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BIR/00FY/LSC/2011/0046



**HM COURTS & TRIBUNALS SERVICE
MIDLAND LEASEHOLD VALUATION TRIBUNAL**

In the matter of

an application for a determination of liability to pay and reasonableness of service charges pursuant to sections 27A and 19 of the Landlord and Tenant Act 1985 and for an order pursuant to section 20C of the Act 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 and
Mr J Ravenhill FRICS sitting at the Magistrates' Court Nottingham**

on 10th, 11th and 12th December 2012

Summary of the Determination

- (i) The service charge payable for the year 2004-5 is £819.99.
- (ii) The service charge payable for the year 2005-6 is £751.51.
- (iii) The service charge payable for the year 2006-7 is £874.42.
- (iv) The service charge payable for the year 2007-8 is £1,323.16.
- (v) The service charge payable for the year 2008-9 is £1,282.73.
- (vi) The service charge payable for the year 2009-10 is 1,362.09
- (vii) The service charge payable for the year 2010-11 is £1,608.32.
- (viii) The service charge payable for the year 2011-12 is £1,764.30.

Reasons for the Determination

Introduction

1. This is an application by the Applicants who seek a determination of the service charges payable in respect of the service charge years 2004/5, 2005/6, 2006/7, 2007/8, 2008/9, 2009/10, 2010/11 and 2011/12.
2. 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).
3. 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 ("the Applicants").
4. The Lease provides (inter alia) for the Respondent to provide services for the benefit of the Property and the Applicants covenant with the Respondent to pay a service charge equal to 0.65% of the total costs incurred by the Respondent in fulfilling its obligations under the Lease. The service charge is payable in advance on the first day of March and the first day of September in each financial year. The financial year end is the 28 February in each year.
5. The Property is situated within Block F and forms one of 158 flats and two commercial units within the development.

Inspection

6. On 10th December 2012 the Tribunal inspected blocks F and C. The Tribunal entered the Building from Upper College Street and entered Block F. The Tribunal inspected the recently created kitchen and ancillary features. The

Tribunal entered the car park by level 2. There was no secure fastening on the door between the car park and the residential block. The Tribunal observed seven bins in a bin store. Access to the store is from the car park and the access door was open. There is no automatic closing provision for the doors.

7. The Tribunal entered Block C from level two of the car park and ascended by lift to the fifth floor. The Tribunal inspected the common parts on each floor. The carpets appeared stained throughout. The general condition of the communal decoration was satisfactory. The communal lights were illuminated. The Tribunal returned to the ground floor and detected the smell of rubbish from the refuse bins.

8. The Tribunal left the block via the steps to Upper College Street. A water leak was observed between blocks C and D. The Tribunal returned to the car park on level -1. The bin store was open. Gaps in the ceiling of the bin store were evident.

9. The Tribunal inspected the common parts in block F. The decoration appeared in good order and the carpets appeared just satisfactory.

The Law

10. Section 27A of the Landlord and Tenant Act 1985 ("the Act") sets out the jurisdiction of the tribunal and the relevant clause (1) provides:

S27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date at or by which it is payable, and*
- (e) the manner in which it is payable.*

11. Section 19 of the Act limits the amount of service charge payable and provides ;

S19 Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and*
 - (b) where they are incurred on the provisions 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.*

12. Section 20C relates to payability of Landlord's costs and provides ;

S.20C Limitation of Service Charges: Costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before... a leasehold valuation tribunal, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(1)

(2) The...tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Hearing

13. The Applicants were represented by Mrs Susan Hunt of Hunter Grey, Chartered Surveyors and the Respondent was represented by Miss Zanelli, Solicitor. Mr Alexander William Hunt was in attendance.

Preliminary submissions

14. Mrs Hunt for the Applicants submitted that the Respondent had failed to disclose relevant documents by 9th October 2012 as required by the Tribunal's directions and had delayed until 22nd November 2012. Mrs Hunt submitted that the Tribunal had repeatedly sanctioned delays by the Respondent and submitted that the Respondent should suffer some penalty. Mrs Hunt was offered the opportunity of making an application for an adjournment in order that she may fully consider her position but declined to do so. The Tribunal was mindful that Mrs Hunt had also previously been allowed an extension of time for the submission of documents and therefore determined that the application proceed.

15. Miss Zanelli for the Respondent submitted that any challenge to the service charge year 2004/5 is statute barred and therefore an abuse of process and should be dismissed. Mrs Hunt submitted that this issue had not been previously raised, and particularly was not in the Scott Schedule, and the Respondent should not be allowed to raise the limitation issue without proper notice. The Tribunal adjourned the issue for consideration until the following day to allow Mrs Hunt to consider her position.

16. The following day Mrs Hunt submitted she had insufficient time to take legal advice. She declined to make an application for an adjournment to take such advice. Mrs Hunt produced a copy of a London Leasehold Valuation Tribunal determination relating to St George's Wharf London under reference

LON/00AY/LSC/2010/0286. Miss Zanelli considered the determination and consented to proceed. She submitted that the service charge accounts were produced on 6 April 2006 and the application made to the Tribunal on 31 October 2011. Service charge demands were made on 22 October 2004 and 15 March 2005. Miss Zanelli submitted the application was out of time and should be dismissed and that it was an abuse of process.

17. The Tribunal considered the Respondent's submission that the application for consideration of the service charge year was an abuse of process and should be dismissed. The power is found in regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. Paragraph 2 of regulation 11 provides that before the Tribunal may dismiss such an application it must give the Applicants not less than 21 days notice of its intention. As no such notice has been given in the present instance the Tribunal did not consider the matter further.

18. The Tribunal notes that the Lease provides for the service charge to be recovered as rent. It determines that the appropriate time limit for recovery of the service charge is six years as provided for in section 19 of the Limitation Act 1980.

19. The Tribunal noted that its jurisdiction is conferred by sections 27A and 19 of the Landlord and Tenant Act 1985. The Tribunal may make a determination of what is payable. The Tribunal does not have jurisdiction to provide for the recovery of the service charge. The Tribunal determines that if the Applicants' claim was clearly statute barred then it may be appropriate for it to dismiss the claim. However in this instance the Tribunal is not satisfied that the claim is statute barred.

20. For these reasons the Tribunal proceeded to determine the payability and reasonableness of the service charge demands for the year 2004/5.

Substantive hearing

21. The Tribunal has before it a Scott Schedule. The Schedule is attached as Appendix I.

22. The parties proceeded to amplify their statements and made submissions.

23. The Tribunal's findings and determinations follow the Scott Schedule.

Service charge year 2004-5

Buildings Insurance

24. The Tribunal accepts that the Building Insurance premium amounts to £18,996 of which £4,221 is in respect of terrorism cover. The Tribunal determines it reasonable for the Respondent to insure against terrorism.

25. The Applicants submit that the insurance claims total £33,482 which were neither controlled nor managed by the Respondents and that any insurance excess should be charged to the leaseholder who was responsible for the claim. The Tribunal accepts the Respondent's submission that the claims were not foreseeable.

26. The Applicants submit that a buildings insurance revaluation should be carried out as the building may be several million pounds overvalued. No evidence was submitted in support. The Royal Institution of Chartered Surveyors Practice Guide advises revaluation on a regular basis. The Tribunal notes that the building was constructed in around 2002 and that the insurance value is index linked. The Tribunal considers the Respondent's conduct to be reasonable in respect of the year in question.

27. No challenge is made by the Applicants that the insurance premium is excessive. The premium is determined by the Tribunal to be reasonable.

Refuse disposal

28. The Tribunal determines that the hire of Euro Bins is reasonable.

Managing Agents Fees

29. The Applicants submit the Managing Agent's fees to be excessive and that they failed to properly manage the building.

30. Mr Alexander William Hunt gave evidence that –
- he sent an email to the Respondent on 24 May 2004 complaining of the build up of excessive rubbish, the smell of bins, failure to clean the common parts, the security gates open and that three cars had been broken into as a result.
 - The gates were still defective on 15 October 2004.
 - He sent a further email to the Respondent on 8 November 2004 informing them that the security gates had been open for a further four weeks.
 - He sent a further email to the Respondent on 19 November 2004 to say that the gates were then finally secure but that abandoned cars still remained in the car park.
 - He sent a further email to the Respondent on 15 February 2004 saying that abandoned cars remained in the car park after eight months and had become occupied by vagrants.
 - Rubbish had been allowed to accumulate.

- Carpets had been allowed to remain stained in communal areas.
- Seals on windows were defective
- He had not been allowed access to meters to read his own meter.

31. The Respondent submits that the necessary standard of service as required under the Lease has been provided and refers to the budgets and supporting invoices. Due to difficult tenants the provision of a high level of service was difficult. Miss Zanelli reserved the right to cross examine the witness but did not do so.

32. On the evidence presented the Tribunal reaches the conclusion that during the period of the service charge year in question the property was subject to excessive smells, the provision of inadequate cleaning and the security gates being allowed to remain open for long periods giving poor security to the residents. The Tribunal accepts that the poor security substantially contributed to cars being broken into, cars abandoned and rough sleepers. The Tribunal accepts the Respondent exhibited a general failure to manage the security of the building. The Tribunal determines a deduction of 40% should be made from the management fee in the sum of £8184.00 giving a proportion of £53.20 for deduction.

