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BIR/00FY/LAM/2011/0007

HM COURTS &TRIBUNALS SERVICE

MIDLAND LEASEHOLD VALUATION TRIBUNAL

In the matter of

an application for the appointment of a Manager pursuant to section 24 of the Landlord and Tenant Act 1987 and for an order pursuant to section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent in connection with the proceedings be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Between:

ALEXANDER WILLIAM HUNT & LOUISE ELIZABETH HUNT

(Applicants)

and

ROPEWALK COURT MANAGEMENT COMPANY (NOTTINGHAM) LIMITED

(Respondent)

relating to 26 Ropewalk Court, Upper College Street, Nottingham, NG1 5BJ

DETERMINATION

Before Mr R Healey a Chairman in the Leasehold Valuation Tribunal & Mr J Ravenhill FRICS sitting at the Magistrates' Court Nottingham

on 14th December 2012

Summary of the Determination

The application for appointment of a Manager is refused.

Reasons for the Determination

Introduction

1. This is an application for the appointment of a Manager in accordance with the provisions of section 24 of the Landlord and Tenant Act 1987 ("the Act").

2. The Applicants are Alexander William Hunt and Louise Elizabeth Hunt ("the Applicants").

3. The relevant lease is dated 23 September 2002 ("the Lease") made between Niall John Mellon (1) Ropewalk Court Management Company (Nottingham) Limited ("the Respondent") (2) and Iain James McLennan (3) for the balance of a term of 999 years commencing on 25 December 2000.

4. The leasehold estate created by the Lease is known as 26 Ropewalk Court, Upper College Street, Nottingham, NG1 5BJ ("the Property"), and is currently vested in Alexander William Hunt and Louise Elizabeth Hunt.

5. The application relates to the whole of the development known as Ropewalk Court, Nottingham comprising 158 residential units and two commercial units of which the Property forms part "the Development").

6. A Preliminary Notice required by s. 22 of the Act is dated 11 November 2011.

7. At a pre trial review held on 11 May 2012 the parties agreed that the Tribunal may have regard to the determination made in respect of the Property under case reference BIR/00FY/LSC/2011/0046 "the Service Charge Case" relating to the determination of liability to pay and reasonableness of service charges.

8. The Tribunal heard the service charge case prior to the present case.

9. The Tribunal inspected the communal areas of the Development on 10 December 2012 in the presence of the parties representatives as is more particularly set out in the determination in the Service Charge Case.

The Law

10 The Law is contained within the Act. In respect of premises consisting of the whole or part of a building which contains two or more flats, a tenant of a flat may apply for the appointment of a manager for those premises. Section 22 requires that a

preliminary notice must be given (or dispensed with by order of the Tribunal under section 23).

11. Section 24 of the Act sets out the Tribunal's powers as follows -

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a Manager to carry out in relation to any premises to which this Part applies –

(a) such functions in connection with the management of the premises, or

(b) such functions of a receiver

or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely –

(a) where the tribunal is satisfied –

(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and

(ii) ...

(iii) that it is just and convenient to make the order in all the circumstances of the case;

[(ab) where [the tribunal] is satisfied –

(i) that unreasonable service charges have been made, or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;

[(aba) where the Tribunal is satisfied –
(i) that unreasonable administration charges have been made or are proposed or likely to be made, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;]

[(abb) where the tribunal is satisfied –

(i) that there has been a failure to comply with a duty imposed by or by virtue of section 42 or 42A of this Act, and

(ii) that it is just and convenient to make the order in all the circumstances of the case;]

(ac) where [the tribunal] is satisfied –

(i) that any [relevant person] has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice); and

(ii) that it is just and convenient to make the order in all the circumstances of the case;] or

(b) where [the tribunal] is satisfied that other circumstances exist which make it just and convenient for the order to be made

(2ZA) In this section "relevant person" means a person –

(a) on whom a notice has been served under section 22, or

(b) in the case of whom the requirement to serve a notice under that section has been dispensed with by an order under subsection (3) of that section.)

[(2A) For the purpose of subsection (2)(ab) a service charge shall be taken to be unreasonable –

(a) if the amount is unreasonable having regard to the items for which it is payable,

(b) if the items for which it is payable are of an unnecessarily high standard, or

(c) if the items for which it is payable are of insufficient standard with the result that additional service charges are or may be incurred.

In that provision and this subsection "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered) and not entered into as variable).]

[(2B) In subsection (2)(aba) "variable service charge" has the meaning given by paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.]

12. In accordance with the Tribunal's directions the parties prepared a Scott Schedule which is set out in the following five pages.

Hearing

13. The Applicants are represented by Mrs Susan Hunt and the Respondent by Gillian Stanley of Mainstay.

Preliminary application

14. The Respondent objected to Mr Ellis being called as a witness by Mrs Hunt. A copy of his statement was served in connection with the service charge application and was passed on to Brady Solicitors who were instructed in that matter. Ms Stanley submitted that her instructions related to the Appointment of Manager case and that she was not privy to the service charge case. Ms Stanley admits she has previously seen the statement but was not expecting the witness to be called in the present application. The Tribunal determined that the Respondent was entitled to have advance notification of the witnesses to be called and invited Mrs Hunt to apply for an adjournment to enable this to be done. After some consideration Mrs Hunt decided to proceed with her application today in the knowledge that she could not call Mr Ellis.

Substantive proceedings

15. The Applicants' allegations in the Scott Schedule are set out by reference to alleged breaches of the codes of management practice authorised under section 87 of the Leasehold Reform Housing and Urban Development Act ("the code of practice").

