that they were attributed to that Block and not merely split 50/50.

## Evidence

### Service Charge for the year ending 24<sup>th</sup> December 2009

25. The Tribunal followed the heads of costs as set out in the Certified Accounts but used the Summary of Costs for 2009 to examine the breakdown of the costs incurred, cross-referencing to the invoices in the Hearing Bundle, and apportioning the costs to each Block and unit. The numbers in brackets in the table for the Summary of Costs refer to the order of the items as set out in the Summary of Costs for 2009.
26. The Certified Accounts set out the costs for the Subject property, which is referred to as Block 2 and in respect of which the Leaseholders of the Subject Property were required to pay 1/6<sup>th</sup> as follows:

<b>Service Charge for the Subject Property (Block 2 Flats 36 – 46) Only Year Ending 24<sup>th</sup> December 2009 as in the Certified Accounts</b>		
	£	Block 2's portion of amount attributed to Blocks
<b><i>Repairs &amp; Maintenance</i></b>		
General	367	50%
Cleaning & Refuse	1,518	50%
Door Entry System & Security	364	50%
Fire Equipment/Alarms Charges	269	50%
<b><i>Grounds Maintenance</i></b>		
Garden Maintenance	380	50%
<b><i>Utilities</i></b>		
Electricity Rates	509	Metered
Water Rates	6	Metered

<b>Professional Fees</b>		
Health and Safety	296	50%
<b>Insurance</b>		
Premiums	667	50%
Valuation	210	50%
<b>Total for Block 2</b>	<b>4,586</b>	
<b>Leaseholders Proportion 1/6 (16.67%)</b>	<b>764.33</b>	

27. The Certified Accounts set out the costs incurred for the Estate in respect of which all units contribute on the basis of 1/19<sup>th</sup> as follows:

<b>Service Charge for All Units to which the Leaseholders of the Subject Property contribute for Year Ending 24<sup>th</sup> December 2009 as in the Certified Accounts</b>			
	£	Apportionment	
<b>Grounds Maintenance</b>			
Garden Maintenance	291	Shared between all units with each unit paying 1/19 <sup>th</sup>	
<b>Professional Fees</b>			
Managing Agents Fees	2,643		
Accountancy Fees	676		
Directorship Fees	397		
Company Secretarial Fees	381		
Health & Safety Inspection	311		
Sundry Expenses	70		
<b>Insurance</b>			
Insurance	97		
<b>Total for All Units</b>	<b>4,866</b>		
<b>Leaseholder's Proportion 1/19<sup>th</sup> (5.26%)</b>	<b>256.11</b>		

28. The Respondent's Representatives produced the Summary of Costs for 2009 for the Subject property and in respect of which the Leaseholders of the Subject Property were required to pay 1/6<sup>th</sup> as follows:

<b>Service Charge for the Subject Property (Block 2 Flats 36 – 46) Only Year Ending 24<sup>th</sup> December 2009 as set out in the Summary of Costs for 2009</b>		
	£	Block 2's portion of total amount attributed to Blocks
<b>Repairs &amp; Maintenance</b>		
General (5)	308.44	Work specifically attributed to Block
Cleaning & Refuse (4)	1,517.50	50% + work specifically attributed to Block
Door Entry System & Security (14)	398.10	50%
Fire Equipment/Alarms Charges (15)	269.25	50%
<b>Grounds Maintenance</b>		
Garden Maintenance (5)	304.01	40%
<b>Utilities</b>		
Communal Electricity Rates (2)	508.75	Metered to Block
Communal Water Rates (3)	5.54	Metered to Block
<b>Professional Fees</b>		
Managing Agents Fees (6)	1,029.39	50%



Health and Safety (12) (2008)	152.34	50%
(2009)	143.66	
<b>Insurance</b>		
Premiums (1)	666.63	50%
Valuation (16)	210.46	50%
<b>Total for Block 2</b>	<b>5,514.07</b>	
<b>Leaseholders Proportion 1/6</b>	<b>919.01</b>	