33. The Applicants submitted that the individual services charges were calculated incorrectly and not demanded in accordance with the Lease. The Tribunal determines that the appropriate service proportion is as set out in the Lease. The Tribunal find that the service charge demands in practice were demanded a month late. The Tribunal determines that this does not invalidate the demands and that the service charge was properly demanded.

34. The Applicants submit there was no tendering for the contract. The Tribunal determines that the agreed fee is reasonable (subject to proper performance) and that the building was managed on the basis of an implied agreement.

Window cleaning

35. The parties accept there is no bill to support the work. The Tribunal find the standard of cleaning to be unacceptable and determine the whole of the charge of £6,481.00 be disallowed giving an apportionment for deduction of £42.13.

Cleaning

36. The Tribunal finds there was little supervision over the cleaning which was to a low standard and represents poor value for money. The Tribunal determine to reduce the claim of £29,210 by 50% giving a reduction of £14,605 from the service charge account and an apportioned deduction of £94.93.

Lift maintenance

37. The Tribunal accepts the Applicants' submission that Kone may be an expensive provider. However the test is reasonableness and the Tribunal determine their appointment reasonable and further the lift maintenance charges to be reasonable.

Landlord's water supply.

38. There is no invoice to show the water is supplied for communal use. The Tribunal therefore determines that the charge of £828 be disallowed giving an apportioned figure for deduction of £5.38.

General Maintenance

39. The accounts for general maintenance show £11,791 which the Tribunal determines as reasonable.

Professional Fees

40. The Respondent submits that the professional charges are in respect of the legal fees incurred by the Landlord in endeavouring to vary a number of leases within the Building by way of substitution of differing service charge proportions. No bills are before the Tribunal to detail the work carried out. The Tribunal is not satisfied on the evidence before it that either the work carried out represents value for money or is properly payable at all. The Tribunal determines the fee of £854.00 be disallowed which gives an apportioned deduction of £5.55.

Audit fees

41. The Tribunal determines that audit fees are properly payable.

Water tank treatment

42. The Tribunal determines it reasonable for a contractor to travel from Tamworth to Nottingham.

Landlord's water supply.

43. This appears to be a repetition of 38 and is therefore disallowed.

Payability

44. The Tribunal determines the service charge payable subject to the foregoing deductions and the issue of recovery insofar as the Limitation Act 1980 is concerned.

Service charge year 2005-6

Buildings Insurance

45. The Insurance Premium is shown in the Scott Schedule as £19,189 and in the narrative terrorism cover is stated to be £6,618. The accounts in Bundle 2, page 19, show a premium in respect of terrorism cover of £6,662 making a total premium of £25,851. The Applicants submit that the insurance claims were not controlled or managed; terrorism cover should be deleted and no buildings reinstatement valuation was carried out. For the reasons set out in response to similar claims for previous year the Tribunal determines the premium reasonable subject to the excessive payment of commission.

46. The broker's commission is accepted by the Respondent to be 25% of the premium which is submitted by the Applicants to be excessive. The Tribunal determines the commission to be excessive and determines a deduction of 10% from the total premium of £25,851 fairly leaves an appropriate commission element. The Tribunal therefore determines a deduction of £2,581 from the service charge account giving an apportioned deduction of £16.80.

Refuse Disposal

47. The Tribunal determines the hire of Euro Bins to be reasonable.

Managing Agent's Fees

48. The accounts show management fees for the building and car park to total £24,660. At the hearing the Applicants submitted there was no challenge to the reasonableness of the fee providing the service was provided although they submitted that a local agent would do the work cheaper, particularly if the contract was put out to tender.

49. The Tribunal finds that a lack of control continued and problems continued with malfunctioning gates leading to security issues, including abandoned cars and rough sleepers which lasted a considerable time. The Tribunal finds the company return was filed late.

50. Taking into account the above management failings the Tribunal determines a deduction of 40% from the Management Fee which amounts to £9,864 and gives an apportioned figure for deduction of £64.12.

51. The Tribunal determines that as the Applicant considers the managing agent's fee reasonable (subject to proper performance) the allegation of failure to tender has no merit. It determines the management agreement is implied. The late submission fee for a company return and professional fees for "incorrect percentages" are, dealt with later.

Window cleaning

52. The Applicants express dissatisfaction with the service provided. There is no bill before the Tribunal detailing the works, nor any contract with the cleaner. The Tribunal determines the whole claim of £8,833 be disallowed giving an apportioned deduction of £57.41.

Cleaning

53. The Applicants submit the cleaning was to a poor standard. The Respondents submit the problems were due to heavy usage. The Tribunal finds that the cleaning was not to the required standard and determines the whole of the sum of £15,823 be disallowed giving an apportioned deduction of £102.85.

Lift maintenance

54. For the reasons set out for the previous year the Tribunal determines lift maintenance charges reasonable.

Video door entrance system

55. On the evidence supplied in the Scott Schedule and no complaint being made with regard to the proper functioning of the system the Tribunal determines that the charges are reasonable.

General Maintenance

56. The total sum for general maintenance of the building and the car park is shown as £13,935. The Applicants express concern over the poor general maintenance of the building. The accounts in the sum of £3,387 are not before the Tribunal. The Tribunal therefore determines that the whole charge of £3,387. be disallowed giving an apportioned deduction of £22.02.

Professional fees and late filing fee

57. The late filing fee of £100 is disallowed.

58. The professional fees amount to £898. The fees relate to the proposed deeds of variation relating to proposed changes to the leases to take account of the correct "percentage fee" for service charge claims. The Respondent assured the Tribunal that the fees did not include work done for chasing arrears and that

such fees were charged directly to the offending leaseholders. The accounts from solicitors relating to the work claimed are not before the Tribunal. The Tribunal is unable to determine the work done. Further the Tribunal is not satisfied that the Manager is responsible for the legal fees in making the proposed lease variations.

59. Accordingly the Tribunal disallows the sum of £998 which gives an apportioned deduction of £6.49.

Audit fees

60. The Tribunal determines the audit fees of £1,113 to be reasonable.

Water tank treatment

61. The Tribunal determines the fee of £1,138 to be reasonable.

Payability

62. The Tribunal determines the appropriate percentage of service charge payable by the Applicants is 0.65% as stated in the Lease. The demand is not required to state how the demanded amount is calculated. The Tribunal determines the demands to be presented in an acceptable format and payable subject to the deductions as set out earlier.

Service charge year 2006-7

Insurance premium

63. The Tribunal notes the insurance premium of £45,763. Terrorism cover was cancelled during the year.

64. The Applicants submit that insurance claims were neither controlled nor managed; that no insurance revaluation was carried out; that leaking roof claims should be referred to NHBC; as terrorism cover now cancelled why was it in force in previous years; an excess of £2,500 on the buildings insurance leaves leaseholders unprotected for this amount and the brokers commission of 25% is too high.

65. The Tribunal notes a letter dated 10 January 2007 from the Managing Agents to the residents generally which relates to a high level of claims. The Tribunal finds that the Managing Agents are attempting to manage claims and that their response is proportionate.

66. There is no evidence before the Tribunal to show that claims may be submitted to NHBC.

67. The Tribunal determines an insurance revaluation should normally be undertaken at this stage. However the Tribunal is not convinced that a revaluation would have a significant effect on the amount of the premium.

68. The Tribunal finds that the inclusion or exclusion of terrorism cover in any particular year is a matter within the judgment of the Manager whom the Tribunal determines acted reasonably.

69. The Tribunal determines the premium of £45,763 reasonable with the exception of the commission payable at 25% which it finds to be excessive. The Tribunal determines a reduction of 10% (£4,576.) from the premium to take account of the excessive commission. The resulting allowable premium is £41,187. The apportioned amount for deduction is £29.74.

Refuse disposal

70. The Tribunal determines the hire of Euro bins to be reasonable.

Managing Agent's Fees

71. The Applicants submit that the fees of £30,897 are not within the bounds of reasonableness and further the agents have failed to manage the building to an acceptable standard. In particular the agents have not implemented chlorination, failed to have the emergency lighting checked and failed to ensure adequate fire protection.

72. The Applicants submit there is no written management contract, that it is a rolling contract from year to year and that consultation is required in accordance with the requirements of section 20 of the Landlord and Tenant Act 1985.

73. The Tribunal determines that the management contract is a yearly contract and not subject to section 20.

74. The Tribunal notes the substantial increase in the managing agent's fee from the previous year. The Tribunal also notes the demands of the Property and finds the fee reasonable provided the management was performed satisfactorily. The Tribunal finds that management was improving but problems still existed. The Tribunal determines the management fee be reduced by 20% making a reduction of £6,179.40 and an apportioned deduction of £40.16.

Communal cleaning

75. The Applicants submit a poor level of cleaning still exists and the charges of £19,383 are excessive. The Respondent submits that this is due to difficult tenants.