16. In the subsequent findings of the Tribunal the numbers in brackets which follow the paragraph numbers are a reference to the numbers used within the code of practice and referred to as such by the Applicants in the Scott Schedule.

17. The parties elaborated upon the matters set out in the Scott Schedule and made submissions.

18. (2.2) Mrs Hunt initially made general allegations against the Respondent. She submitted that the Manager did not participate with the leaseholders in connection with the management of the Development and there was no competitive tendering for the management contract. She submitted the Respondent's directors did not represent the leaseholders (who are shareholders in the Respondent) and that the relationship between the Landlord and the Respondent contained a conflict of interest. This was evidenced by the Managing Agents (Mainstay) also acting for the Landlord in collection of the ground rent. It was submitted the Landlord was the biggest service charge debtor and that it had taken the Managing Agents two years to pursue him. The Respondent responded that it was customary for ground rents to be collected alongside service charges and that it believed other agents had been investigated by the Respondent to

take over the Management. The Tribunal is not satisfied on the general evidence presented of any material breach of the code of practice.

19. (2.6) On the basis of the evidence before the Tribunal it found that the broker took 25% of the insurance premium. The Respondent submitted this was normal in the industry. The Tribunal in the Service Charge Case deducted 10% from the gross premium. The Tribunal preferred the Respondent's evidence regarding the cleaner and caretaker and Haven Power (the electricity provider). The call out charges, were challenged and reduced by the Tribunal in the Service Charge Case from £47 to £12.25. in respect of each call out. The Tribunal determined the addition of a 10% handling charge in the circumstances and the addition of VAT on certain contractors invoices to be acceptable. The Tribunal previously confirmed the lift insurance premium and the mark up on key fobs reasonable. The Tribunal finds the accreditation of potential contractors reasonable. The Tribunal accepts the Respondent's explanation for charging an administration fee on late payments. The Tribunal finds no material breach of the code of practice.

20. (3.4) The Tribunal notes that the Respondent's company policy provides that when solicitors are instructed the Respondent refers all communications from the Applicants to be dealt with by those solicitors. The Tribunal finds this in principle to be a reasonable policy. The Tribunal accepts that the Applicants have endeavoured to register their share transfer without success. No satisfactory explanation is given for the failure to register. The failure prevents the Applicants from taking an active part in the Respondent Company. The Tribunal considers this to be unacceptable.

21. (3.20) On the basis of the evidence supplied by the Applicants and the submissions made by the Respondent the Tribunal is not satisfied of any health and safety or risk assessment breaches. The Tribunal notes inspection by the fire officer and the recent carrying out of works and is satisfied that the Respondent and the Managing Agents take safety seriously.

22. The Tribunal prefers the evidence of the Respondent with regard to the explanations given for emergency lighting, fixed wiring, water risk assessment and safety signs. The Respondent accepts that the fixed wiring was first inspected in 2011 and fifty faults were recorded. The Tribunal again notes inspection by the fire officer. The Tribunal finds no breach of the code of practice.

23. (3.26) The Tribunal finds the dispute resolution system in existence by the Respondent to be reasonable.

24. (4.5) The Tribunal accepts the explanation given by of the Respondent and determines that the service charge monies are held in accordance with section 42A of the Act.

25. (8.2)(8.11) In the Service Charge Case the Tribunal determined that the service charge demands contained the requisite legal information and that demanding

the service charge one month later than that prescribed in the Lease was not fatal to the demand.

26. (6.4) The Tribunal notes the allegation of submission of service charge demands to the wrong party and/or wrong address and that this issue was resolved in favour of the Applicants by County Court Proceedings. For some inexplicable reason the change of leaseholder appears not to be recorded in the Respondent's system.

27. (6.6) The Respondent's admit that they failed to include the required statutory notification with their demand for two administration charges. The Respondent subsequently withdrew the charges. The Tribunal determines an initial breach of the code of practice which was subsequently rectified.

28. (7.5) The Tribunal in the Service Charge Case determined that the Management Contract was renewed annually and was not a Qualifying Long Term Agreement.

29. (8.7) The Tribunal accepts the submission by the Respondent. The Tribunal accepts that the budgets are prepared with due care. For the year in question the Respondent obtained a substantially reduced buildings insurance premium. The Tribunal determine no breach of the code of practice.

30. (10.5) The issue of reasonableness of costs was dealt with in the Service Charge Case. !0% was deducted from the buildings insurance premium. Principally deductions were made for shortcomings in cleaning, failure to properly negotiate electricity contracts and disallowance of legal fees for lease variations to take account of inaccurate service charge proportions. The Tribunal determines these shortcomings were more evident in earlier years and that these are examples of breaches of the code of practice.

31. (10.22) The Tribunal accepts the submissions of the Applicants that there has been a failure by the Respondent through their Managing Agents to allow the Applicants to inspect documentation. Documentation was only produced following the issue of proceedings. The Tribunal determines a breach of the code of practice.

32. (12.3) The Respondent accepts that the caretaker set up his own company. This happened before the contractor's accreditation scheme was implemented. It was done to retain a member of staff. The Applicant submits that the caretaker was not properly performing his duties to the Respondent. The Tribunal in the Service Charge Case determined the employment of the caretaker to be reasonable. The Tribunal determines no breach of the code of practice.

33. (13.5) At the hearing Mrs Hunt referred to the hole in the ceiling in front of the lift in block C. and leaks in roof. Ms Stanley responded that dialogue was ongoing with NHBC to deal with the leak and that the NHBC had called for a report. Ms Stanley submitted there was no guarantee with the roof. With regard to repairs the Tribunal accepts the explanations of the Respondent as are set out in the Scott Schedule. The Tribunal determines no breach of the code of practice.