29. The Respondent's Representatives produced the Summary of Costs for 2009 for the Estate in respect of which all units contribute on the basis of 1/19<sup>th</sup> as follows:

<b>Service Charge for All Units to which the Leaseholders of the Subject Property contribute for Year Ending 24<sup>th</sup> December 2009 as set out in the Summary of Costs for 2009</b>		
	£	Apportionment
<b>Grounds Maintenance</b>		Shared between all units with each unit paying 1/19 <sup>th</sup>
Garden Maintenance	291.34	
<b>Professional Fees</b>		
Managing Agents Fees	535.84	
Accountancy Fees (7)	676.00	
Directorship Fees (11)	396.75	
Company Secretarial Fees (10)	381.34	
Health & Safety Inspection (12) (2008)	159.92	
(2009)	152.68	
Sundry Expenses (9)	69.92	
<b>Insurance</b>		
Insurance	97.20	
<b>Total for All Units</b>	<b>2,760.99</b>	
<b>Leaseholder's Proportion 1/19<sup>th</sup> (5.26%)</b>	<b>145.32</b>	

30. The differences between the Certified Accounts and the Summary of Costs for 2009 were reconciled as follows:

<b>Service Charge for the Subject Property (Block 2 Flats 36 – 46) Only</b>				
Head	Certified Accounts	Summary of Costs	Reason	Adjustment to Certified Accounts
<i>General</i>	£367	£308.44	Specific costs attributed incorrectly	Reduced by £58.56
<i>Garden Maintenance</i>	£380	£304.01	Cost for Block 2 reduced to 40% of total	Reduced by £75.99
<i>Managing Agents Fees</i>	£0	£1,029.39	Allocated to Blocks	Increased by £1,029.39
<i>Door Entry System</i>	£364	£398.10	Specific costs attributed incorrectly	Increased by £34.10
<i>Adjustment</i>				Total reduced by £978.07
<b>Total</b>	<b>£4,586</b>	<b>£5,514.07</b>		Difference £978.07
The Accounts also rounded the costs whereas the Summary gave the precise amount.				

<b>Service Charge for All Units</b>				
<b>Head</b>	<b>Certified Accounts</b>	<b>Summary of Costs</b>	<b>Reason</b>	<b>Adjustment to Certified Accounts</b>
<i>Managing Agents Fees</i>	£2,643	£535.84	Part of fees allocated to Blocks, and other units	Reduced by £2,107.16
<b>Total</b>	£4,866	£2,760.99		Difference £2,105.01
The Accounts also rounded the costs whereas the Summary gave the precise amount.				

31. The Tribunal considered the accounts item by item and the Respondent's Representatives offered explanations for costs incurred. The Applicants' Representative comments are summarised.

### ***General Repair and Maintenance***

32. The costs attributed to the head General Repair and Maintenance were for: removal of carpet in the communal hallway, repairs to the electric doors, keys for the car park gates, signs and replacement of a weather strip. Costs for the removal of unauthorised rubbish from both the bin stores and the common parts were recognised as a problem. The Tribunal commented that the Leaseholders needed to be vigilant and report the activity and also to use local authority services for the removal of large items. The local authority would charge an individual Leaseholder to remove such items at a domestic rate, which was far less than the commercial rate charged to the Managing Agent and passed on to the Leaseholders through the Service Charge to have the items removed. It was also commented that the Managing Agents needed to ensure that Leaseholders were aware of the provisions for the removal of large items. The Respondent's Representatives stated that each Block paid the costs that had incurred. As a result, on examination of the Summary and related invoices, an adjustment was made reducing the figure shown in the Certified Accounts attributed to Block 2 from £367 to £308.44.

### ***Cleaning and Refuse***

33. The Tribunal noted that this item included cleaning of communal parts i.e. the hall, stairs and landings of the Subject Property, the windows and the bin stores. It was further noted that cleaning was undertaken once a fortnight under an annual contract and that the Applicants had considered it to be substandard. The amount attributed to the Subject Property in the Summary of Costs for 2009 and the Certified Accounts was the same.

