

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/40UC/LSC/2009/0022

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (LIABILITY TO PAY SERVICE CHARGES)

Property: A development of purpose-built properties at Countess Avenue, Duke Street, Lords Way, Bridgwater, Somerset TA6 3TJ / 3TG / 3SF in particular 3 Countess Avenue, 15 Duke Street, 7 Countess Avenue, 52 Lords Way, 29 Countess Avenue and 7 Lords Way.

Applicants: CARNIVAL WALK MANAGEMENT COMPANY LTD.

Respondents: Mr. A. White (3 Countess Avenue)
 Ms. J. Gibson (15 Duke Street)
 Mr. A. Coram (7 Countess Avenue)
 Mr. O. Panagoutsos (52 Lords Way)
 Mr. J. Rainey (29 Countess Avenue)
 Ms. C. Hale & Mr Lynch (7 Lords Way)

Represented by: For the Applicant: Miss Helen Macrae

Also in attendance: Emily Holman, Property Manager of the Applicant, Mr. A. Coram and Mrs. Anne June Coram. On the second day: Kirsty Barrett replaced Emily Holman.

Date of Application: 30th January, 2009

Date of Directions: 20th March, 2009 as amended on 13th August, 2009.

Date of Inspection: 12th November, 2009

Date of Hearings: 12th November, 2009 and 14th January, 2010.

Venue: Bridgwater & Albion RFC, Bath Road, Bridgwater, Somerset TA6 4TZ

Members of the Tribunal: Mr. T. D. George (Lawyer Chairman)
 Miss C.A. Rai. LLB (Lawyer Member)
 Mr. P. E. Smith, F.R.I.C.S. (Valuer Member)

Date of Tribunal Decision: *First day of March 2010*

DECISION:**Introduction:**

The Application considered by the Tribunal was by the Applicant to determine the Service Charges in respect of the Pproperty for the years the 1st April, 2008 to the 31st March, 2009 and the 1st April, 2008 to the 31st March 2009 as reasonable and that the leaseholders have a liability to pay the charges. The Application was dated the 30th January, 2009.

DETERMINATION

The Tribunal determines, under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") that:

1. For the years the 1st April, 2007 to the 31st March, 2008 the following sums are due:

1) 3 Countess Avenue (Block 15 – Mr. A. White)

Amount claimed by the Applicant set out in Paragraph 16:	£1,203.08
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LESS:

A one-seventy-fourth share of the £61.43 set out in Paragraph 35	£ 0.83
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A one-seventy-fourth share of the £381.15 set out in Paragraph 37	£ 5.15
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A one seventy-fourth share of the £99.87 set out in Paragraph 38	£ 1.34
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A one quarter share of the £117.50 set out in Paragraph 38	£ 29.37
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The amount of the managing agents charge of £58.75 not allowed at Paragraph 42	£ 58.75
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The sum of £110.45 not allowed at Paragraph 42	<u>£110.45</u>	<u>£ 267.35</u>
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Amount due to the Respondent		<u>£ 935.76</u> =====
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2) 15 Duke Street (Block 2 – Ms. J. Gibson)

Amount claimed by the Applicant set out in Paragraph 17:	£1,511.56
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LESS:

A one-seventy-fourth share of the £61.43 set out in Paragraph 35	£ 0.83
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A one-seventy-fourth share of the £381.15 set out in Paragraph 37	£ 5.15
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A one seventy-fourth share of the £99.87 set out in Paragraph 38	£ 1.34
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A one quarter share of the £117.50 set out in Paragraph 38	£ 29.37
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The amount of the managing agents charge of £58.75 not allowed at Paragraph 43	£ 58.75
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The sum of £110.45 not allowed at Paragraph 43	<u>£110.45</u>	<u>£ 205.89</u>
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Amount due to the Respondent		£1,305.67
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- 3) 7 Countess Avenue (Block 15 – Mr. A. Coram)
 A one-seventy-fourth share of the £61.43 set out in Paragraph 35 £ 0.83
 A one-seventy-fourth share of the £381.15 set out in Paragraph 37 £ 5.15
 A one seventy-fourth share of the £99.87 set out in Paragraph 38 £ 1.34
 A one quarter share of the £117.50 set out in Paragraph 38 £ 29.37
 Amount due to the Respondent £ 36.69
 =====
- 4) 52 Lords Way (Block 7 – Mr. D. Panagoutsos)
 A one-seventy-fourth share of the £61.43 set out in Paragraph 35 £ 0.83
 A one-seventy-fourth share of the £381.15 set out in Paragraph 37 £ 5.15
 A one seventy-fourth share of the £99.87 set out in Paragraph 38 £ 1.34
 A one third share of the £117.50 set out in Paragraph 38 £ 39.16
 Amount due to the Respondent £ 46.48
 =====
- 5) 29 Countess Avenue (Block 14 – Mr. J. Rainey)
 A one-seventy-fourth share of the £61.43 set out in Paragraph 35 £ 0.83
 A one-seventy-fourth share of the £381.15 set out in Paragraph 37 £ 5.15
 A one seventy-fourth share of the £99.87 set out in Paragraph 38 £ 1.34
 A one quarter share of the £117.50 set out in Paragraph 38 £ 29.37
 Amount due to the Respondent £ 36.69
 =====
- 6) 7 Lords Way (Block 4 – Ms. C. Hale & Mr. Lynch)
 A one-seventy-fourth share of the £61.43 set out in Paragraph 35 £ 0.83
 A one-seventy-fourth share of the £381.15 set out in Paragraph 37 £ 5.15
 A one seventy-fourth share of the £99.87 set out in Paragraph 38 £ 1.34
 A one quarter share of the £117.50 set out in Paragraph 38 £ 29.37
 Amount due to the Respondent £ 36.69

2. For the years the 1st April, 2008 to the 31st March, 2009 the following sums are due:

1) 3 Countess Avenue (Block 15 – Mr. A. White)

A one quarter share of the overcharge of £211.50 set out in Paragraph 31	£52.87
A one-seventy-fourth share of the £380.11 set out in Paragraph 37	£ 5.13
A one seventy-fourth share of the £106.25 set out in Paragraph 26	£ 1.43
A one seventy-fourth share of £131.15 set out in Paragraph 26	<u>£ 1.77</u>
Amount due to the Respondent	<u>£61.20</u> =====

2) 15 Duke Street (Block 2 – Ms. J. Gibson)

A one quarter share of £1.14 set out in Paragraph 27	£ 0.28
A one-seventy-fourth share of the £380.11 set out in Paragraph 37	£ 5.13
A one seventy-fourth share of the £106.25 set out in Paragraph 26	£ 1.43
A one seventy-fourth share of the £131.15 set out in Paragraph 26	<u>£ 1.77</u>
Amount due to the Respondent	£ 8.33 =====

3) 7 Countess Avenue (Block 15 – Mr. A. Coram)

A one quarter share of the overcharge of £211.50 set out in Paragraph 31	£52.87
A one-seventy-fourth share of the £380.11 set out in Paragraph 37	£ 5.13
A one seventy-fourth share of the £106.25 set out in Paragraph 26	£ 1.43
A one seventy-fourth share of the £131.15 set out in Paragraph 26	<u>£ 1.77</u>
Amount due to the Respondent	£61.20 =====

4. 52 Lords Way (Block 7 – Mr. D. Panagoutsos)

A one-seventy-fourth share of the £380.11 set out in Paragraph 37	£ 5.13
A one seventy-fourth share of the £106.25 set out in Paragraph 26	£ 1.43
A one seventy-fourth share of the £131.15 set out in Paragraph 26	<u>£ 1.77</u>
Amount due to the Respondent	£ 8.33 =====

5. 29 Countess Avenue (Block 14 – Mr. J. Rainey)

A one-seventy-fourth share of the £380.11 set out in Paragraph 37	£ 5.13
A one seventy-fourth share of the £106.25 set out in Paragraph 26	£ 1.43
A one seventy-fourth share of £131.15 set out in Paragraph 26	<u>£ 1.77</u>
Amount due to the Respondent	£ 8.33

6.	<u>7 Lords Way (Block 4 – Ms. C. Hale & Mr. Lynch)</u>	
	A one-seventy-fourth share of the £380.11 set out in Paragraph 37	£ 5.13
	A one seventy-fourth share of the £106.25 set out in Paragraph 26	£ 1.43
	A one seventy-fourth share of the £131.15 set out in Paragraph 26	<u>£ 1.77</u>
	Amount due to the Respondent	£ 8.33 =====

REASONS.