34. (13.16) At the hearing Mrs Hunt submitted that the directors of the Respondent company were over influenced by the Managing Agents and that the Managing Agents were running the development to their own advantage. Ms Stanley responded that the directors of the Respondent company were involved and that a director's consent to any works exceeding £250 was required before they could be started. The Tribunal preferred the evidence of the Respondent. The Tribunal determines no breach of the code of practice.

35. (21.6) The Respondent's legal costs relating to variation of the service charge proportion in the leases was not allowed by the Tribunal in the Service Charge Case. The Tribunal carefully considered the responsibility for such legal costs and considered that on balance it was inappropriate for them to form part of the service charge. The Tribunal does not determine this to be a breach of the code of practice At the hearing Mrs Hunt submitted that arrears were referred too early to lawyers. The Tribunal determines the procedure adopted by the Respondent to be acceptable.

36. The Applicants submit that the Respondent blames the quality of the tenants for the problems in the development. The Applicants submit there is no evidence to support this. The Tribunal determines that the Development should be maintained to an acceptable standard and that any problem leaseholders or tenants must be managed appropriately. The Tribunal finds that over the years, particularly with the introduction of a caretaker, the quality of management has improved. The Tribunal does not determine any breach in the code of practice.

37. The Applicants submit that lack of cash flow is an excuse for excessive costs and that the real problem is lack of management. The Respondents gave evidence of a high level of debtors and that the largest debtor had recently paid. The Tribunal finds that cash flow problems existed but determine this is not an acceptable explanation for failure to properly manage. The failures to manage are documented in the Service Charge Claim.

38. On the issues of Insurance cost and broker's commission this has already been addressed. Further the Tribunal prefers the Respondent's evidence.

39. The Tribunal has carefully considered the Applicant's submissions in the section headed "Conclusion". The Tribunal prefers the submissions of the Respondent.

Consideration of the findings by the Tribunal

40 The main matters in issue are, the insurance commission, managing agent's fees, excessive charging, communal cleaning, professional fees in respect of lease variation and electricity charges. The Tribunal has considered the determination relating to the disputed service charge, as agreed at the preliminary hearing and the findings set out above.

41. The buildings insurance premium commission was determined in the Service Charge Case to be excessive and reduced by 10%. It is noted that the commission is retained by the brokers and none is passed to Mainstay. The ultimate source of the

commission is not known. There is no evidence before the Tribunal to show that it is retained either wholly or in part by the Respondent.

42. The Tribunal was not satisfied that in the early days of management the level of cleaning was properly managed and this is reflected in a reduction of the service charges determined by the Tribunal in the Service Charge Case.

43. Excessive charging was determined by the Tribunal in respect of call out charges and part of the Respondent's charges were disallowed. The bulk of the other charges made by the Respondent were determined to be reasonable.

44. The professional legal fees relating to lease variation were disallowed in the Service Charge Case.

45. In the early years of management the electricity charges appeared not to be properly managed and this is reflected in the Service Charge Case.

46. A lack of effective management of the development by the Respondent was determined in the Service Charge Case. In the early years a deduction of 40% was made. The deduction declined in subsequent years as the management became more effective.

47. The Tribunal is satisfied that for each of the above matters in issue the management had substantial shortcomings in the early years and an appointment of a Manager at that time may have been appropriate.

48. The Tribunal notes that in the service charge year 2011-12 the Tribunal approved the managing agent's fees and for the first time during their management no deduction was determined to be made from their fees.

49 In the year 2011-12 the only deduction determined to be made from the service charge was in respect of excessive commission (and there is no evidence that any of it went to the Respondent) and a deduction for health and safety inspections which the Tribunal determined was duplicated.

50. The Tribunal finds that the Respondent has substantially reduced the extent of the service charge arrears.

51. The Tribunal finds that in the year 2011-12 the insurance premium is much reduced and the communal electricity charges are at reasonable levels.

Determination

52. The Tribunal considered these findings against the criteria set out in section 24 of the Landlord and Tenant Act 1987.

53. The Tribunal is not satisfied at the present time that any relevant person is in breach of any obligation to the Applicants other than the excessive commission

payment on the insurance premium and the failure to undertake an insurance valuation on the Building and the Tribunal determines that it is not just and convenient on such evidence to make an order for the appointment of a manager.

54. The Tribunal determines that unreasonable charges have been made in the past. The Tribunal finds however that improvements have been made and it is not satisfied that unreasonable service charges are likely to be made in the future. In all the circumstances the Tribunal does not consider it just and convenient to make an order.

55. The Tribunal does not find that any unreasonable administration charges have been made or are proposed or likely to be made.

56. The Tribunal does not find any breaches of section 42 or 42A of the Act.

57. The Tribunal determines that on the basis of the evidence before it the level of management has improved and is now at a satisfactory level. Any excessive future commission payment, may be challenged by making a separate application and does not make it just and convenient to appoint a manager.

58. The Tribunal determines that there have been failures to comply with provisions of the Code of Practice made under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993, but in all the circumstances, it determines that it is not just and convenient to make an order for the appointment of a manager.

Section 20C application

59. The Tribunal finds that the Respondent was reluctant to divulge information until the commencement of the present application. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings shall be treated as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants or either of them.