### ***Door Entry System & Security***

34. The costs relating to the Door Entry System were for a maintenance contract with Tremorfa except for two invoices, which were for repairs on the gates and doors at the Subject Property. The amount attributed to the Subject Property in the Certified Accounts was less than in the Summary. On examination of the Summary it was noted that the cost of the maintenance contract was allocated equally to each Block but that the costs of repairs were allocated according to which Block required the repair. In 2009 more repairs had been undertaken on the Subject Property. The Summary was therefore submitted as having the correct amount increasing the figure shown in the Certified Accounts attributed to Block 2 from £364 to £398.10.

### ***Fire Equipment/Alarms Charges***

35. The costs in the Accounts relating to the Fire Equipment/Alarms Charges were for a maintenance contract with Tremorfa. The invoices were provided. The costs were divided equally and the amounts recorded in the Summary and Certified Accounts against the Subject Property were the same.

### ***Garden Maintenance***

36. The costs relating to Garden Maintenance were allocated to the two Blocks in the Certified Accounts on a 50/50 basis whereas in the Summary of Costs for 2009 40% of the cost was attributed to the Subject Property because the Respondent's Representatives stated that the area around Block 2 was less than that around Block 1, as had been identified by the Tribunal in the determination for year ending 24<sup>th</sup> December 2008. As a result an adjustment was made reducing the figure shown in the Certified Accounts attributed to Block 2 from £380 to £304.01.

### ***Utilities***

37. It was noted that Blocks 1 and 2 are separately metered for both electricity and water. The costs in both the Summary and Certified Accounts were £508.75 for electricity the meter having been read. The charge for water was £6.00 and the Respondent's Representatives said that a bill had not been received so this was just an allowance. During the course of considering the matter at the Hearing it was suggested that the bill for Block 1 might have been for both Blocks. The Tribunal stated that whatever the situation it was essential that the matter be investigated as a matter of urgency. The Applicants' Representative expressed particular concern as the tap had been used by non residents and the Applicants were keen to monitor the charge.

### ***Managing Agents Fees***

38. It was noted that the Certified Accounts had charged the Management Fees to all units equally. The Respondent's Representatives submitted that this was not reasonable as the Blocks required more management than the Shared Access. Therefore in the Summary the total management cost of £2,643 had been distributed so that each Block was charged £1,029.39 and the remainder was charged proportionality to the other units and to the Shared Access.

### ***Accountancy Fees***

39. Both the Certified Accounts and the Summary recorded a charge of £676.00 for Accountancy Fees, which were apportioned equally amongst the 19 units under the Management Company. The Tribunal noted that these costs were divided between the Managing Agents own accountancy department and an independent accountant, David Thomas, who provided the certificate. The Accountancy department charged £436.00 for preparing the accounts and David Thomas charged £240.00 for the certification. The amount to be apportioned to the Subject Property was £213.47.

### ***Director and Company Secretary's Fees***

40. Both the Certified Accounts and the Summary recorded a charge of £397.00 for Director's Fees and £381 for Company Secretarial Fees, which were apportioned equally amongst the 19 units under the Management Company. The Tribunal reiterated the point it had made at the Hearing prior to the determination for Service Charge for the year ending 24<sup>th</sup> December 2008 that it appreciated that a Director and

Company Secretary was required to comply with the Companies legislation nevertheless the fees appeared very high.

### ***Sundry Expenses***

41. Both the Certified Accounts and the Summary recorded a charge of £70.00 for Sundry Expenses, which were apportioned equally amongst the 19 units under the Management Company and these were agreed.

### ***Insurance Premium and Valuation***

42. Both the Certified Accounts and the Summary recorded a charge of £666.63 Insurance Premium and £210.45 for the Insurance Valuation, which were apportioned equally between the two Blocks and these were agreed. In addition there was a charge of £97 in both the Certified Accounts and Summary for an insurance premium attributed to the Shared Access.