76. The Tribunal notes that additional resources have been utilised. The Tribunal finds that communal cleaning is still not satisfactory and determines a reduction of 10% (£1,938.) which give an apportioned deduction of £12.60.

Video door entry system

77. The Applicants make no objections concerning the performance of the system. Their objection is limited to the cost incurred by both a maintenance contract and additional contractors. The Tribunal finds the existence of a maintenance contract and additional contractors acceptable and determines the charges to be reasonable.

Lift maintenance

78. The Tribunal determines the charges reasonable for the reasons stated for previous years.

Caretaker

79. The Applicants submit the caretaker to be an unnecessary expense. The Respondent submits that the presence of a caretaker has made a marked improvement to the management of the building. The Tribunal finds the appointment of a caretaker for ten hours a week a positive step in the management of the building. The Tribunal determines the cost of the caretaker reasonable.

General maintenance

80. The Applicants object to work being carried out which they feel ought to be done by the caretaker. They object to contractors travelling long distances to do small jobs e.g, re- hanging doors at a cost of £111.04 (inc VAT).

81. The Tribunal identifies that general maintenance amounts to £15, 955 of which £10,101 came from the reserve fund. The Tribunal has not been able to identify all the bills particularly those paid from the reserve fund. The Tribunal determines this omission may fairly be reflected in a deduction of 10% (£1,596) which gives an apportioned deduction of £10.37.

Communal Electricity

82. The Applicants submit the agents have failed to properly negotiate contracts and meter readings are estimated. Costs have increased beyond normal electricity cost increases. Bills are missing. There is no evidence that a substantial missing electricity account relates to communal electricity.

83. The Tribunal notes that in the previous year electricity costs were £17,271. The amount claimed for the present year is £27,208. The amount for the following year is £23, 279. The Tribunal finds £21,000 to be a reasonable figure for the current year and determines that £6,208 be disallowed. The proportion to be disallowed is £40.35.

Professional fees

84. These relate to legal fees incurred relating to the proposed variation of leases to take account of differing service charge apportionments. No bills are before the Tribunal. For the reasons previously given the Tribunal determines that the fees of £1036 are not allowable. The proportion to be disallowed is £6.73.

Annual return fee and accountancy fee

85. The Tribunal determines that the late submission fee is not allowable It determines the accountancy fee is reasonable. The Tribunal therefore determines the sum of £100 in respect of the late submission fee to be disallowed. The proportion to be deducted is £0.65.

Service charge year 2007-8

Buildings Insurance

86. The Tribunal notes the increased insurance premium of £60,276. which is based on an index linked valuation. There is no evidence before the Tribunal to show that an insurance revaluation has been undertaken. The Norwich Union Policy Schedule confirms the excess of £2,500 for escapes of water. The Applicants submissions are similar to their submissions in previous years.

87. The Tribunal does not accept that a local broker would be more effective. The non inclusion of terrorism cover is a reasonable judgment for the Managers to make. The Tribunal determines the Respondent should have ensured the Building was revalued to determine the correct up to date valuation rather than relying on index linking. However the Tribunal determines that this is not likely to have a significant effect on the premium. The Tribunal determines the commission rate of 25% excessive and determines a deduction from the premium of 10% to be reasonable. The Tribunal therefore disallows £6028 which gives an apportioned deduction of £39.18.

Refuse disposal

88. For the reasons given in previous years the Tribunal determines the hire of Euro Bins to be reasonable.

Managing Agent's Fees

89. The Tribunal notes the Managing Agent's fees to be £32,162 which it determines to be reasonable provided the contract is properly performed.

90. Mrs Dunne gave evidence for the Respondent. She stated that Mainstay was appointed every year. Discussions had taken place between the Managing Agents and the Respondent concerning the appointment of different agents and her understanding was that there was no guarantee that other agents would be able to perform better. She stated that there was insufficient money available to do everything that the Respondents wished to do. When cross examined she said that consultation with the leaseholders was not required.

91. The Tribunal finds that the contract is renewed annually. The Tribunal determines that section 20 of the Landlord and Tenant Act 1985 is not applicable and no leaseholder consultation is required.

92. The Applicants submit that "site management is non existent." The Tribunal determines that there were still shortcomings in management of the site and determine to disallow 10% (£3,216) of the Managing Agent's fee which gives an apportioned deduction of £20.90.

Professional Fees.

93. There are no accounts before the Tribunal detailing these costs. They are submitted to relate to legal work done in connection with the proposed variation of service charge percentages in leases. The sum claimed is £2,240. For reasons previously stated the sum is disallowed which gives an apportioned deduction of £14.56.

Communal window cleaning

94. Mr Hunt gave evidence to say that window cleaning was generally inadequate. The Respondent produced a document from Bundle 2 section D page 12 to show that the contract provided for an annual clean of all external and internal communal windows. The Tribunal determined the charges of £2,504 to be reasonable.

Lift maintenance

95. For reasons given in previous years the Tribunal determines the various charges to be reasonable.

Fibre glass removal

96. The Tribunal finds that the water tank failed in service and was not under warranty. There is no evidence to show the caretaker delayed repairs in order that his company could benefit from the repair. The Tribunal therefore determines the charges of £5,434 reasonable.

General Maintenance

97. The Respondent gave evidence that the monitoring of out of hours calls were subcontracted by Mainstay. Mainstay were charged by the subcontractor £2.25 for each call. The Respondent charged each call at £47.00. The Tribunal finds £12.25 to be a reasonable charge to be charged by Mainstay. The Tribunal determines that the sum of £810 be disallowed from the charge of £1,116. The apportioned deduction is £5.26.

98. The Tribunal determines the claim for pest control to be reasonable.

99. The Tribunal determines that the costs of £210 on the County Court judgment be disallowed. The apportioned deduction is £1.36.

100. The Tribunal determines the charges for signage to be reasonable.

101. The Tribunal submitted that either the caretaker or a representative of Mainstay should check the building for leaks. The Respondent submitted that neither the caretaker nor themselves were experts. The Tribunal determines that it is reasonable for a caretaker to identify obvious leaks but accepted that rectification for such work to be carried out by a qualified contractor.

Communal Electricity

102. The Tribunal determines the charge of £23,270 is consistent with the charges in the accounts for the previous year and is consistent with that allowed by the Tribunal for the following year. The charges are therefore determined to be reasonable.

Cleaning and gardening

103. The Tribunal finds that communal cleaning and gardening are not adequately performed. The Tribunal determines that the costs of £22,031 be subject to a 10% deduction (£2,203.). This gives an apportioned figure for deduction of £14.32.

Overspend letter

104. The Tribunal determines that the notice complies with section 20(B)(2) of the Landlord and Tenant Act 1985.

Service charge demands

105. The Tribunal accepts that the service charge demands demand payment one month later than that provided for in the Lease and that there is no breakdown of costs on the demand. The Tribunal determines that the demands include the statutory information required and are valid.

Service charge year 2008-9

Buildings Insurance

106. The Applicants submitted at the hearing that the premium was not excessive having regard to the claims history. However Mrs Hunt submits that the claims history should have been better managed by the Managing Agents.

107. Miss Zanelli submits that the directors of the Respondent Company were in this year starting to get a hold on the management of the Respondent company.

108. The Tribunal noted that no insurance revaluation had been obtained and determined this ought properly to have been obtained by the Respondent. The Tribunal determined that, subject to the premium being calculated on the index linked value of £66,901, rather than actual revaluation, it is acceptable, subject to the included commission of 25% being determined as excessive. The Tribunal determined that 10% of the commission (£6,690) be disallowed to take account of the excessive commission. This gives an apportioned deduction of £43.49.

Refuse disposal

109. For the reasons previously stated the Tribunal determines the charge to be reasonable.

Managing Agent's Fees

110. The Tribunal determine than in principle the Managing Agent's fees of £33,520 are reasonable subject to satisfactory performance of the contract.

111. At the hearing the Applicants challenged the appointment of the caretaker as unnecessary and submitted that he did not perform his duties. The Applicants submitted that the caretaker was a director in a company engaged by the Managing Agents to work in the building and that in practice his role was unclear.

112. The Tribunal determines that the appointment of the caretaker is reasonable with a view to improving control over the development. It is unreasonable to expect the managing agents to deal with detailed site problems

on a daily basis. It shows that attempts are being made by the Manager to get management under control.

113. The Applicant submits there is still inadequate management and this is accepted by the Tribunal. The Tribunal determines a figure of 10% (£3,352) be deducted from the management fee. This gives an apportioned deduction of £21.79.

114. The Tribunal determines that consultation is not required for the management contract.

Professional fees

115. Again no accounts are before the Tribunal. For reasons previously stated the professional fees of £22,886 are disallowed. This gives an apportioned deduction of £148.76.

Lift maintenance

116. For the reasons given in previous years the Tribunal determines the various charges reasonable.

General maintenance

117. The Applicant submits that there are no bills for £2,255 worth of expenses and this is not challenged by the Respondent. The Tribunal therefore determines that these be disallowed. The apportioned deduction is £14.66.