Roger Healey

Chairman

DATED: 12 March 2013

Appendix A

Scott Schedule BIR/00FY/LAM/2011/0007
Flat 28 Ropewalk Court, Upper College Street, Nottingham, NG1 5BJ
Application for Change of Manager

No.	RICS Code No	Complaint	Response
1			
		NON COMPLIANCE WITH THE RICS CODE	
	2.2	**Supply of Goods and Services Act 1982 state that services should be a reasonable standard and cost.** The Scott Schedules in respect of the Service Charges Application challenge the reasonableness and cost of the Service Charges.	The Applicant has made a sweeping accusation under Section 2.2 of the RICS code which the Respondent refutes unreservedly. Contracts are placed with suppliers following extensive discussions with the RMC and in line with budgets agreed by same. The Applicant has raised no specific supplier issues.
	2.6	**Declaring of commissions such as insurance commissions.** 1. There is a discrepancy between the amounts paid in insurance premiums. It has recently been disclosed that the Broker takes 25% commission and surcharges taken which are not disclosed by the Managing Agent as follows:	1) As previously confirmed, Mainstay or the RMC do not benefit from any commission in respect of the buildings insurance. The brokers, Hamilton Robertson, benefit from a 25% commission. The only other fee payable is the interest charged at 6% for paying the premium on a monthly basis via a credit agreement arranged through the broker. I attach herewith a spreadsheet with a breakdown of charges and copy invoices for the insurance relating to the period of accounts 1st April 2011 to 31st March 2012 (pages 1-4). The Directors and officers insurance is also included within this heading at a charge of £915.94. Monthly credit arrangement was necessary as there was insufficient cashflow to allow payment of the invoice in full.
		2. The Facilities Technician/Cleaner and Caretaker are paid £9.75 per hour but the charge to Leaseholders is increased by approximately 20 to 25%.	2) Mainstay Facilities Management Limited are engaged as a supplier of services by Ropewalk Court Management (Nottingham) Limited. We attach for your information a breakdown of their costs in respect of the cleaning/caretaker services provided (page 5).
		3. Haven Power (the electricity provider) is reputed to hand back commissions to Managing Agents who bulk buy power. This discourages moving contracts to cheaper rates at the end of the contract to another supplier and this is the case for Ropewalk Court. The current rate is more than is offered to the casual caller.	3) The Respondent confirms that it does not receive a commission from Haven Power and asserts that Haven Power were instructed on the basis of a more competitive quote. A copy of the most recent quotes are enclosed herewith (pages 6-8).
		4. Out of hours fees are re-invoiced but there is no cross matching or identification of the call out. All bills should be invoiced directly by the supplier to the Ropewalk Court Management Company	4) An Out of Hours Service is supplied to Mainstay Residential Limited for all sites which it manages and all relevant call outs are recharged to the Management Company under the terms of the Management Agreement.
		5. Mainstay re-invoices for many items but no receipts are attached. Items then attract an additional amount of VAT adding 20% to each invoice with the exception of the cleaning and caretaking.	5) The Respondent assumes in this instance that the Applicant is referring to recharges made by its supplier, Mainstay Facilities Management Limited and confirms that they charge net of the Purchase Invoice with 10% handling fee and 20% VAT. An example is enclosed for the Applicant's information (pages 9-10).
		6. Mainstay has an arrangement with Oval Insurance Broking with regard to Lift Engineering Insurance. Each lift costs more than the going rate than with any other engineering insurance providers. The additional charge is £150 for each lift per year, £900 in total which is secreted to Mainstay. Commissions are not disclosed.	6) The lift engineering insurance is competitively brokered through Oval Insurance on an annual basis. The cover provided under the policy is wider with a more enhanced insurance cover than most competitive policies on the market. Commissions are received on policies on behalf of the RMC by the Agent and clients are advised accordingly. Leaseholders who specifically request the information are also advised of the agent's commission which has been set at 15%.
		7. Key fobs are charged out at £71.91 for the gate and £38.11 for an entrance door fob plus postage and 2% credit card charges. Though any site internet fobs can be purchased at £26 individually and door fobs for £7. The cost of programming fobs is charged back to the service charges.	7) The Respondent provides a full breakdown of the cost of the fob below; Door — we purchase them from our suppliers at a cost of £13.72 then we program them and with admin cost we sell at £38.11. Gate – we purchase from supplier at £56.40 then program and with admin cost we sell at £71.91 Post and Packing is an additional charge of £5.65 for Special Delivery ensuring that the goods are signed for on delivery. There is a surcharge of 2% if paying by credit card and 50p if paid by debit card due to transactional charges made by the bank. As outlined above, internet bought fobs would not be sufficient as they are not programmed to the individual codes on site.
		8. Contractors have to apply and pay a fee for accreditation to Mainstay.	8) Mainstay's contractors accreditation scheme is no longer in place, all contractors now need to be accredited with Safecontractors which ensures contractors have the necessary Health & Safety documentation and insurance requirements. Mainstay pay a fee to Safecontractors to be a client and use their facilities to check the contractors credentials. During Mainstay's accreditation scheme, commissions were not received, an administration fee was paid by the contractor on an annual basis to cover the costs of the administration work involved in managing this project.
		9. Mainstay does not disclose who benefits from the Administration fees for late payments.	9) Mainstay charge late payment fees, however, this is not a commission, it is an administration charge to cover the costs of the additional administration work involved in identifying outstanding monies and pursuing through to payment. Arrears collection is a priority to ensure sufficient funds are available to pay invoices for services provided under the terms of the lease. If insufficient funds are available this will inevitably lead to reduction or even suspension of services specified in the lease. A copy of the Arrears Procedure has been supplied to the Applicant previously.
	3.4	**Respond promptly to enquiries** Correspondence over the years and endless emails show this mostly does not take place. 2 recent letters to Mainstay Secretaries asking once again to have the share registered have been totally ignored as has every request since 2004. The Managing Agents confirm that they have refused to correspond with the Applicants for the last four years.	The RICS code of practice state that Managers should respond promptly and suitably to reasonable requests from tenants for information or observations relating to the management of the property. Mainstay (Secretaries) Limited have been appointed as Company Secretary since 15th May 2009 and as such are unable to comment on any correspondence regarding the issue of shares prior to this period. From 15th May 2009 to date, Mainstay (Secretaries) Limited are able to confirm that they do not have record of any correspondence sent to them from the Applicant. With regards to correspondence with Mainstay Residential Limited, the Respondent confirms that it acted in accordance with the Management Company's instructions based on legal advice sought in the recovery of Service Charge Arrears. Copy letters sent to the Applicant explaining the position are enclosed (pages 11-13).
	3.20 7.1	**Non-compliance with Health and Safety.** Records show recently that in the event of a fire: 1 The emergency lighting is not in full working order 2 Fire Alarm was not working 3 Fire Doors were not closing properly	1. Having emergency lights fully working 100% of the time is an impossibility but a plan of action to remedy defects is ongoing. 2. The Respondent cannot find records which state the fire detection system was not in working order. There are maintenance records which state that some repairs are required. 3. The Respondent asserts that in their experience the fire doors are prone to abuse and will always need to be repaired.