Background to the Application

1. On the 30th January 2009 the Applicant made an Application for the determination of Service Charges in respect of the Property under the Act. The Service Charges are divided into two parts. One for the communal areas of the Property called "the Estate". The other for each block of the Property called "the Block Service Charge". Two of the Respondents were alleged to be in arrears with Service Charges, namely Mr. A. White (Flat 3 Countess Avenue) and Ms. J. Gibson (15 Duke Street). The Applicant wishes to be able to take proceedings under Section 146 of the Law of Property Act 1925. Only Mr. A. Coram accompanied by Mrs. A. J. Coram of the Respondents attended the Hearing.
2. The Tribunal inspected the Property on 12 November 2009 prior to the Hearing. In addition to the Tribunal Members, Miss Helen Macrae and Emily Holman attended the inspection. The whole complex comprises fourteen purpose built Leasehold blocks containing fifty eight flats and four coach houses of tile and brick construction under a pitch roof and three storeys with common courtyards and car parking areas. In addition there are twelve freehold houses. The various properties were constructed in approximately the year 2000, with common courtyards as part of a larger development of similar style property. Miss Macrae explained that the large grassed area between the blocks is a public space maintainable by the Local Authority and is not within the Service Charge provisions.

Flats 3 and 7 Countess Avenue are in a block of four flats with a car port for each flat and car parking at the rear. There is a separate bin area. The building is three storeys and one flat is built over the four car ports at first floor level.

Flat 29 Countess Avenue is in a similar block with four car ports and bin area and parking. There is also a small garden.

15 Duke Street is in a block of four flats on three storeys with a flat built over garages rather than car ports. There is a bin area.

Flat 52 Lords Way is in a building with three flats over three floors. There is no garage or car port, only parking to the rear. There is a bin area.

Flat 7 Lords Way is in a building with four flats on three storeys with car ports and one flat over the car ports. There is a bin area and a large garden.

There are communal areas in the blocks of flats, such as stairways, hallways, passages and pathways. Also, externally, are the bin areas, car parks and gardens. Lighting is provided in the communal areas and the outside of the blocks.

Labyrinth Properties Limited manages the Estate area of this development on behalf of the Applicant and for this purpose they maintain sixteen separate accounts. Fourteen of the accounts are for the various blocks of flats/individual properties within the development and a further account is maintained for the entire Estate, namely, all the exterior communal areas surrounding all the blocks of flats and houses. The final account is for the coach houses on the Estate.

THE LAW.

3. The relevant law is to be found in Section 27A of the Act which provides, so far as relevant to the Application, as follows:
 - (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. Section 21 of the Act provides as follows:

(1) The Landlord must supply to each tenant by whom Service Charges are payable in relation to each accounting period, a written statement of account dealing with:

- (a) Service Charges of the tenant and the tenants of dwellings associated with his dwelling.
- (b) relevant costs relating to those Service Charges
- (c) the aggregate amount standing to the credit of the tenant and the tenants of those dwellings:-
 - (i) at the beginning of the accounting period and
 - (ii) at the end of the accounting period and
- (d) related matters

(2) The statement of account in relation to an accounting period must be supplied to each such tenant not later than six months after the end of the accounting period.

(3) Where the landlord supplies a statement of account to a tenant he must also supply to him:

- (a) a certificate of a qualified accountant that in the accountant's opinion, the statement of account deals fairly with the matters with which it is required to deal and is

sufficiently supported by accounts, receipts and other documents which have been produced to him and

(b) a summary of the rights and obligations of tenants of dwellings in relation to service charges.