Gardening

118. At the hearing the Applicants submitted that the gardening should be done by the caretaker. The Tribunal notes the increase in charges. The Tribunal does not accept that the gardening should be done exclusively by the caretaker. The Tribunal determines the charge of £4,007 to be reasonable.

Communal electricity

119. The Tribunal notes that the previous years charge for communal electricity is £23,270 and for the present year £33,197. The Tribunal, using its experience and knowledge as an expert tribunal, would not expect to see an increase in charges beyond 10%. The Tribunal accepts the Applicants' submission that there appears to be a lack of control. The Tribunal determines a 10% increase reasonable and allows a figure of £25,587. It follows that £7,610 is disallowed which gives an apportioned deduction of £49.40.

Expenditure – water pump maintenance etc.

120. The Applicants submit that it is inappropriate for regular items of service charge costs to be taken from "renewals sinking fund". The Respondent submits that the problems occurred after the budget was produced and the reserve fund was used to fund necessary works.

121. The Tribunal is unable to identify the figure of £9,704 in the accounts. If it has been included within general maintenance then it has already been dealt with. The only item listed in the accounts is water maintenance in the sum of £1,478. The Tribunal determines that it is not unreasonable to take money from reserve funds to deal with unexpected expenditure that no deduction is to be made.

Cleaning

122. The Tribunal accepts the evidence of the Applicants that a poor standard of cleaning was prevalent. The Tribunal determines that the charges of £22,101 be reduced by 10% (£2210) This gives a chargeable figure of £19,891. The apportioned deduction is £14.37.

Communal window cleaning

123. The Applicants challenge the charges of £2,074 on the grounds of the work not having been done. The Tribunal notes that in the preceding year a greater sum was allowed for window cleaning for the reasons there stated. The Tribunal determines the charges as reasonable.

Maintenance and testing of systems

124. In the Scott Schedule the Applicants challenge the sum of £10,844 which is not substantiated in the accounts. The figure in the accounts is £4,674 which the Tribunal determines to be reasonable.

Overspend letter

125. The Tribunal finds no breach of the relevant legislation and determines the letter to be valid.

Service charge year 2009-10

Buildings Insurance

126 The premium is £72,297. The Applicant submits this is excessive and the Respondent explains that a number of claims made for water damage have inflated the premium. The parties submitted the same arguments as in previous years.

127 The Tribunal determines that an insurance revaluation should have been undertaken by this time. However the Tribunal determine that this is not likely to have a significant effect on the premium. The Tribunal determines the premium is reasonable subject to an excessive commission payment. The Tribunal determines a deduction of £7,230 (10%) which gives a chargeable figure of £65,067 The apportioned figure for deduction is £47.

Refuse disposal

128. For the reasons stated in previous years the Tribunal determines the charge of £9,302 reasonable.

Managing Agent's Fees

129. The Tribunal accepts that the Managing Agents failed to consult generally with the leaseholders, failed to negotiate electricity charges and that the Applicants had been unable to secure registration on the shareholders register of the Respondent company.

130. The Tribunal determines that the Managing Agent's fees of £32,807 be reduced by 10% to £29,526. The sum disallowed is £3,281 and the apportioned figure for deduction is £21.33.

Communal Electricity

131. The Applicants submit that the increase in electricity charges to £52,163 is excessive. The Tribunal further notes that the allowable figure in the preceding year was £25,587. The Tribunal determines that the Respondent has failed to manage the charges. The Tribunal determines an increase of 10% (£2,559) in the current year giving an allowable figure of £28,146. The figure disallowed is £24,017 and the apportioned figure for deduction is £156.11.

Communal window cleaning and gardening

132. The Tribunal notes the figure as £2163 for window cleaning and £3202 for gardening making a total of £5,365. The Applicant submits there is a poor quality service for the window cleaning with no supervision and there is a conflict in the caretaker's duties between gardening and cleaning. The Tribunal has previously allowed the window cleaning charge for very similar amounts and finds the gardening charge reasonable. The Tribunal therefore determines both charges as reasonable.

Lift maintenance

133. The Tribunal determines the late payment charges of £457 be disallowed. The apportioned figure is £2.97. For reasons previously given the Tribunal determines the remaining lift charges to be reasonable.

General maintenance

134. The sum of £20,706 appears in the accounts. The Respondent confirmed that none of the professional charges were charged to the service charge account and were subject to recharge to individual leaseholders. The Tribunal noted the total general maintenance charges of £20,706 (Bundle 3 Page 10). The Tribunal determine the charge as reasonable.

Communal cleaning

135. The communal cleaning is shown in the accounts as £31,395. This comprises the payment to the caretaker (£6916) and commercial cleaning (£24,479). The Tribunal accepts the Respondents submission that additional service was required to rectify the existing deficiencies in communal cleaning. The Tribunal determines the charge as reasonable.

Water testing and pumps

136. The Tribunal does not accept the Applicants submission that a local contractor ought to be used. The Tribunal determine the charges of £1,295 reasonable.

Maintenance of systems

137. The Tribunal accepts that a maintenance contract plus ad hoc maintenance is reasonable. The Tribunal determines the charges of £10,944 to be reasonable.

Service charge year 2010-2011

Buildings Insurance

138. The Buildings insurance premium is shown as £71,934. The parties submissions are similar in principle to previous years.

139. The Tribunal notes that an insurance valuation has still not been undertaken. The Tribunal determines a 10% reduction to take account of excessive commission. The deduction is £7,193 leaving an allowable premium of £64,741. The apportioned amount for deduction is £46.75.

Refuse disposal

140. For the reasons stated in previous years the Tribunal determines the charges of £9,755 to be reasonable.

Managing Agent's Fees

141. The basic fees are £34,250. The parties submissions are similar in principle to previous years. There is evidence of management failure as evidenced by the deductions made by the Tribunal for this year. The Tribunal finds a slight improvement in management. The Tribunal determines a deduction of 5% (£1,712.50) which gives an allowable figure of 32,537.50. The apportioned figure for deduction is £11.13.

Adjustment regarding square footage

142. The charges are in respect of ongoing legal fees relating to the proposed variation to the service charge proportion.

143. For the reasons given in earlier years the charges of £16,073 are disallowed. The apportionment for deduction is £104.47.

Communal window cleaning and gardening

144. For the reasons previously given the Tribunal determines the sum of £4,536 reasonable

Lift maintenance

145. The Tribunal disallows the late payment fees of £67.50. The apportionment for deduction is £0.44. For the reasons previously stated the Tribunal determines the remaining various charges for lift maintenance reasonable.

Risk assessment

146. The cost in the accounts is shown as £1,454. The Tribunal finds there has been duplication of work. The Tribunal disallows £725. The apportioned figure for deduction is £4.71.

General maintenance

147. The Tribunal accepts the Applicants submissions on out of hours call out and determines a deduction of £416. This gives an apportioned deduction of £2.70.

148. The Tribunal determines the late filing fee of £150 be disallowed. This gives an apportioned deduction of £0.98.

149. The Tribunal does not accept the objections to the remaining items and determines the charges to be reasonable.

Communal Electricity

150. The Tribunal determines the charges of £29,321 reasonable.

Additional cyclical contributions

151. The Tribunal finds that the Lease makes provision for overpayments to be carried forward. The Tribunal determines that in so doing the Respondent is acting reasonably.

Communal cleaning and caretaker

152. For reasons already given for previous years the Tribunal determines the charges of £33,200 reasonable.

Health and Safety Assessment and Testing

153. The Tribunal notes the figure of £1,100 in the Scott Schedule which appears to be taken from the budget. The figure of £1,454 appears in the final accounts and is dealt with at paragraph 144.7.

Maintenance and testing of systems

154. The Tribunal notes the figure of £12,910 in the Scott Schedule which appears to be the budgeted figure. The actual figure is shown in the accounts at £8,035. In the absence of specific objections the Tribunal determines the charges reasonable.

Service charge year 2011-12

155. The Tribunal notes that the application was submitted on the basis of budgeted accounts and final accounts have subsequently been completed.

Buildings Insurance

156. The Tribunal notes the budgeted figure of £81,000 in the Scott Schedule. The Applicants submit the sum of £50,287 should be substituted as the final figure and the annual premium from 14 August 2011 should be £28,950. At the

hearing the Applicants submitted that they were content with the £28,950 premium subject to the challenge on the amount of the commission.

157. The Tribunal determines a 10% deduction from the premium to take account of the excessive commission. The sum disallowed is £5,029 leaving a chargeable figure of £45,258. The apportioned sum for deduction is £32.68.

Refuse Disposal

158. The Tribunal notes the budgeted figure in the Scott Schedule of £9,280 and the actual figure in the accounts. The Respondent submits that ten used bins have been acquired. The Tribunal determines the charge as reasonable.

Managing Agent's Fees and Expenses

159. At the hearing the Applicants submitted that fees of £205 per unit are appropriate. This equates in total to £32,390 for the residential units. The Respondent's fees are stated by the Applicants in the Scott Schedule to be £35,680 with further additional items set out. In the absence of any specific complaints supported by evidence the Tribunal determines the fees reasonable.