### ***Health & Safety***

43. It was noted that the cost of this item in the Certified Accounts was a total of £903.00, which was apportioned with each Block paying £296.00 and the remainder being divided between the 19 units. The Respondent's Representatives stated that the cost recorded in the Certified Accounts was for two years and that the cost for each year was £464.60 for 2008 and £440.00 for 2009. It was stated that this was a statutory requirement and that it related not only to Health and Safety under employment regulations but also fire risk assessment. It was further stated that they had been advised that such assessments should be carried out every year. A copy of the report carried out in 2008 was provided.
44. The Applicants' Representative stated that she conducted Health and Safety Risk Assessments and considered that the cost was unreasonable for carrying out what was essentially "a checking exercise" in a building, which had limited common parts. She did not consider that they needed to be carried out every year or in great detail. She added that the cleaners and others employed sub-contractors and would be legally required to carry out their own health and safety inspection and risk assessment before commencing work.
45. There followed some discussion on the matter with a view to a determining the reasonableness of the charge for 2009 put in issue by the Applicants. The Tribunal suggested that the Subject Property, being a 'new build', should comply with both health and safety and fire regulations. The Tribunal appreciated the importance of complying with fire regulations but commented that the common parts were small and fire prevention and fighting equipment was installed and checked regularly. The Tribunal questioned whether annual full health and safety and fire risk inspections were always required and whether such inspections might only be necessary every few years (perhaps 5 years in the case of a health and safety inspection for the subject property) with annual checks taking place within the normal management regime linked in the case of fire risk assessments to the maintenance of fire equipment. The Tribunal accepted that the situation might be different in the case of a more substantial property and if a caretaker/concierge were employed on the premises. The Tribunal was of the opinion that neither the legislation nor the Royal Institute of Chartered Surveyors Service Charge Residential Management Code *required all* blocks of flats with common parts to have annual health and safety and fire risk assessments, although it was agreed that this might be appropriate for some premises and in some circumstances.

46. The Respondent's Representatives stated that they could only act on the advice that they had been given and that fire officers and the Association of Residential Managing Agents (ARMA) had recommended more regular inspections than the Tribunal seemed to be suggesting were necessary.

***Applicants' Comments***

47. The Applicants' Representative stated that she was happier with the apportionment now that repairs were being charged to the Blocks that incurred the cost, the shared access was identified separately and the gardening costs were apportioned to take account of the smaller area around Block 2, the Subject Property. In addition the Leaseholders were now able to engage with the management of the Estate. She submitted that if the information that had been given by the Respondent as a result of the Application had been provided when requested by the Leaseholders at the outset these proceedings would not have been necessary. She expressed her main concern in relation to the Service Charge for the year ending 24<sup>th</sup> December 2009 was the charge for the Health and Safety Inspections.

***Respondent's Representatives Comments***

48. The Respondent's Representatives submitted that the apportionment as set out in the Summary of Costs for 2009 and the total costs as set out in the Certified Accounts for the year ending 24<sup>th</sup> December 2009 were reasonable and payable.

**Estimated Service Charge for the year ending 24<sup>th</sup> December 2010**

50. The Respondent's Representatives provided a Service Charge Budget Account for the Subject property as follows:

<b>Estimated Service Charge for the Subject Property also referred to as Block 2 Flats 36 – 46 for Year Ending 24<sup>th</sup> December 2010</b>	
	£
<b><i>Repairs &amp; Maintenance</i></b>	
General	342
<b><i>Insurance</i></b>	
Buildings Insurance	785
Directors & Officers Insurance	73
<b><i>Professional Fees</i></b>	
Administrative Costs	69
Audit & Accountancy Costs	216
Company Secretary	126
Health & Safety Inspection	193
Management Fees	1,185
<b><i>Repairs and Maintenance</i></b>	
Aerial Maintenance	150
Cleaning Contract	642
Communal Window Cleaning	207
Door Entry System	280
Drainage & Sewerage	47
Electrical Maintenance	100
Fire Equipment Maintenance	277
General Repairs & Maintenance	158
Refuse Collection	70

Sundry Expenses	50
<b>Reserves</b>	
Major Works Contribution	510
<b>Utilities</b>	
Electricity	300
Water	92
<b>Total for Block 2</b>	<b>4,677</b>
<b>Leaseholders Proportion 1/6</b>	<b>779.50</b>