5. Section 21 then contains further provisions relating to various regulations, notifications and obligations.
6. Section 21B provides for Notices by the Landlord to accompany a demand for Service Charges.
7. Section 28 contains provisions about the qualification of an accountant who certifies the summary of information about relevant costs within Service Charges and refers to regulations.
8. Schedule II Part One of the Commonhold and Leasehold Reform Act 2002 sets out the definition of "administration charge" as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly.....(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is a party to his lease otherwise than as landlord or tenant.....
9. The Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007 provides for the content and form of the summary of rights and obligations of interest to accompany a demand for the payment of a Service Charge.
10. Section 18 of the Act provides as follows:
 - (1) In the following provisions "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent:-
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of Management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs:
 - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the Service Charge is payable.
 - (3) For this purpose:

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a Service Charge whether they are incurred, or to be incurred, in the period for which the Service Charge is payable or in an earlier or later period.

11. Section 19 of the Act provides as follows:

(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.

12. Section 146 of the Law of Property Act 1925 contains restrictions on and relief against forfeitures of leases and underleases. No further details of the law in that respect are necessary in this case.

13. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides:

(1) A Landlord under a long lease of a dwelling may not serve a notice under Section 146 of the Law of Property Act 1925 (c20) (restriction of forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This Subsection is satisfied if:

- (a) it has been finally determined on an application under subsection (4) that the breach has occurred
- (b) the tenant has admitted the breach or

- (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitral agreement, has finally determined that the breach has occurred.
- (3) But a Notice may not be served by virtue of subsection 2(a) or (c) until after the end of the period of fourteen days beginning with the day after that on which a final determination is made.
- (4) A Landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
- (5) Not relevant to these present proceedings.

THE HEARING: THE APPLICANTS' CASE

14. Helen Macrae for the Applicant said that the reason for the Application was that two people were in arrears with their Service Charges, namely Mr. A. White in respect of Flat 3 Countess Avenue and Ms. J. Gibson in respect of Flat 15, Duke Street. The Applicant wishes to be in a position to serve notices under Section 146 of the Law of Property Act 1925 and, therefore, has to comply with the provisions of Section 168 of the Commonhold and Leasehold Reform Act 2002.
15. Reference was then made to the main bundle before the Tribunal. It was explained that the copy lease ("the Lease") dated the 29th November 2002 was typical of the leases of the dwellings on the estate. It was also explained that the written application sought a determination that the Service Charges for the years the 1st April, 2007 to the 31st March, 2008 and also for the 1st April 2008 to the 31st March 2009 were reasonable and that the various leaseholders have a liability to pay the charges. The Service Charges are applied in one part to the general parts of Carnival Walk, Bridgwater which is the name of the development and is referred to throughout as "the Estate". The other part is in respect of the fourteen blocks of flats/individual properties for which separate accounts are prepared and the final account for the coach houses on the Estate.

16. The Service Charges for No. 3 Countess Avenue, part of Block 15, the tenant being Mr. A. White, were dealt with first. The Tribunal was told that the Service Charges due and in arrears amounted to £1,203.08p, made up as follows:

Sum due on 1 October, 2008 (Service Charges due)	£ 829.50
Sum due on 19 August, 2008 (Service Charges due)	£ 204.38
Administration Charge claimed on 20 October 2008	£ 58.75
Administration Charge claimed on 30 October 2008	<u>£ 110.45</u>
Total	<u>£1,203.08</u> =====

The Tribunal's attention was drawn to a letter dated 19 November 2008 from Mr. A. White in which he agreed that he did owe money in respect of 3 Countess Avenue in the sum of about £1,200. He said that he would like to set up a standing order for the future money aspect of the account. He added that he was being charged at nearly £100 per letter to be sent to him and he was finding that a bit too much as it seems it will never get paid off at that rate.