	Risk Assessment Reports show repeated major faults which continue each year. The first report was 2007 and, although Ms Stanley states that they were not necessary before that date, Risk Assessment has been an explicit legal duty since 1992 (Regulation 3 of the Management of Health and Safety at Work Regulations 1992). Mainstay carries out risk assessments themselves but there is no evidence of expertise or qualifications of the inspector and for a cheaper cost a fully qualified independent assessor could be employed. There are items that are not mentioned in the report which we consider to be appropriate observations e.g. Meter Rooms are left open for long periods. Refuse bin lids left open. Ropewalk Court has no employees but there is confusion over this and the liabilities should be made clear.	The Respondent's lead auditor has the following qualifications: Nebosh national general certificate, Nebosh Fire management and fire risk assessment certificate, CFPA Europe diploma in fire safety, IFPA diploma Fire Prevention (Certificates are available for inspection). Reports can only state what is seen at the time of assessment; interaction of others at the property cannot always be accounted for. It should be noted that the managing agents and their employees and those contracted to clean the commercial areas etc are employees as they are paid to provide a service on behalf of Ropewalk Court Management (Nettingham) Ltd. Up until 1st April 2006 the Fire Precautions Act 1971 was in force which required apartment blocks to have a fire safety certificate issued by the local fire authority. Only once the Regulatory Reform (Fire Safety) Order 2005 came into effect was a fire risk assessment on apartments blocks required.
	Emergency Lighting since installed was not tested correctly and the batteries not discharged which lessens the battery life. When it was first tested in 2009 there were 121 emergency lights not working. Many of them in meter rooms where in electricity supplies would have to be turned off and on stairs. Many of the faults are repeated 6 months later and after that. There is no evidence of a monthly test. The log is incorrect and incomplete. **Fixed Wiring** was not checked until 2012 and then showed 50 faults. It should be checked every five years.	As stated previously, having emergency lights fully working 100% of the time is an impossibility. Testing the lights may cause failures, which is the point of the tests; to find and repair any which may be faulty. The fact that the Respondents are having them tested and repaired regularly demonstrates that they have a maintenance regime in place in accordance with BS9999. Fixed wiring inspections were conducted in 2010 (less than ten years after original installation) and found the following • 8 Category 4 faults located in blocks A-C; • 6 Category 4 Faults in block D-F; • 24 Category 4 faults, 1 category 3 fault and 1 category 2 fault in standalone block. Category 2 fault is one which requires improvement; Category 3 is one which requires closer inspection; Category 4 are those which do not meet current standards (this category is no longer applicable under current guidance enclosed at pages 22-37).
	Water Risk Assessment only assess the tank sources of water use in communal areas. It does not assess other communal water sources. **Safety Signs.** Signs have not been put into place until recently but some signs are still missing.	Sources of water in the communal areas would be supplied from the cold water tank systems or direct fed from the mains. Mains fed water does not require an assessment. With regards to the provision of safety signs, the Respondent kindly requests that the Applicant please clarify which signs are missing so that the Respondent may comment on the same.
3.26	**No dispute resolution or mediation in place.** Although a written handing procedure has been produced (but not to leaseholders generally) this does not get put into practice. The arrears policy is 3 letters incurring the Leaseholders in charges of £95. In 28 days the matter is referred to Solicitors. Mainstay then charges another £66 for the referral. No policy is in place to telephone or email the leaseholder to ascertain if there are problems and to check if they are sending letters to the correct address. Arbitration is not suggested before legal action.	There is a formal complains procedure in place which is available to view on the Mainstay website. This is also provided to leaseholders in the event that a complaint was made.
4.5	Bank accounts do not show that Ropewalk Court funds are held separately. The bank statements that have been produced are confusing and do not show that all entries are appropriate to Ropewalk Court. RBS clearly indicate that Client funds are held all together and not separated for Ropewalk Court.	The bank statements previously provided to the Applicant show the client name denoting that the funds shown relate to Ropewalk Court. In the letter already supplied to the Applicants, RBS clearly state that there is " a clear distinction between all client funds managed [by Mainstay), and the system allows bank statements to be issued per client providing a clear representation of the transactions relevant to each development managed." Furthermore, all client bank accounts are reconciled monthly.
6.2 8.11 Appendix 11	**Demands for money are not clear and understandable** Service Charge Demands are incorrect; they have been addressed incorrectly to the applicants at the incorrect address. They do not comply with periods in the lease. They do not show the landlords address. They do not make it clear how the service charges are calculated, at what percentage. The budget figures are not sent with demands and are not available on line when they are sent. **Provide the Landlord's name and address. S1 and 2 Landlord and Tenant Act 1985**	Service charges are demanded correctly and are issued to the correspondence address held on our system at the time of demand. The first written instruction regarding a change of address was received by Mainstay on 25th March 2011 and whilst this letter indicates they had written 24th September 2010, this was never received. Our system was updated accordingly on 4th April 2011 from the Apartment to Flat 3, 5 Hereford Road. In November 2011, a further letter was received advising to update the Address to The Oaks, 21 Main Street which was updated on 9th November 2011. As advised, Mainstay is the second Managing Agent for Ropewalk court and when the development was handed over to Mainstay to manage, the previous agents advised of the dates that they were demanding. Mainstay continued to demand on these dates for continuity. We have discussed this over the years to establish if the demand dates should be changed to reflect the lease and we were advised by the RMC's solicitors that there is no prejudice to the leaseholders for requesting payments a month late, as the service charge becomes payable when demanded and has been consistantly demanded on the same dates. Previously, an address in Dublin was detailed on the demand together with Mainstay's address in England. Following a LVT case Belfor Properties Ltd v Martin [2012] we changed the landlords address for notices from Dublin to c/o their Solicitor in Wales. There is no requirement to detail the percentage on the demands, leaseholders are aware of their percentage contribution as detailed within their lease and budgets are prepared for the year in advance which is demanded half yearly. Letters are issued with the demands with details on how to obtain a copy of the budget from the website or that any leaseholder can contact our office to request a hardcopy which we will post out to them free of charge.
6.4	**Warning of legal action and forfeiture.** The Managing Agents are in the habit of sending letters to the incorrect adresses so that judgement is awarded without the tease holders knowledge.	As stated above, the first written instruction regarding a change of address was received by Mainstay on 25th March 2011 and whilst this letter indicated they had written 24th September 2010, this was never received. Our system was updated accordingly on 4th April 2011 from the Apartment to Flat 3, 5 Hereford Road. In November 2011, a further letter was received advising to update the Address to The Oaks, 21 Main Street which was updated on 9th November 2011. (Copy letters are enclosed at pages 20-21)
6.6	**Demands for administration charges are sent without the accompanying notice.** This is admitted by the Managing Agents.	Current Arrears letters are sent with the correct supporting legislative requirements (copy templates are enclosed for ease of reference at pages 14-19). These were not widely known in 2007/2008. Two fees were levied previously for £30 on 18th June 2007 and £79.25 on 6th June 2008, both of which have now been removed from the leaseholders Account.
7.5	**Qualifying Long Term Agreements** Our opinion is that the Managing Agent's Agreement which has never been put out to tender.	The Management Agreement in place is not a Qualifying Long Term Agreement as it is not longer than 12 months and as such there is no requirement for consultation under Section 20 of the Landlord and Tenant Act 1985. It is Mainstay's understanding that other agents have been approached previously by the Respondents but not engaged.