51. The Tribunal noted that the estimated costs of the following items were similar to those of the previous year:
- General repair and maintenance
  - Buildings Insurance
  - Accountancy Fees
  - Company Secretary Fees
  - Management Fees
  - Cleaning Contract, Communal Window Cleaning, Drainage & Sewerage, Electrical Maintenance, General Repairs & Maintenance and Refuse Collection, which had in the previous year appeared under a single heading of "Cleaning and Refuse"
  - Door Entry System
  - Fire Equipment and Maintenance
  - Sundry Expenses
52. The Respondent's Representatives commented that the additional item of Director's and Officer's Insurance was considered necessary as the Leaseholders were taking office as Directors. It was said that provision for the Company Secretary's fees was made as the Leaseholders did not wish to hold that office which would be filled by a person nominated from the Managing Agents.
53. The Applicants' Representative commented that there was provision of £150.00 for Aerial Maintenance but so far as the Leaseholders were aware there was no aerial and no dish for Sky reception which it was understood at the time of purchasing the Lease that there would be.
54. The Respondent's Representatives said that they were currently seeking to make arrangements for Sky reception. It was also said that even with standard terrestrial the maintenance of the amplifier and cabling to each flat was expensive.

**Application under Section 20C Landlord and Tenant Act 1985 and for Reimbursement of Fees**

55. The Applicants applied for an order under Section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenants of the property at the Hearing. In addition the Applicants applied for reimbursement of fees pursuant to Regulation 9(1) of Leasehold Valuation (Fees) (England) Regulations 2003 (SI 2003/2098). The Applicants' Representative reiterated a point made earlier that if the information that had been given by the Respondent as a result of the Application had been provided when requested by the Leaseholders at the outset these proceedings would not have been necessary.

56. In response to questions from the Tribunal the Applicants' Representative stated that she was a Leaseholder and had paid the fees on behalf of the other Applicants.
57. The Respondent's Representatives stated that they would not be charging their costs in connection with these proceedings, as these were included in the Management Charge. However they did not consider it fair to be ordered to reimburse the fees as the apportionment issue was open to interpretation and it was not unreasonable for the matter to have been brought before the Tribunal.

## Decision

### **Determination in respect of the Apportionment**

58. The Lease requires the apportionment to be "a fair and equitable percentage of the amount attributable to the Management Company's expense and outgoings". Under its jurisdiction to assess payability the Tribunal agreed with the following apportionment, which it found from the Summary to be made by the Managing Agents:
- Repairs incurred by Block 2 whether for the door entry system, automated gate or general repairs were attributed as a cost to that Block and payable equally by the Leaseholders in that Block.
  - The cost of Maintenance Contracts e.g. door entry system, fire equipment etc. which serve both Blocks are divided equally as the Blocks are virtually identical in this respect.
  - The cost of the Cleaning, internal and window, the Blocks are divided equally as the Blocks are virtually identical in this respect. An exception being where the contractor records that it has cleaned one Block but not the other or has given a special clean to, e.g. carpets, or removed refuse from a specific Block in which case it is charged to that Block, as for repairs.
  - Water and Electricity are metered for each Block and charged accordingly.
  - Buildings Insurance is apportioned between the Blocks, the Garage and the Flat Over the Garage and is apportioned between those units. There is also an insurance premium for the Car Parks and Shared Access which is payable equally by all units.
  - The costs incurred for running the Respondent which include the Company Secretary's Fees, the Director's Insurance, the Accountancy Fees and the Sundry Expenses are payable equally by all 19 of the units, which come under the auspices of the Respondent and presumably all of which are entitled to be members/shareholders of the Respondent.
  - The Managing Agents Fees are apportioned broadly on the basis of 2/5<sup>ths</sup> payable by each Block and 1/5<sup>th</sup> by those contributing to the Shared Access.
  - The Garden Maintenance is apportioned between the Blocks on the basis of 60% payable by Block 1 and 40% payable by Block 2.
59. The Tribunal did not agree with the apportionment, which it found from the Summary to be made by the Managing Agents, of the Leaseholders to the Garden Maintenance and the Managing Agents Fees for the Shared Access, which in 2009 came to £291.34 and £535.84 respectively. Block 2 is a self-contained building and car park and the only access is shared by the Leaseholders of Block 2. What the Tribunal found to be described as the Shared Access in the Lease was the car park and area around Block 1 and the 7 other adjacent units. The Tribunal accept that for the purposes of this assessment the apportionment of 1/19<sup>th</sup> of the amount set aside for the Shared Access in respect of the insurance and Health and Safety Inspection and Fire Risk Assessment should be payable by the Leaseholders of Block 2. The reason