17. Helen Macrae then dealt with the Service Charges for No. 15 Duke Street, a part of Block 2, the tenant being Ms. J. Gibson. The Service Charges due and in arrears amounted to £1,511.56p made up as follows:

Sum due on 1 st October, 2008 (Service Charges due and an administration charge of £29.38p)	£ 279.86
Sum due on 1 st October, 2008 (Service Charges due)	£1,062.50
Administration Charge incurred on 20 th October, 2008	£ 58.75
Administration Charge incurred on 24 th October, 2008	<u>£ 110.45</u>
Total	<u>£1,511.56</u> =====

18. The Tribunal was then taken through the five sets of accounts for the relevant parts of this development, namely the Estate, Block 2, Block 4, Block 7, Block 14 and Block 15.
19. The Estate was the first account to be dealt with for the period 1st March 2007 to the 31st March, 2008. This comprises the account supported by invoices for the various expenses incurred during the year. There was a concern about the Accountancy Charges in the sum of £246.75p as against the invoice from the Accountants, Wheeler & Associates dated the 27th

June, 2008 in the sum of £146.88. There was also a concern about the charging of £381.15p for Directors and Officers insurance cover in respect of the Applicant. It became evident that the accounts to the 31st March, 2008 were not sent to the tenants until at least the 25th June, 2009, being the date on the independent Accountants' Report.

20. Block 2 was the next to be considered. The same comments apply to the accountancy charges. Otherwise no points arose comparing the account with the invoices.
21. Next was Block 4. The same comments apply to the accountancy charges. It is noted that the stated deficit of £160.11p was not charged because the delivery of the accounts to the tenants was more than six months after the year ending the 31st March, 2008.
22. Block 7 followed. The same comments apply concerning the Accountancy fees. Despite every opportunity being given, an invoice for £6.27 dated the 30th November, 2007 is the only invoice given to the Tribunal for maintenance and repairs. Therefore the figure of £309.44 has to be reduced to £303.17. Similarly, invoices for management fees total £386.52 leading to a reduction of the figure of £582.50p by £195.97p. to the figure of £386.52.
23. Block 14 followed. The same comments apply to the accountancy fees. Again, despite every opportunity being given, one invoice is missing so that the invoices for communal cleaning total £447.83p in place of the stated figure of £487.56, a reduction of £39.73. Similarly, the invoices given to the Tribunal for maintenance and repairs total £152.09 in place of the stated figure of £321.27p, a reduction of £169.18p. The deficit of £144.23 has not been charged, for the reason already given.
24. Block 15 followed. The same comments apply to the accountancy fees. Otherwise there were no discrepancies to concern the Tribunal.
25. Then started the examination of the accounts for the period 1st March 2008 to the 31st March, 2009. These were issued to the tenants in good time, with the Independent Accountants' report being dated the 25th June, 2009.
26. The Estate was dealt with first. The same point as before arose about the Directors and Officers insurance premium of £380.11p. The fee charged by the Managing Agents in the sum of £577.50 was agreed to be incorrect. The Service Agreement provides that the fee for

Company Secretarial fees should be £350 plus VAT at 17.5% giving a total of £411.25. A credit should be given of the difference, namely £106.25p. There are four invoices raised by the Managing Agents as follows:

£ 58.75	for dealing with an insurance claim dated the 7 th April, 2008.
£ 35.25	an administration fee for a loan from the Managing Account to the Service Charge Account
£ 8.40	for copying and postage of company accounts to directors, sending signed accounts to accountants and to Companies House.
<u>£ 28.75</u>	or the provision of Archive Storage annually, in advance from 1 st January, 2009.
Total	<u>£131.15</u>

The sums of £58.75 and £35.25 were stated to be in the figure of £163.59 in the accounts.

27. Block 2 was the next account to be looked at. It was agreed that there is an error in the General repairs and maintenance item. The figure of £74.53 should be £73.39, a reduction of £1.14p. There were no other items causing concern.
28. Block 4 followed. There were no items causing concern.
29. Block 7 was the next to be considered. There were two errors concerning the entries for cleaning and general repairs and maintenance. Certain items had been put under the wrong heading. The figure for cleaning of £579.71 should be £589.24. The figure for general repairs and maintenance of £542.92 should be £533.39. The final total is not affected. There were no other points of concern.
30. The Tribunal then considered Block 14. There was a similar error in the account concerning the items for cleaning and general repairs and maintenance. The figure for cleaning of £579.71 should be £589.24. The figure for general repairs and maintenance of £134.51 should be £124.98. The final total is not affected. There were no other points of concern.
31. Block 15 was the final block to consider. There was an error in the account concerning the items for cleaning and general repairs and maintenance. The figure for cleaning of £579.71 should be £589.24. The figure for general repairs and maintenance of £428.78 should be