Communal window cleaning and gardening

160. The Applicants submit the budgeted costs of £8,000 are excessive. The final accounts show window cleaning at £3,006 and gardening at £962. The Tribunal determines the charges to be reasonable.

Lift maintenance

161. The Applicants submit that lift insurance and maintenance can be obtained more cheaply. At the hearing the Applicants alleged the Respondent's receive a 15% commission on lift insurance which is denied. The budgeted costs are shown as £15,400 and the actual costs shown as £14,719. The Tribunal considered carefully the evidence before it and determine that the Respondents have acted reasonably. The Respondent's charges are therefore determined to be reasonable.

Health and Safety Assessment and Training

162. The Applicants submit that the budgeted figure in the Scott Schedule is £1,700 and the actual figure £1,963. They submit that further assessment is not required. The Tribunal finds no reason for further assessments and determines to disallow the charges of £1,963. The apportioned figure for deduction is £12.76.

General Maintenance

163. The Tribunal notes the budget of £16,500 and the actual of £16,800. On the evidence available the Tribunal determines the charges as reasonable.

Communal Electricity

164. The budget is shown as £37,000 and the actual is £27,847. There is no justifiable challenge. The previous year is £29,321. The Tribunal determines the charge as reasonable.

Caretaker's expenses

165. The budget shows £7,120 and the actual is £6,975. The Tribunal finds the position of caretaker sustainable. The Tribunal determines the charge as reasonable.

Facilities Technician and Communal Cleaning

166. The Tribunal finds that there is little overall change in cost and determines the charges as reasonable.

Determination

167. Taking into account the findings of the Tribunal it is determined as follows

168. **Service charge demanded for the year 2004-5** **£1,021.18**

Deductions as determined above-

Management	53.20	
Window cleaning	42.13	
Cleaning generally	94.93	
Water supply	5.38	
Professional fees	5.55	201.19

Service charge determined payable for the year **£819.99**

169. **Service charge demanded for the year 2005-6** **£1,021.20**

Deductions as determined above-

Insurance	16.80	
Management	64.12	
Window cleaning	57.41	
Cleaning generally	102.85	
General maintenance	22.02	
Professional fees/late filing	06.49	269.69

Service charge determined payable for the year **£751.51**

170. **Service charge demanded for the year 2006-7** **£1,015.02**

Deductions as determined above-

Insurance	29.74	
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Management	40.16	
Cleaning generally	12.60	
General maintenance	10.37	
Communal Electricity	40.35	
Professional fees	06.73	
Late Filing	00.65	140.60
Service charge determined payable for the year		<u>£874.42</u>
171. Service charge demanded for the year 2007-8		£1,418.74
Deductions as determined above-		
Insurance	39.18	
Management	20.90	
Professional fees	14.56	
General maintenance	5.26	
County Court Costs	01.36	
Cleaning and gardening	14.32	95.58
Service charge determined payable for the year		<u>£1,323.16</u>
172. Service charge demanded for the year 2008-9		£1,643.62
Deductions as determined above-		
Insurance	43.49	
Management	21.79	
Professional fees	148.76	
General maintenance	14.66	
Communal Electricity	117.80	
Cleaning	14.39	360.89
Service charge determined payable for the year		<u>£1,282.73</u>
173. Service charge demanded for the year 2009-10		£1,589.50
Deductions as determined above-		
Insurance	47.00	
Management	21.33	
Communal Electricity	156.11	
Late payment	2.97	227.41
Service charge determined payable for the year		<u>£1,362.09</u>
174. Service charge demanded for the year 2010-11		£1,779.50
Deductions as determined above-		
Insurance	46.75	
Management	11.13	
Adjustment of square footage	104.47	
Lift – late payment	0.44	
Risk assessment	4.71	
General Maintenance	2.70	
Late filing	0.98	171.18
Service charge determined payable for the year		<u>£1,608.32</u>

175. Service charge demanded for the year 2011-12		£1,809.74
Deductions as determined above-		
Insurance	32.68	
Health & Safety Testing	12.76	45.44
Service charge determined payable for the year		<u>£1,764.30</u>

Landlord and Tenant Act 1985 section 20C application

176. The Tribunal has accepted a number of the challenges to the service charge which were made by the Applicants. The Tribunal determines that information was not readily made available by the Respondent to the Applicants which made it necessary for the Applicants to make this application to obtain the information they required. Accordingly the Tribunal determines that any costs incurred by the Respondent in connection with the proceedings before the Tribunal shall not be treated as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Roger Healey

Chairman

DATED: 12 March 2013

Appendix I

No.	Item	Cost – Refer to bundle	Tenant's contribution	Complaint	Tenant's alternative proposal	Unreasonable Cost to Tenant	Landlord's response	Tribunal's determination
1.	Buildings Insurance	£18,996	£123.47	<p>Insurance claims were not controlled or managed. 17 claims were listed. 2 under £100, 1 under £200, 2 under £370, 4 under £700. There were only 3 major claims 2 for just over £10,000 and one for £4320. 9 were water claims. Total claims were £32482.</p> <p>No Buildings Valuation carried out to establish Buildings Value. The Building may be several million pounds overvalued.</p> <p>Terrorism Premium totals £4221. It was subsequently not considered to be relevant so why not cancelled at this point as it represents a third of the premium. If cash flow was an issue this would have assisted.</p>	<p>Check all flats, off load the liability to those owners who do not respond.</p> <p>Control claims and do not make claims for small amounts as not cost effective.</p> <p>Carry our valuation to make sure sum insured is correct.</p> <p>Cancel terrorism cover as was subsequently done for following years</p>	<p>£40.35</p> <p>There is a cost impact from excessive claims in following years.</p>	<p>As explained in the Respondents Statement of Case, there have been a number of claims made due to water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore the Respondent is required to provide insurance under the terms of the lease.</p> <p>The Terrorism Premium that forms part of the insurance was decided by the Respondent to be necessary; Clause 5 of the fourth schedule of the Lease clearly states that the property must be insured against 'such other risks as directed by the Lessor'. Therefore although not named, it is common practice to insure against Terrorism.</p>	
2.	Refuse Disposal	£8,605 Respondents File 2 Page 19 Applicants Bundle B51-B52	£55.93	<p>Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990</p>	<p>Euro Bins should have been provided at the expense of the Developer in 2003. Plastic wheelie Bins available free with local Council. £8605 totally avoidable charge</p>	<p>£55.93</p>	<p>The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition, as the Tribunal is aware there is no requirement to provide the cheapest possible services and thus the Respondent submits that the amount requested is reasonable.</p>	
3	Managing Agents Fees	£24,660 Respondents Form 2 P 19 and 20	£160.29	<p>The Management is of a poor standard. No hands on management in place, no supervision on site of staff or contractors, no inspection of works of maintenance. Managing Agent acting in the interests of the Landlord and not in</p>	<p>Local Independent Agent. Tendering should have taken place. Reasonable fees per unit would have been</p>	<p>£60.00 (excessive cost)</p> <p>£100.29 (negative)</p>	<p>The Respondent has provided the 2005-2006 budgets and accounts and supporting invoices to show that a necessary standard of service required under the terms of the Lease was provided. Due to the difficult tenants located at the development, providing high standard of services has been difficult.</p>	

				<p>the interests of all the Leaseholders. Managing Agent appointed by the Developer/Landlord. No Management Agreement in place. No tendering for the contract.</p> <p>Individual service charges were calculated incorrectly for incorrect percentage charges and not demanded in accordance with the lease.</p>	£100.	value of Managing Agent)	<p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary.</p> <p>The 'Percentage issue' is accepted and it has been agreed by the parties to be addressed at a later date.</p> <p>The Lease makes no relevant point on how the demands should be issued merely to which period they should relate and on what day they should be paid, as can be seen at clause 3.(3).</p> <p>The Professional Charges relate to legal fees that were incurred in an attempt to remedy the 'Percentage Issue'. They are due under the terms of the Lease.</p>
4	Window Cleaning	£6481 Respondents File 2 P19	£42.13	No supervision as managing agents were not on site to check. No 26's windows were not cleaned.	Supervision and program of works	£42.13	<p>There is no requirement under the terms of the Lease to supervise a contractor who has been employed to provide a service. If the standard was unacceptable the Applicant should have informed the Respondent so that necessary steps could be taken to remedy the situation. It can be seen from the accounts and invoices that have been supplied, that services were provided.</p>
5	Cleaning	£29210	£189.87	<p>The cleaning was of a poor standard and in fact no evidence of any cleaning carried out. Cleaning work was not supervised by Mainstay. Work carried out by 3 different Cleaning Companies. No efficiency. No evidence of any tenders or quotes. It did appear that the cleaners were employed for cleaning the Landlord's apartments which were let out on a daily serviced basis.</p> <p>Invoices were not disclosed by the Respondents for a Company called Brooks/Phillips Maintenance Limited until August 2012. It can only be assumed that this is because this Company had just been created and operated from a private house in Solihull. This Company were into bankruptcy due to financial irregularities</p>	An assessment is required calculating the precise schedule of cleaning and the necessary time required to carry out the work. Put work out to tender. Supervise and schedule program of works with one reliable reputable company.	£189.87	<p>The Respondent clearly stated in the Budget for 2004-2005 that the state of communal area was of a poor standard due to difficult tenants. As can be seen through the budgets, accounts and various invoices the service was provided and in the context the service that was provided, was to a reasonable standard.</p>