being that a larger amount of these costs would have been attributed to the Leaseholders of Block 2 to cover the Block 2 Car Park had Block 2 been excluded from the Shared Access calculations. However, the area immediately around Block 1 apart, the grounds, which are included within the Shared Access and surround the adjacent units, are substantial enough to warrant a separate apportionment in respect of which Block 2 should not be required to contribute.

#### **Determination of the Service Charge for the year ending 24<sup>th</sup> December 2009**

60. For the year ending 24<sup>th</sup> December 2009 the Tribunal cross-referenced the costs in the Certified Accounts with the costs recorded in the Summary of Costs for 2009. Firstly the Tribunal used the Summary of Costs, related invoices and evidence of the parties to gather further information in order to determine the reasonableness of the cost. Secondly the Tribunal used the Summary of Costs to assess the amount of the cost apportioned to the Subject Property, referred to in the Summary of Costs as Block 2, to determine the reasonableness of the share.

#### ***General Repair and Maintenance***

61. The costs attributed to the item headed General Repair and Maintenance and apportioned to Block 2 of £308.44 and identified in the Summary of Costs for 2009 were in the experience of the Tribunal reasonable and payable.

#### ***Cleaning and Refuse***

62. The Tribunal accepted that the cleaning of the hallway, stairs and landings was not of a high standard but found it to be commensurate with the attendance of the contractor once a fortnight. The Tribunal determined that in the knowledge and experience of its members the charges for window cleaning, internal cleaning and bin store cleaning apportioned to Block 2 of £1,517.50 and identified in the Summary of Costs for 2009 were reasonable and payable by the Applicants to the Respondent.

#### ***Door Entry System & Security***

63. The Tribunal determined that in the knowledge and experience of its members the costs for the maintenance contract and the repairs on the gates and doors incurred in respect of Block 2 of £398.10 and identified in the Summary of Costs for 2009 were reasonable and payable by the Applicants to the Respondent.

#### ***Fire Equipment/Alarms Charges***

64. The Tribunal determined that in the knowledge and experience of its members the charge for the maintenance contract with Tremorfa relating to the Fire Equipment/Alarms Charges of £269.25 apportioned to Block 2 and identified in the Summary of Costs for 2009 was reasonable and payable by the Applicants to the Respondent.

#### ***Garden Maintenance***

65. The Tribunal determined in the knowledge and experience of its members that the cost of Garden Maintenance in the Summary of Costs for 2009 attributed to Block 2 of £304.01 being 40% of the total costs allocated to the Blocks was reasonable and payable by the Applicants to the Respondent.



### ***Utilities***

66. The Tribunal determined that the cost for communal electricity for Block 2 £508.75 as identified in the Summary and Certified Accounts was reasonable and payable by the Applicants to the Respondent.
67. The Tribunal determined that an allowance for £170.00 for water in the Service Charge for 2009 should be payable by the Applicants to the Respondent to meet this cost when the meter is read.

### ***Managing Agents Fees***

68. The Tribunal determined that in the knowledge and experience of its members taking into account the standard of service the Managing Agents Fees in the Summary of Costs for 2009 attributed to Block 2 of £1,029.39 being £171.56 per unit was reasonable and payable by the Applicants to the Respondent.