£207.75. This comprises the deduction of the £9.53 which is added to the cleaning figure and the deduction of the amount of £211.50 which was wrongly included in the general repairs and maintenance item. It follows that the total service charge for the block should be reduced by £211.50. This changes the total for the year from £2563.59 to £2352.09. This results in the surplus for the period increasing from £556.41 to £767.91. There are four flats in the block, meaning that each flat is entitled to an additional credit of £52.87.

The Respondents Case

32. Only Mr. A. Coram accompanied by his wife Mrs. A. J. Coram attended the Hearing. Mr. Coram spotted that the invoice for £211.50 had been wrongly included in the Account for that block 15. Mr. Coram's evidence was that he had always paid his Service Charges and did not want to complain about them. He did want to complain about the lack of cleaning carried out in the block and about the lack of wheelie bins for the Block. He had been in touch with the Managing agent about the lack of bins, but nothing had resulted. The bin area is used by persons who do not live in the block. The area becomes very full of rubbish. In March 2008, the bin men did clear it all. Mr. Coram asked if he could buy two wheelie bins but this was refused by the Managing Agents. In about July 2008, a representative of the Managing Agents arrived to measure the bin area to check whether wheelie bins could be accommodated without construction work being required. Their conclusion was that no work was needed. The bin men continued to take the rubbish appropriate to the four flats, but not the excess. Mr. Coram said that he thought his lease was not clear as to whether the block had the exclusive use of the bin area. Any rubbish not in black bags when the bin men arrived is not taken by them. The residents in the block then put that rubbish into black bags and disinfect the area. As the rubbish is then in black bags, the bin men take it when they next arrive. It was agreed by Mr. Coram that there had been no charge for cleaning the block during April, May and June 2007.

As a result of a question by Helen Macrae to Mr. Coram, Helen Macrae said she would see what she could do about the wheelie bins.

33. As to the remaining Respondents, the only views expressed by Mr. A. White are those expressed in his letter of the 19th November 2008 which has already been referred to. Ms. J. Gibson has made no comments at all. Mr. O. Panagoutsos wrote a letter dated the 6th October 2009 which the Tribunal has read. A reply was sent to him on the 26th October, 2009 by Helen Macrae by way of explanation. That letter has also been read by the Tribunal. Nothing further has been received from Mr. Panagoutsos. Nothing at all has been received from Mr. J. Rainey or Ms. C. Hale or Mr. Lynch.

SUBMISSIONS

34. The Tribunal raised the issue of the premiums for the Directors and Officers Insurance being charged as Service Charges. Helen Macrae argued that the charge was justified on the basis that without the cover, no one would be prepared to become a director, including someone who was already a shareholder. The Applicant Company would then have to be struck off the register for want of directors. The Tribunal asked the question, whether it should be the shareholders of the Company, or the tenants of Carnival Walk who are involved in the desirability of this type of insurance. Helen Macrae had no further comment to make on that issue. Helen Macrae and the Tribunal went through the provisions of the Lease relating to insurances. The clauses considered were clause 1.9, Clause 1.11, Clause 5.2 and Clause 8.2. None of them refer expressly or by implication to this type of insurance. Helen Macrae said she would leave the issue to the expert Tribunal.