8.7	**Budgets not estimated with good and careful management** The latest budget was over estimated on insurance costs by £53000.	The RICS Service Charge Residential Management Code state that budgets should be prepared carefully as possible using the best possible information available. The budget for the year 1st April 2011 to 31st March 2012 was prepared during March 2011, and at such times we were not aware of the reduced premium as the insurance renewal date was 15th August 2011, therefore we had to base our estimate on the previous years premium. The budget for the following year 1st April 2012 to 31st March 2013 was reduced accordingly to £35,003. As the insurance premium falls due part way through the financial year we need to budget this figure prudently. Budgets should be based on professional assessment of costs. Mainstay's budgets are prepared by the Property Manager and a Service Charge Accountant before obtaining Client approval
10.5	**Works at unreasonably high costs** This is a continual theme throughout, often for the following reasons: 1. Contractors travelling considerable distances. 2. Competitive tendering not always taking place. 3. Inadequate supervision on site and indefinite instructions from Managing Agents. 4. Work undertaken by Mainstay's own operatives such as Maybeck for services such as Company Secretary. 5. Work carried out by Mainstay themselves, Risk Assessment Reports, Emergency Lighting Checks, etc 6. Commissions and discounts not passed on by Managing Agents.	As per the Applicant's assertions at 2.2 above, there is a separate application in respect of reasonableness and the Respondent's therefore conclude that any submissions regarding reasonableness should be heard under that application only. 1) Most contracts work on a regional basis comprising the Midlands area. It is sometimes necessary to appoint a suitable contractor from outwith Nottingham City to carry out repairs ie in emergencies. Travelling costs are minimal and we act on the best interest of the development in appointing the best contractor for the job. However, this has been difficult as we have had to negotiate with contractors to continue to provide services whilst receiving payment sporadically due to cashflow issues. 2) Tendering is carried out for works of a non-emergency or of a more major nature. It has been difficult to get contractors to tender due to the difficulties in the cashflow where contractors were reluctant to tender or accept contracts when we could not guarantee payments within their payment terms. Tendering is also carried out where national contractors are used. This is demonstrated in the reduced costs now being provided for the fixed electrical inspections (moved from day rate to a per circuit cost), lightning conductor (down from £295.00 to £215.00) testing and water hygiene services (down from £1585.00 to £745.00) etc. All these savings are made due to the Managing Agent's buying power and is passed on to the clients. 3) Before we appointed a Facilities Technician, contractors were appointed to carry out repairs if we received reports from residents, at that time, we relied upon the description of repairs from the resident which may have resulted in a couple of jobs not being completed on the first attempt. We appointed the Facilities Technician during June 2009 and the new procedure is for all contractors to call in advance to make an appointment and sign-in, and the repairs can now be supervised by the Facilities Technician. 4) Mainstay (Secretaries) Limited have been appointed as Company Secretary for Ropewalk Court Management (Nottingham) Limited since 25th May 2009 for an annual fee based on the number of units. The Respondent encloses herewith a copy of the fee tariff (inclusive of VAT) which details the scope of the duties carried out on the Management Company's behalf (at page 53). 5) The Respondent's confirm that risk assessments costs are for the FRA & GRA combined and this compares favourably with competitors such as Cardinus or Blue Risk Management who quote separately. 6) Any commissions are noted to clients in accordance with RICS practice. Apart from insurance, the agents do not receive any commissions and any contractor discounts are reflected in the prices quoted for the benefit of those payers for the services from funds held in trust.
10.22	**Request to inspect accounts** Repeated requests by Applicants in writing since 2006 have been refused	In accordance with the RICS code, a tenant may make a request to inspect the accounts, receipts and other supporting documents within six months of receiving the summary. The Respondent confirms that, even during the recovery of Service Charge arrears and the correspondence through solicitors, they have never refused the Applicant the opportunity to inspect the same. Furthermore, since an LVT application has been made, the Respondent has provided all available information in an attempt to be as transparent as possible. As the Applicant has failed to produce specific details, the Respondent can only assume that all these comments relate to the period before June 2009 when we appointed our Facilities Technician. Please also see point 10.5 above.
12.3	**Contracts should be employed in view of economy, efficiency and quality of service** 1. Poor choice of Contractors. Phillips/Morris and PHRS (who's Director was the Caretaker and the Secretary his partner) are in liquidation. Joan Jules, the Cleaning Company, is also a Company operated by the Caretaker 2. Contractors travelling distances 3. Often contractors visiting site are not able to access the problem or find out what the problem is and having to make follow up visits instead of being able to do the work on first visit. 4. Many different contractors employed working on the same systems for instance 5 different electricians in one year. This means that each electrician would not know the extent of the others work and be familiar with the system. One contractor should 'adopt the system'.	
13.5	**Repairs should be made promptly.** There are still repairs not done since 2004. For instance there is still no lock from the car park to block F. Sewage was allowed to leak into Block F for weeks and a dehumidifier put in and never emptied so it all leaked again. There were no fire doors on some areas for months and some still do not fit or close properly. Emergency lighting is still defective There has been a hole in ceiling in one block which has been there for at lease 2 years. There are structual repairs required to one of the outside stair areas The list could continue....	The car park doors were continually being forced and it was agreed with the Directors that the doors would be replaced, however, we would not lock these doors. The development has security by way of vehicle and pedestrian gates and all the main access door have a fob entry. All tasks are addressed on priority, there would only be a delay if the contractor had difficulty in gaining access to apartments to trace the leak, again, I believe the work being referred to was pre 2009. The fire doors in the car park area was referred back to the developer initially as each door had to be made to measure, unfortunately the developer never replaced the doors and therefore we instructed a contractor. The emergency light test which was carried out in April 2012 identified a number of failures. We obtained quotes and can confirm that all repairs were completed during September 2012. A further test has now been carried out during October 2012 and we shall seek the Directors approval to proceed with the repairs required. The hole in the ceiling relates to the water ingress from the external sealant and we cannot re-instate same until the remedial works have been carried out as this is the subject of an NHBC claim.