### ***Accountancy Fees***

69. The Tribunal noted the explanation of how the Accountancy Fees were incurred and the amount that was attributable to the Subject Property. The Tribunal therefore determined that in the knowledge and experience of its members the sum of £213.47 for Block 2 was reasonable and payable by the Applicants to the Respondent.

### ***Director and Company Secretary's Fees***

70. The Tribunal noted that the role of the Directors was due to be passed to the Leaseholders and that the Leaseholders had also indicated that they did not wish to take over the role of the Company Secretary, which would remain with the Managing Agent. The Tribunal determined that in the knowledge and experience of its members the fees apportioned to Block 2 of £125.37 for Director's Fees and £120.42 for the Company Secretary's Fee were reasonable and payable by the Applicants to the Respondent.

### ***Sundry Expenses***

71. The Sundry Expenses totalling £70.00 were agreed.

### ***Insurance Premium and Valuation***

72. The Buildings Insurance Premium for Block 2 of £666.63 Insurance Premium and the share of the Insurance Valuation attributed to Block 2 of £210.45 were agreed. It was also determined that each Leaseholder of Block 2 should pay 1/19<sup>th</sup> of the Insurance attributed to the Shared Access to cover the insurance over its own Car Park.

### ***Health & Safety***

73. The Tribunal noted the submission of the Respondent's Representatives that the Health and Safety Inspection and Fire Risk Assessment are a statutory requirement and that they had been advised that such assessments should be carried out every year. Although the Tribunal entirely agrees that the Inspection and Assessment are statutory requirements and are applicable to the Subject Property, nevertheless, it does not agree that it is reasonable that a full chargeable inspection and risk

assessment should be carried out on annual basis in respect of every property. Any chargeable inspection and risk assessment should be proportionate.

74. There is a range of considerations as to when such full chargeable Inspection and Assessments should be carried out which will vary from property to property. For example an annual inspection and assessment may well be reasonable for a large block of flats with resident employees such as a caretaker and cleaner. However in the present case the Tribunal took into account the following matters:
- the size of the property
  - the type of property
  - the age and condition of the property
  - the likelihood of risk
75. The Tribunal found that the common parts of the Subject Property comprised a small hallway, three flights of stairs and three landings. The Subject Property is a block of six flats with two flats on each floor. The Subject Property was constructed in 2007 and is in good condition and should therefore comply with the most recent building regulations including the most recent fire prevention regulations in respect of its construction and installations. The car park, entrance, gardens and bin store are easy to maintain and have no particular management or health and safety issues.
76. The Tribunal determined that the health and safety inspection and fire risk assessment conducted in 2008 at a cost of £464.60 was reasonable and the sum of £202.84 apportioned to the Leaseholders of Block 2 (being £152.34 plus 6/19<sup>ths</sup> of £159.92 as identified in the Summary of Costs for 2009) is payable by the Applicants to the Respondents.
77. However, the Tribunal found that, as full health and safety and fire risk inspection had taken place in 2008 then, unless there had been a change in the premises or their use which might affect the health and safety or fire risk, there was no evidence to indicate that a further inspection was necessary in 2009 over and above the regular inspections and assessments that should be conducted by the managing agent under the RICS Residential Management Code and ARMA guidance. The Tribunal therefore determined that the charge of £440.00 was not reasonable or payable by the Applicants to the Respondent.
78. The Tribunal agrees that inspections and assessments should be made but should be carried out to a level of detail and at intervals in accordance with a proportionate and reasoned plan appropriate to the property; also, it may be appropriate for fire risk assessments to be made at different intervals from health and safety inspections.