FINDINGS

35. In general the level of the Service Charges is reasonable. However, in connection with the management charges, which were at the upper level of charges, there should not be extra invoices over and above the management charges. Therefore the following amounts are not properly charged:

The Estate for the year to the 31st March 2008:

(a)	Invoice Number 28312 dated the 12 th July 2008	£ 24.75
(b)	Invoice Number 34947 dated the 1 st January, 2008	£ 29.38
(c)	Invoice Number 36345 dated the 31 st January 2008	<u>£ 7.30</u>
		£ 61.43

The Estate for the year to the 31st March 2009:

(a)	Invoice Number 38790 dated the 7 th April, 2008	£ 58.75
(b)	Invoice Number 39997 dated the 15 th May, 2008	£ 35.25
(c)	Invoice Number 54692 dated the 11 th February, 2009	£ 8.40
(d)	Invoice Number 54925 dated the 16 th February, 2009	<u>£ 28.75</u>
		£131.15
		=====

Block 7 for the year to the 31st March, 2009

Invoice Number 44750 dated the 17 th September, 2008	£ 29.38
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These sums are to be credited as soon as possible.

36. The Tribunal perused a large number of electricity invoices. It was impossible to relate these invoices specifically to the Estate and the various blocks. There were produced to the Tribunal two schedules prepared by the accountants Wheeler and Associates for the years ending 31st March, 2008 and 31st March, 2009. The Tribunal decided that the figures in the Schedule were reasonable and was content to rely upon these Schedules.
37. The Directors and Officers insurance relating to the Applicant as a Company, caused the Tribunal to consider whether these premiums are properly to be charged as Service Charges. Having considered the representations made by Helen Macrae and perused the clauses of the Lease as already referred to, the Tribunal has concluded that the premiums are not properly charged as Service Charges. It follows that the premiums should be re-credited.

For the year ended 31 st March, 2008	
Invoice Number 18508 dated 31 st May 2007	£381.15
For the year ended 31 st March, 2009	
Invoice Number 26099 dated 31 st May, 2008	<u>£380.11</u>
	£761.26
	=====

38. The accountancy fees charged for the year ended the 31st March, 2008 are too great. Trying to take account of the peculiar way in which the accounts for that period are prepared, the Tribunal has determined that there are overcharges:

The Estate:

The amount charged	£246.75
The amount that should be charged	<u>£146.88</u>

Sum to be credited	£ 99.87
	=====

Block 2:

The amount charged	£235.00
The amount that should be charged	<u>£117.50</u>
Sum to be credited	£117.50
	=====

Block 4:

The amount charged	£235.00
The amount that should be charged	<u>£117.50</u>
Sum to be credited	£117.50
	=====

Block 7:

The amount charged	£235.00
The amount that should be charged	<u>£117.50</u>
Sum to be credited	£117.50
	=====

Block 14:

The amount charged	£235.00
The amount that should be charged	<u>£117.50</u>
Sum to be credited	£117.50
	=====

Block 15:

The amount charged	£235.00
The amount that should be charged	<u>£117.50</u>
Sum to be credited	£117.50
	=====

39. The Tribunal considered the withdrawal of general cleaning services at block 4 in the year ended 31st March, 2008. The periods are April 2007, May 2007 and June 2007. The reason given by the Applicant was that there were insufficient funds to maintain the services. Clause 7 of the Lease provides "that the Landlord and the Management Company may withhold add to extend vary or make any alteration in the rendering of the Services or any of them from time to time if the Landlord or Management Company at their absolute discretion deems it desirable to do so." Therefore, although this is not a very helpful way for a Landlord to behave, there is no remedy for the tenants, particularly as no charge was made.

40. The Tribunal was satisfied that the Accountancy firm Wheeler & Associates were duly qualified in accordance with Section 28 of the Act.
41. The Tribunal was satisfied that the provisions of Section 21 of the Act had been complied with by the Applicant.
42. The account and invoices for Block 15, in particular 3 Countess Avenue (Mr. A. White) includes a charge by the Managing Agents in the sum of £58.75 for sending instructions to leasehold Legal Services Limited about a breach of covenant, presumably concerning arrears of Service Charges. The charge was made on the 20th October, 2008. That charge should not have been made because that work by the Managing Agents is within the general management charge. It is unreasonable to charge it. In the letter dated the 24th October 2008, a charge is made of £110.45 being costs incurred in connection with that letter for the recovery of arrears. That sum is not part of the Service charge under the Lease. It may or may not, in due course, be recoverable in any action taken to recover any arrears under another jurisdiction.
43. The same issues arise in respect of 15 Duke Street (Ms. J. Gibson) Block 2. The figures are the same and should not have been charged for the same reasons.
44. The following findings relate to the period ending 31st March, 2009. The Managing Agents did charge £517.50 on the account for the Estate which was incorrect and should be the sum of £411.25 including VAT in respect of Company Secretarial fees. A credit is to be given for the difference of £106.25 divided between the seventy-four flats.
45. The Managing Agents did charge £128.15 over and above their usual fee. That sum is unreasonable in the light of the other charges made by them. A credit is, therefore, to be given for the £128.15 to be divided between the seventy-four flats.
46. A credit of £1.14 should be given in respect of Block 2 to correct an error in the general repairs and maintenance item.
47. A credit of £52.87 should be given to each flat in Block 15 in respect of a wrong charge of £211.50 in the general repairs and maintenance item.