				in 2007.			
6	Lift Maintenance	£18,194 Comprising: £13,625 Maintenance Insurance £61	£118.26	<p>Kone are an expensive service provider. Fully comprehensive maintenance system now required for a new lift.</p> <p>Lift invoices are missing for a value of £9,048.27</p> <p>Included is a missing total invoice for an apparent replacement Lift Motor is missing for £4208.62?</p> <p>Impossible to determine this cost and separate from main supplies</p> <p>Maintenance charges on telephone accounts no necessary</p>	<p>Maintenance contract not necessary</p> <p>This is a lift only 18 months old. This should have been taken up with the manufacturer as a lift motor lasting for such a short period of time would not be fit for purpose</p>	<p>£33.15</p> <p>£58.81</p> <p>(£27.35 is cost of motor)</p> <p>£1.81</p>	<p>The Respondent is required under the terms of the Lease to ensure that the lift is maintained, as the Tribunal is aware there is no requirement to provide the cheapest possible service and thus the Respondent submits that the amount requested is reasonable.</p> <p>The Respondent has provided all invoices that it has in their possession as it appears some maybe missing. The accounts were however based on these invoices and prepared by an accountant and therefore should be deemed as reliable.</p> <p>Maintenance charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the Lease to ensure maintenance of the lifts.</p> <p>The composition of how the electricity bears no relevance on the reasonableness of the service charge.</p>
		Telephone Lines Supplementary File 6					<p>The Respondent is required under the terms of the Lease to ensure that the entry system is maintained, as the Tribunal is aware there is no requirement to provide the cheapest possible service and thus the Respondent submits that the amount requested is reasonable.</p> <p>The Respondent has provided all invoices that it has in their possession as it appears some maybe missing. The accounts were, however, based on these invoices and prepared by an accountant and, therefore, should be deemed as reliable.</p>
7	Landlord's Water Supply	£828 File 2 P19	£5.38	No Invoices produced. Assumed this is for the Landlord's serviced apartments as the water supply for the communal areas is not metered or subsequently charged.	Not a service charge cost	£5.38	This is a communal water supply.

8	General Maintenance File 2 P19	£13,062	£84.90	The accounts produced show that the general repair and maintenance are mostly to correct unfinished or poor building work/installations additional accounts missing for £5,544.06 were produced in August 2012. These showed a Company called Brooks/Phillips from 2 Hardwick Road, Olton, Solihull, West Midlands, were paid £734 per month to carry out maintenance of no specification. Including in this total is £370.26 for a late filing penalty, and undefined debt recovery which are not maintenance costs.	Most work should have been carried out by the Developer under the 2 year building guarantee. Charge works to the Landlord/builder for unfinished or poor work. Use local contractors on an hourly rate charge/ File accounts on file	£42.45	
9	Professional Fees	£854	£5.55	No accounts produced		£5.55	The professional charges relate to legal fees that were incurred in an attempt to remedy the 'Percentage Issue'. They are due under the terms of the Lease.
10	Audit Fees File 6 P 5 P22	£909.09	£5.91	For accounts year ending 2003 and corporation tax advice to Landlord	Should be paid for by the Freeholder. Are in the wrong financial year	£5.91	This is a communal water supply.
11	Water tank treatment File 6 P83	£1,128	£7.33	Contractor travelling from Tamworth in Staffordshire.	Use local contractor at fee of £300	£5.38	The Respondent is required under the terms of the Lease to ensure that the water tank is treated. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable.
12	Landlord Water supply	£828	£5.38	No bill provided. There have been no subsequent water bills so we assume this is not a communal water supply but the Landlord's own		£5.38	This is a communal water supply
13	<u>PAYABLE</u> Y	£1,067.00 (Respondents' supplementary File P19)	Unknown	No demand for this or amount ever received by the Leaseholders. Most invoices are addressed to CIM payments and not to the Ropewalk Court Management Company. The bank accounts do not show any individual payments.	There is no service charge payable for this period by the Applicants.		Terms of the lease are silent with relation to the demand of Service Charges; they are however clear as to how the Services Charge is apportioned in that it amounts to 0.65% of the total costs and expenses incurred by the Managers. The 'Percentage issue' is accepted and it has been agreed by the parties to be addressed at a later date. CIM Limited is a part of the Managing Agents company, the account acted as holding account for the Respondent, who is not Vat registered.

No	Item	Cost- Refer to bundle	Tenant's contribution	Complaint	Tenant's alternative proposal	Un-reasonable Cost to Tenant	Landlord's response	Tribunal's determination
1	Buildings Insurance	£19,189	£124.73	<p>Insurance claims were not controlled or managed. 15 claims were listed. 2 under £500, 5 under £5000, 9 between £5000 and £13000. 13 were water claims.</p> <p>Terrorism Premium totals £6618. It was subsequently not considered to be relevant so why not cancelled at this point as it represents a third of the premium?</p> <p>No Buildings Valuation carried out to establish Buildings Value. The Building may be several million pounds overvalued.</p> <p>Brokers fees too high</p>	<p>Check all flats for repetitive water leak cause (e.g. valve to dishwasher), off load the liability to those owners who do not respond.</p> <p>Control claims and quotes. Pass on information to Leaseholders.</p> <p>Carry out valuation to make sure sum is correct. Cancel terrorism cover as was subsequently done for following years.</p> <p>Take up Build Problems with Builder and NHBC. Specifically roof problems and leaks.</p> <p>Negotiate fixed fee and use local company with access to site. Cut out broker and go direct to company</p>	<p>£40.35</p> <p>There is a cost impact from excessive claims – In following years</p>	<p>As explained in the Respondents Statement of Case, there have been a number of claims made due to water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore the Respondent is required to provide insurance under the terms of the lease.</p> <p>The Terrorism Premium that forms part of the insurance was decided by the Respondent to be necessary; Clause 5 of the fourth schedule of the Lease clearly states that the property must be insured against 'such other risks as directed by the Lessor'. Therefore although not named, it is common practice to insure against Terrorism.</p>	
2	Refuse disposal	£8803 Respondent's File 2 Page 19 Applicants Bundle B51-B52	£55.60 Less cost of new bin £249	Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990	Euro Bins have been provided at the expense of the Developer in 2003. Plastic wheelie Bins available free with local Council. Rent of bins is totally avoidable charge.	£55.60	The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition, as the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount requested is reasonable.	
3	Management and Administration Managing Agents Fees	£24,880 £403 accountancy Total £25063 Respondent's file 2 P 19	£162.90	The site is in chaos because the Management is non-existent. No hands on management in place, no supervision on site of staff or contractors, no inspection of works or maintenance. Managing Agent fails to put basic repairs to the car park gates causing problems with security.	Local Independent Agent. Tendering should have taken place. Reasonable fees per unit would have been £100. Local Agent would have been in touch with the workings of the City of Nottingham and understand the requirements of the site.	£30.00 (excessive cost) £109.40 (negative value of Managing Agent)	The Respondent has provided the 2005-2006 budgets and accounts, along with supporting invoices to show that a necessary standard of service is required under the terms of the Lease was provided. Due to the difficult tenants located at the development, providing high	

		and 20		Tramps are living in the car park and car are abandoned there. Continual emails to agents produce no results. No management agreement in place. No tendering for the contract. Individual service charges were calculated incorrectly for incorrect percentage charges and not demanded in accordance with the Lease. Company Return Late so surcharge fine. No account for professional fees of £898			standard of services has been difficult. There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary. The 'Percentage Issue' is accepted and it has been agreed by the parties to be addressed at a later date. The Lease makes no relevant point on how the demands should be issued merely to which period they should relate and on what day they should be paid, as can be seen at clause 3.(3). The Professional Charges relate to legal fees that were incurred in an attempt to remedy the 'Percentage Issue'. They are due under the terms of the Lease.	
4	Window Cleaning	£8333 Respondent's File File 2 P19	£54.16	No supervision as managing agents were not on site to check. No 26's side elevation windows were never cleaned.	Supervision and program of works	£54.16	There is no requirement under the terms of the Lease to supervise a contractor who has been employed to provide a service. If the standard was unacceptable, the Applicant should have informed the Respondent so that necessary steps could be taken to remedy the situation. It can be seen from the accounts and invoices that have been supplied, that services were provided.	
5	Cleaning	£15823	£102.85	The cleaning was of a poor standard and in fact no evidence of any cleaning carried out in the communal areas. Cleaning work was not supervised by Mainstay. Work	An assessment is required calculating the precise schedule of cleaning and the necessary time required to carry out the work.	£52.85	The Respondent clearly stated in the Budget for 2005-2006 that the state of communal area was of a poor standard due to difficult tenants. As can be seen though the	