13.16 **Consultation**

The Leaseholders have not been invited to participate in any aspect of the management and maintenance of Ropewalk Court. The Budgets have been compiled, decisions made without meetings or any consultation whatsoever.

Shareholders have been left in the dark about every issue. There has been one AGM meeting in Ireland for the Company which is registered in England and Wales and even that meeting is not recorded in minutes. Shareholders are not allowed to look at the Company Register and at Directors minutes. Ms Stanley says that AGM's are not necessary but that provision under the Companies Act did not come into force until October 2007 so until that date AGMs were necessary. In any event should there not be meetings to approve the Auditors, select Directors, accept the accounts?

This lack of dialog has had a detrimental effect on everyone who lives or owns an anartment. There are constant recorded complaints that the Managing Agents, Mainstay, are not answering emails and letters.

Consultation is vital. The Directors and the Managing Agents should be aware that they are acting on behalf of the Leaseholders whose money they are entrusted to spend wisely and as the majority direct the Directors The Current Menager has effectively dispensed with consultation in any way with Leaseho'ders or Shareholders and the question had to be asked why. The Directors only invite suspicion running a 'closed shop' situation.

The Ropewalk Court Management Company (Nottingham) Limited have given too much control solely to the Managing Agents to appoint Contractors, Auditors, and themselves without consultation. The Management Company have held AGMs in Ireland for a Company Registered in England and Wales. The Company have dispensed with holding AGMs or any general meetings whatsoever where Shareholders are invited and have actively discouraged participation.

The Respondent is aware of its obligations under Section 13.16 of the RICS code which relates to the consultation of leaseholders in relation to long term agreements and qualifying works and assert that there has been no breach in this respect.

The Management Company has been handed over to residents since June 2005 and the board comprises of leaseholders who are consulted with in regards to budgets, accounts and general items of expenditure at the development. There is no provision in place to prevent shareholders from viewing the Company Register and this has been provided to the Applicants previously. Directors minutes are not available to inspect however but there is no entitlement for a shareholder to inspect the same under the Companies Act 2006. The Companies Act 2006 also removed the requirement for an Annual General Meeting for the purpose of appointing auditors and approving the company accounts for all companies limited by share which would support the Respondent's assertion that such meetings are no longer necessary. This does not prevent any shareholders from exercising their rights under Section 303 of the Companies Act 2006 to requisition a General Meeting and the Respondent confirms that they have never received any such request

21.6 **Try to acoid incurring legal costs**

Legal costs are a feature of the costs each year.