CONCLUSION

48. Having considered all the evidence before it and the legal issues involved, the Tribunal has made the decision set out in the determination at the beginning of these Reasons.

DATED this *First* day of *March* 2010

CHAIRMAN of the Tribunal

T. D. George.

.....
T. D. GEORGE

A Member of the Southern Rent Assessment Panel
appointed by the Lord Chancellor

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/40UC/LSC/2009/0022

IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (LIABILITY TO PAY SERVICE CHARGES).

Re: A development of purpose-built properties at Countess Avenue, Duke Street, Lords Way, Bridgwater, Somerset TA63TJ/3TG/3SF in particular 3 Countess Avenue, 15 Duke Street, 7 Countess Avenue, 52 Lords Way, 29 Countess Avenue and 7 Lords Way.

BETWEEN

CARNIVAL WALK MANAGEMENT COMPANY LTD. Applicant

and

Mr. A. White (3 Countess Avenue)
 Ms. J. Gibson (15 Duke Street)
 Mr. A. Coram (7 Countess Avenue)
 Mr. O. Panagoutsos (52 Lords Way)
 Mr. J. Rainey (29 Countess Avenue)
 Ms. C. Hale & Mr Lynch (7 Lords Way)

Respondents

DECISION of the Tribunal in response to the Applicant's Application for leave to appeal

TRIBUNAL:

Mr. T. D. George (Lawyer Chairman)
 Miss C.A. Rai. LLB (Lawyer Member)
 Mr. P. E. Smith, F.R.I.C.S. (Valuer Member)

Date of issue:

6th June

day of

June

2010

BACKGROUND:

1. The Tribunal issued its decision in this matter on the 1st March, 2010. References to paragraph numbers in this note, unless otherwise stated, are references to the numbered paragraphs in that decision. The Tribunal made determinations under Section 27A of the Landlord and Tenant Act 1985 (as amended).

2. DECISION:

The Tribunal refuses the application by the Applicant for leave to appeal under Section 175 of the Commonhold and Leasehold Reform Act 2002 for the reasons set out below. That being the case, it is open to the Applicant to renew its application for leave to appeal to the Lands Tribunal within twenty eight days of the date when this decision is sent to it.

3. REASONS:

One reason for the appeal is specified, namely in respect of Directors and Officers Insurance. These grounds of appeal are set out, namely that the Tribunal failed to take into account the relevant evidence, the points in issue have very wide implications and the Tribunal wrongly disregarded professional practice.

4. The evidence before the Tribunal is set out at paragraphs 14 to 33 inclusive of the decision which demonstrates that the Tribunal did take into account the relevant evidence. Furthermore paragraph 35 of the decision contains reference to the relevant clauses of the Lease referred to in Paragraph 15.

5. The fact that the points in issue have very wide implications has no bearing on the construction of the Lease.

6. Paragraph 34 of the Decision confirms the consideration of professional practice.

7. Nothing in this Application is sufficient to satisfy the Tribunal either that the Conclusions reached by it were ones that it could not reasonably have come to on the material before it, or that there has been any error of law, practice or procedure in reaching its decisions.

DATED this *Eight* day of *April* 2010

CHAIRMAN of the Tribunal



T. D. GEORGE

A Member of the Southern Rent Assessment Panel
appointed by the Lord Chancellor