**Summary of Determination of the Service Charge for year ending 24<sup>th</sup> December 2009**

79. The Tribunal determined that the Service Charge for the Subject Property also referred to as Block 2 for the year ending 24<sup>th</sup> December 2008 in respect of which the Leaseholders pay 1/6<sup>th</sup> is as follows:

<b>Service Charge for the Subject Property (Block 2 Flats 36 – 46) for Year Ending 24<sup>th</sup> December 2009 as determined by the Tribunal</b>		
	£	Block 2's portion of amount attributed to Blocks
<b><i>Repairs &amp; Maintenance</i></b>		
General	308.44	Work specifically attributed to Block

Cleaning & Refuse	1,517.50	50% of maintenance contract + work specifically attributed to Block
Door Entry System & Security	398.10	50%
Fire Equipment/Alarms Charges	269.25	50%
<b>Grounds Maintenance</b>		
Garden Maintenance	304.01	40%
<b>Utilities</b>		
Communal Electricity Rates	508.75	Metered to Block
Communal Water Rates	5.54	Metered to Block
<b>Professional Fees</b>		
Managing Agents Fees	1,029.39	50%
Health and Safety (2008)	152.34	50%
<b>Insurance</b>		
Premiums	666.63	50%
Valuation	210.46	50%
<b>Total for Block 2</b>	<b>5370.41</b>	
<b>Leaseholders Proportion 1/6</b>	<b>895.07</b>	

80. The Tribunal determined that the Service Charge for the Subject Property also referred to as Block 2 for the year ending 24<sup>th</sup> December 2008 in respect of which the Leaseholders pay 1/19<sup>th</sup> is as follows:

<b>Service Charge for All Units to which the Leaseholders of the Subject Property contribute for Year Ending 24<sup>th</sup> December 2009 as determined by the Tribunal</b>		
	£	Apportionment
<b>Professional Fees</b>		
Accountancy Fees	676.00	Shared between all units with each unit paying 1/19 <sup>th</sup>
Directorship Fees	396.75	
Company Secretarial Fees	381.34	
Health & Safety Inspection (2008)	159.92	
Sundry Expenses	69.92	
<b>Insurance</b>		
Insurance	97.20	
<b>Total for All Units</b>	<b>1,781.13</b>	
<b>Leaseholder's Proportion 1/19<sup>th</sup> (5.26%)</b>	<b>93.74</b>	

81. The Tribunal therefore determines that for the period ending 24<sup>th</sup> December 2009 the Service Charge of each tenant of the Subject property is £988.81 is reasonable and payable by each of the Applicants as Leaseholders of the Subject property to the Respondent when lawfully demanded.

#### **Estimated Service Charge for the year ending 24<sup>th</sup> December 2010**

82. The Tribunal compared the Service Charge that it determined to be reasonable for the year ending 24<sup>th</sup> December 2009 with the Estimated Service Charge provided for the year ending 24<sup>th</sup> December 2010 and noted that although the Estimated Service Charge was set out differently nevertheless, both Service Charges contained similar items. In addition the costs, which the Managing Agent anticipated incurring were, overall, similar to those that had been incurred in the previous year and had been determined to be reasonable. The Tribunal also determined that the apportionment of the Service Charge to the Subject Property was reasonable. The Tribunal was also mindful that the determination in relation the Budget Service Charge for the year

ending 24<sup>th</sup> December 2010 for those costs *to be incurred* does not preclude the Applicant or Respondent from making an Application under section 27A of the 1985 Act for a determination as to the reasonableness of the *actual costs when they have been incurred*.

**Application under Section 20C Landlord and Tenant Act 1985 and for Reimbursement of Fees**

83. In respect of the Application for an order under Section 20C of the Landlord and Tenant Act 1985 that the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Leaseholders of the Subject Property the Tribunal makes no Order the Respondent having agreed that the costs of these proceedings will not be charged to the Service Charge Account.
84. The Tribunal accepts that the apportionment issue justifies the Application and therefore it makes no Order against the Respondent with regard to the Application for reimbursement of fees pursuant to Regulation 9(1) of Leasehold Valuation (Fees) (England) Regulations 2003 (SI 2003/2098). However, the Tribunal does require under that Regulation Miss La Vern Haye, Ms AJ Robson, Mr TJ Douglas, Mrs Chandra Chudasama and Mr Adam Knox as parties to the Application to reimburse 1/6<sup>th</sup> each of the Fees paid by Miss Harriet Nassolo in respect of the proceedings.

JR Morris (Chair)

8<sup>th</sup> September 2010