Legal costs were incurred for a variation of the lease which was never achelved. The Managing Agents rely on legal advice rather than their own expertise.

The Directors instructed a Solicitor to vary the lease which involved 25 Apartments as the percentages were incorrect. They were unable to obtain the agreement of 25 leaseholders to voluntarily agree to the variations and subsequently, on the request of the RMC directors, this matter was passed to Brady's Solicitors.

2 **Respondent's reasons for the above problems:**

1. Poor Quality of Tenants

The Respondents present no evidence that 'buy to let' investments and owners living abroad had a negative impact on the management. Investment Owners are usually the majority with modern blocks of flats in Nottingham and many Investment Owners leave management to local letting agents who will not knowingly choose poor sub tenants. The development is popular because of its central location and therefore relatively easy to let.

All residents need to be aware of their responsibilities and they respond to discussion negotiation and careful management. If the common areas are not well kept Residents will have no incentive to treat them with respect. There is no evidence, and it is unlikely, that owners would willingly neglecting or showing no interest in their investment flats.

2. Cash Flow:

Tha Respondent's excuse for excessive costs and contracts not negotiated should be lack of management not lack of funds.

1) The biggest debtor according to the Respondent owns 20% of the flats - in other words the Landlord. Mainstay collect ground rents on behalf of the Landlord so there were funds in the Landlord's account.
2) Leaseholders were invited to pay monthly by Mainstay which is contrary to the terms of the lease and a month late. This would naturally invite a cash short situation.
3) The Respondents have presented no evidence that lack of cash flow was an obstacle to providing basic services such as cleaning and lighting. Cash flow did not prevent Mainstay paying themselves advance Management Fees for 6 months on 18th May 2004 of £9808.50. Since then Management Fees have been paid to Mainstay by Mainstay in advance totalling £25,641 in 2003-2004 and £24,660 in 2004-05. This figure grew to £35,680 in 2011 a massive 46% rise. The index on which they maintain governs the increase in fees has only risen 23%.
4) The accounts do not reflect this cash flow problem.
5) In 2002 this was a new development so for 2 years from completion, repairs should have been done by the Developers and after that more serious issues taken to the NHBC who will listen to problems on structural issues. The NHBC claim does ot work like an insurance excess. The Applicants are not certain that the Managers understand the NHBC process
6) The Ropewalk Court (Nott-nghare) Management Company is not likely to have established a poor payment record. For instance the Electricity, BT accounts and others are sent c/o CIM Payments at the address at Whittington Hall.

1) The leaseholders are not obliged to know of the Landlord's financial status, the Landlord has been pursued for payment of service charges the same as any other leaseholder and we can confirm that we have been successful and the legal action is now settled.
2) Leaseholders were invited to pay monthly by way of an external company providing a credit facility. The company at the time, Amber Credit, would settle the leaseholders demand in full on the due date and the leaseholder would then pay Amber Credit by monthly instalments.
5) As far as we are aware no repairs have been carried out within the first 2 years which should have been referred back to the developer. And again Mainstay were not the first Managing Agent appointed.
6) As the context of this question is unclear and although we requested the applicant to clarify, which they have not, we are unable to provide an answer.

3. Insurance Cost

1) It is claimed that the high insurance cost is due to the high claims experiance. The Applicants do not dispute that many claims will result in higher premiums. The Applicants however d spute that high claims were necessary and with effective management this could have been avoided.
2) Commissions to Brokers and third parties should be disclosed and established if fair and reasonable.

1) As you are no doubt aware, we cannot access apartments without prior written notice and therefore this comment is not justified. We believe that several claims became very expensive as leaks were not identified until it became a substantial repair, the apartments have laminate flooring and this allowed water to travel under the floor causing damage. It is the leaseholders responsibility to ensure their apartment is water tight and report any leaks immediately. Each claim is assessed to the validity by the insurance company, this is not Mainstay's decision. If the insurers were concerned to the level of claims of any one insured peril, they would have provided recommendations to Mainstay as agents to try and reduce the risk.
2) This has already been addressed.

3 CONCLUSION

The Managers have hidden information or provided misinformation about the appointment of the Managing Agent and the position and involvement of the Landlord and the Ownership of various flats. There is confusion about the Landlord's financial status and how his debts have affected Ropewalk Court. The Landlord now owns 33 flats, it is understood, and is trying to sell them. They have acted ignoring the need for transparency, consultation and disclosure.

The Managing Agents have managed at a distance in a re-active way. They only visit the site 8 times each year. They have not been pro-active in solving any of the issues that have been outstanding for 10 years. Those issues include:
1. Build problems with the roof, balconies and other areas.
2. Reducing costs
3. Solving the problems with the lease
4. Providing effective, competitive management

In conclusion the Managers have failed to provide a safe, secure and peaceful place for Leaseholders, Sub Tenants and Residents to enjoy.

Due to the lack of any evidence , this appears to be only the Applicant's opinion. There has been no breach of the lease. The leaseholders are not obliged to know of the Landlord's financial status, the Landlord has been pursued for payment of service charges the same as any other leaseholder and we can confirm that we have been successful and the legal action is now settled as outlined in previous notifications regarding debtors listings. The management contract is for the Property Manager to visit the development 8 times per annum, over and above this, the Facilities Technician will report any issues on a day to day basis. From the condition that the development was handed over to Mainstay to manage, we can advise that the development is a much safer, secure and peaceful place for residents. Breaches of the lease ie noise nuisance etc and dealt with immediately and we have recently carried out an internal Health & Safety audit which achieved 100% and we enclose a copy herewith (pages 38-52).