				<p>carried to by different Cleaning Companies. No efficiency. No evidence of any tenders or quotes. 1 bill is addressed to William Bancroft Buildings others to CIM Payments</p> <p>Invoices were not disclosed by the Respondents for a Company called Brooks/Phillips Maintenance Limited until August 2012. It can only be assumed that this is because this Company had just been created and operated from a private house in Solihull. This Company went into bankruptcy due to financial irregularities in 2007.</p> <p>Charges for paying late</p>	<p>Put work out to tender. Supervise and schedule program of works with one reliable reputable company.</p> <p>Organise finances and pay on time</p>		<p>budgets, accounts and various invoices the service was provided and in the context the service that was provided, was to a reasonable standard.</p>
6	Lift Maintenance	<p>£13917 Comprising: £7969 Maintenance £1480 Insurance £1589 Telephone lines £2879 lift electricity</p>	£90.46	<p>Kone are an expensive service provider. Fully comprehensive maintenance system not required for a new lift.</p> <p>Lift invoices are missing for a value of £4064</p> <p>Maintenance charges on telephone accounts not necessary</p> <p>Impossible to determine this cost and separate from main supply</p>	<p>Comprehensive Maintenance Contract not necessary</p>	<p>£33.15</p> <p>£26.41</p> <p>£1.81</p>	<p>The Respondent is required under the terms of the Lease to ensure that the lift is maintained, as the Tribunal is aware there is no requirement to provide the cheapest possible service and thus the Respondent submits that the amount requested is reasonable.</p> <p>The Respondent has provided all invoices that it has in their possession, as it appears some may be missing. The accounts were, however, based on these invoices and prepared by an accountant, therefore, should be deemed as reliable.</p> <p>Maintenance charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the lease to ensure maintenance of the lifts.</p> <p>The composition of the electricity charge bears no relevance on the reasonableness of the service charge.</p>

7	Video Door Entrance System File 2 P 19 See list P132 Document produced Aug 2012	£3968	£25.79	£2486.27 was apparently paid as an annual maintenance but only one invoice is produced for £573.54 so cannot be verified. £1912.73 invoices missing. Repairs as well as improvements were an extra cost and carried out by other contractors. Secom were not used for repairs e.g. replacement buttons (Security Gates and Access from Wolverhampton and Brooks/Phillips from Solihull). £425 paid to Brooks/Phillips for improving system and programming fobs even though Brooks/Phillips were paid £734 per month for general maintenance	Annual maintenance with Secom not necessary on relatively new system and therefore no benefit for having in place. Secom based in Birmingham. Use local contractors for maximum efficiency and cost.	£18.92	The Respondent is required under the terms of the Lease to ensure that the entry system is maintained, as the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable. The Respondent has provided all invoices that it has in their possession as it appears some may be missing. The accounts were, however, based on these invoices and were prepared by an accountant. Therefore they should be deemed as reliable.
8	General Maintenance File 2 P 19	£13,935	£90.58	Accounts were missing for £13479 and some were produced in August 2012 but £3387 of value are still not available. Many of the accounts show that the General maintenance is generally not maintenance of the property. Doors and roofs should be maintenance free as they are only a few years old. A Company called Brooks/Phillips from 2 Hardwick Road, Olton, Solihull, West Midlands, were paid £734 per month to carry out maintenance with no agreed scope but then charged extra for specific maintenance. Brooks/Phillips did not provide an adequate service or fulfil the maintenance role. A Company called Gates and Access of 2 Hardwick Road, Olton, Solihull, West Midlands also invoiced for various gate and video door repairs. An out of hour's service was charged for by Mainstay, but there was no specific details and out of hours accounts were then charged again by various contractors.	Use local contractors on specific work. Hands on management of maintenance is required by an experienced trained manager. We agree a total of £1227.77 are reasonable general maintenance bills. Continual repairs to doors, flat roofs should be referred back to the Landlord. Doors and gates should have been secured so access not available to non residents	£82.60	The accounts and the budgets have been made available for the leaseholders inspection, as per the letters that are sent to the leaseholders inviting them to inspect the budget and accounts online Due to the context and the difficult tenants of the development, extra and regular maintenance was, and is needed. The Respondent is under an obligation to maintain the communal areas.
9	Professional Fees	£854 £100	£5.55 £0.65	No accounts produced		£6.20	The accounts and the budgets have been made available for the

	and late filing fee						leaseholders inspection, as per the letters that are sent to the leaseholders inviting them to inspect the budget and accounts online
10	Audit Fees	£1113 File 6 P 5 P	£7.23	Auditor not independent and not voted for at AGM. No tender for contract. £100 charged for late delivery of accounts penalty	Independent Auditor out to tender will do at less than £600 File accounts on time	£3.33	There is no requirement for an independent Auditor to be voted an AGM, Clause 3.(1) states: 'Auditors of the Managers'. There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs.
11	Water tank treatment	£1128 File 6 P93	£7.33	Contractor travelling from Tamworth in Staffordshire.	Use local contractor at fee of £300.	£5.38	The Respondent is required under the terms of the Lease to ensure that the water tank is treated. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable.
2	<u>PAYABILITY</u>		Unknown	It is not clear or stated in any way how the Applicants contribution is calculated. Demands were incorrectly addressed and not in an acceptable format. The Managers have not calculated percentages correctly. Most invoices are addressed to CIM payments and not to the Ropewalk Court Management Company. The bank accounts do not show any individual payments and are in the name of CIM payments Ltd. CIM payments are registered for VAT so would reclaim VAT	Consider if service charges are correctly demanded. Service charges should be clear and easily understandable		Terms of the lease are silent in relation to the demand of service charges. They are, however, clear as to how the services charge is apportioned in that it amounts to 0.65% of the total costs and expenses incurred by the Managers. The 'Percentage issue' is accepted and it has been agreed by the parties to be addressed at a later date. CIM Limited is a part of the Managing Agents company. The account acted as holding account for the Respondent, who is not VAT registered.

No.	Item	Cost - Refer to bundle	Tenant's Contribution	Complaint	Tenant's alternative proposal	Unreasonable Cost to Tenant	Landlord's response	Tribunal's determination
1	Buildings Insurance	£46,763 Respondents File 2 P8	£297.46	<p>Cost increases by a massive £58% on the previous year, 67% on 2004/5 and the excess increased to £2,500. 8 (known) claim incidents were below the £2,500 and therefore not paid out leaving the Leaseholders without protection for this value.</p> <p>Insurance claims were not controlled or managed and according to the Broker £74,238 for 11 claims were settled. This would require extensive damage and surely requires an investigation and management control.</p> <p>Claims were being made through the insurance but should have been made via the NHBC guarantee.</p> <p>No Buildings Valuation carried out to establish Buildings Value. The Building may be several million pounds overvalued.</p> <p>Terrorism Premium totals £1,605 so was cancelled part through the year. It was subsequently not considered to be relevant so why not cancelled before.</p> <p>Brokers fee already too high and now also increases by 58%. The Landlord or another party is also taking a</p>	<p>Check all flats for repetitive water leak cause (e.g. valve to dish washer), off load the liability to those owners who do not respond. Investigate where these are build faults (roof leaks) and suggest individual claims to the NHBC and not to insurance policy. Control claims and quotes. Pass on information to Leaseholders.</p> <p>Take up Build Problems with Builder and NHBC. Specifically roof problems and leaks.</p> <p>Carry out valuation to make sure sum insured is correct.</p> <p>Cancel terrorism cover as was subsequently done for following years.</p> <p>Negotiate fixed fee and use local Broker with access to site or cut out broker and</p>	<p>£167.46</p> <p>(based on a controlled premium of £20,000 allowing for a reasonable index linking and an excess for increased claims)</p>	<p>As explained in the Respondents Statement of Case, there have been a number of claims made due to water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore the Respondent is required to provide insurance under the terms of the lease.</p> <p>The Terrorism Premium that forms part of the insurance was decided by the Respondent to be necessary, Clause 5 of the fourth schedule of the Lease clearly states that the property must be insured against 'such other risks as directed by the</p>	

				commission.	go direct to insurance company.		Lessor'. Therefore although not named, it is common practice to insure against Terrorism.	
2	Refuse Disposal	£9,081. Respondents File 2 P8 Applicants Bundle B51-B52	£63.41	Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990	Euro Bins should have been provided at the expense of the Developer in 2003. Plastic wheelie bins available free with local Council. £9,765 totally avoidable charge	£63.41	The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition. As the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount requested is reasonable.	
3	Managing Agents Fees	£30,897 Respondents File P 13. File 2 (c) P4	£200.83	Fees are charged 6 months in advance and invoiced a month before the start of the 6 month period. Fees increased by over 20% even though the budget notes indicated that fees had increased by the average earning index. Management of the site is a disaster. Brooks/Phillips who were largely in charge of the site were out of control, not carrying out works, fabricating costs and overcharging. Brooks/Phillips went into insolvency and Mainstay had no one on site to carry out their management duties at the Leaseholder's additional expense. Jim McCullum came to the rescue in	Management fees should be charged in accordance with RICS contract recommendations a max of 3 months in advance Local Independent Agent. Tendering should have taken place. Reasonable fees per unit would have been £100. Local Agent supervising works and would have been in touch with the workings of the City of Nottingham and understand the requirements of the site.	£100.84 (excessive cost) £100.00 (negative value of management)	The Respondent has provided the 2005-2006 budgets and accounts and supporting invoices to show that a necessary standard of service required under the terms of the Lease was provided. Due to the difficult tenants located at the development, providing high standard of services has been difficult. There have been no qualifying long term agreements within the meaning set down by	

				<p>the form of Caretaker and Cleaning company called Joan Jules.</p> <p>No terms of written agreement available. Contract was a rolling agreement which terms and costs were dictated by Mainstay.</p> <p>No consultation under Section 20</p>			<p>the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary.</p>
4	Communal Cleaning	£19,383 Respondents File 2, Section (c) P8	£126.00	<p>Poor standard of cleaning generally. 6 different cleaning contractors in 3 years. No tendering, no job specification. Joan Juiles Cleaners are run by Caretaker Jim McCullum. Annual contract is worth £21372 but was issued at a maximum of £16,360.</p> <p>Accounts from JJ are suspect showing a zero VAT but no registration number and no address. CMC carried out communal cleaning at £882.90 per month</p>	Put cleaning contract out to tender for specific works to local contractor. Managing agent to supervise the standard of work on site.	<p>£63.00 (costs were doubled by J.J)</p> <p>£30.00 (poor standard of cleaning)</p>	<p>The Respondent clearly stated in the budget that the state of communal area was of a poor standard due to difficult tenants. As can be seen though the budgets, accounts and various invoices the service was provided and in the context the service that was provided, was to a reasonable standard.</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.</p>
5	Video	£3,563	£23.15	Door entrance system does not need a	Pay for repairs only	£14.28	The Respondent is

	door entry system			maintenance contract. Other suppliers are called out to carry out repairs and not the maintenance company. 5 different companies carry out works to the system. Most are based some distance away.	Repairs cost £1365. Use local Contractor who will become familiar with the system for efficiency and consistency.		required under the terms of the Lease to ensure that the entry system is maintained. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable.	
6	Lift Maintenance	£12,941 Comprising: Maintenance £5,216 Insurance £2,199	£84.00	Local Contractor can provide a better service at cheaper cost Insurance can be obtained cheaper Telephone lines have avoidable maintenance charges saving £262. The cost has doubled since the previous year yet electricity costs have bit although how this figure is calculated is not a credible or necessary exercise.	Kone are an expensive service provider. Fully comprehensive maintenance system not required for a Kone lift only 4 years old. Install autodiallers and use local contractor.	None if autodiallers are installed this year	The Respondent is required under the terms of the Lease to ensure that the lift is maintained. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable. Maintenance charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the lease to ensure maintenance of the lifts.	
7	Caretaker	£6,383	£35.00	Caretaker was employed instead of putting management into place. Unnecessary appointment that only served to cause problems and more expense	Not necessary if properly managed with a local managing agent	£35.00	The Respondent is required under the terms of the Lease to ensure that the entry system is maintained.	

							As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable.
8	General Maintenance	£5,854 plus £10,101 charged to 'Renewals Sinking fund' Total £15m955	£103.71	Much work carried out which should have been caretakers such as key cutting, removing fire extinguishers, purchasing brackets. £121.79 to purchase sack truck. Many contractors were travelling substantial distances to do small jobs e.g. re-hang door £111.04, 48432 worth of invoices missing for repairs taken from sinking fund.	Control over repairs, gates and doors have endless bills. These should not be falling after only 4 years. Use local contractors	£54.80	The accounts and the budgets have been made available for the leaseholders inspection, as per the letters that are sent to the leaseholders inviting them to inspect the budget and accounts online Due to the context and the difficult tenant of the development, extra and regular maintenance was, and is needed. The Respondent is under an obligation to maintain the communal areas.

No	Item	Cost-Refer to bundle	Tenant's contribution	Complaint	Tenant's alternative proposal	Un-reasonabl é Cost to Tenant	Landlord's response	Tribunal 's determinat ion
1	Buildings Insurance	£60,2276 Respondents File 2 P25 Applicants Bundle 24A Section 3 Page 1	£391.79	No Section 20 Consultation Process. Premium not competitive and Brokers fee at 25% is too high. Another commission paid to a third party but our enquiries with the Broker have been referred to Mainstay. Mainstay confirm that they do not receive commission so we assume that a commission is paid to the Landlord or his solicitors. Actual cost was £46,000 in 2011 and cheaper available was obtained in August 2011 at £29,000 Claims history is given as an excuse for the higher premium but policies are available where this is not a factor such as the current one. The excess for a claim was £2,500 making any reasonable claim not viable. The Managing Agents made no attempts to manage the claims and to identify, rectify and warn Tenants and Occupiers of the problems.	More competitive policy available with a local broker to sort out claims and problems available for site visits and recommendations. Fix brokers fee not related to premium as increased premium increases brokers fee. Alternative to approach insurance Company directly. See comments 2011-12	£141.79	As explained in the Respondents Statement of Case, there have been a number of claims due to water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore the Respondent is required to provide insurance under the terms of the Lease There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the insurance has been renewed on a yearly basis.	
2	Refuse Disposal	£10,078 Respondents File 2 P25	£65.51	Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990	Euro Bins should have been provided at the expense of the Developer in 2003. Plastic wheelie	£65.51	The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition,	

		Applicants Bundle B51-B52			Bins available free with local Council. £9,755 totally avoidable charge		as the Tribunal is aware there is no requirement to provide the cheapest possible services and thus the Respondent submits that the amount requested is reasonable.
3	Managing Agents Fees	£32,162 Accountancy fees £433 Total £32,595 Respondents File 2 P25. Matrix Lists P9, P10 and P11	£211.87	<p>Site management is non-existent by the Managing Agent and the newly appointed caretaker is busy supplying work for his newly formed maintenance company and cleaning company.</p> <p>No written agreement in place. No understanding of terms and service between parties. Management allowed to run without end.</p> <p>No consultation under Section 20.</p> <p>The Matrix Lists show that Flats Nos 48, 49, 70, 71, 72, 73, 83, 85, 132, 133, 135, 15, 7 and 165 would all have paid more than £250 for Management. Mainstay's contract was a rolling contract and no contract was in place or the terms negotiated by the managers. Mainstay were allowed to charge as much as they wanted.</p> <p>Fees went up again by 4% and were invoiced 6 months in advance</p>	<p>Local Agents Fees in 2008 were £160 per unit inclusive of VAT. On a large quantity of flats a set fee would be negotiated.</p> <p>Other Managing Agents should have been asked to quote.</p>	£25.00 (overcharge) £150 for mismanagement	<p>The Respondent has provided accounts and supporting invoices to show that a necessary standard of service required under the terms of the Lease was provided.</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.</p> <p>Clause 3.(3) of the Lease requests that service charge is paid every 6 months in advance. Also the increase in managing agent's fees is unsurprising in the context of the development.</p>
4	Professional Fees	£2,204 Respondents File 2 P25	£14.33	No accounts available showing these costs	No evidence that these are related to service charges or maintenance or properly spent.	£14.33	The professional charges relate to legal fees that were incurred in an attempt to remedy the 'Percentage Issue'. They are

							due under the terms of the Lease.
5	Communal Window Cleaning	£2,505 Respondents File 2, P25	£16.28	Work was of a poor standard. No supervision on site. No individual flat window cleaning was carried out	Supervision and put the work out to tender	£16.28	There is no requirement under the terms of the Lease to supervise a contractor who has been employed to provide a service. If the standard was unacceptable, the Applicant should have informed the Respondent so that necessary steps could be taken to remedy the situation. It can be seen from the accounts and invoices that have been supplied that services were provided.
6	Lift Maintenance	£11,273 Comprising £7,142 insurance £2,272 Telephone Lines £1,859	£73.27	Local Contractor can provide a better service at cheaper cost Insurance can be obtained cheaper Telephone lines have avoidable late payment and payment charges. Telephone lines £587 overpaid	Local contractor can provide a better service at cheaper costs £2,160 normal annual cost (2011) price Insurance can be obtained cheaper. Lift insurance and inspection £1387 Pay bills by Direct Debit and cut maintenance charges Cost £1,272 saving £587. Call out costs £2,000 maximum. Total spend £6,819	£28.95	The Respondent is required under the terms of the Lease to ensure that the lift is maintained. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable. Maintenance charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the Lease to ensure maintenance of the lifts. The composition of how the electricity bears no relevance on the reasonableness of the service charge.
7	Remove fibre glass	£5,434	£35.25	Taken from cyclical maintenance sinking fund. This was a new tank that failed before it should and should have been referred to the	Not cyclical maintenance Repaired by manufacturer	£35.32	The Respondent was informed of a water leak that from one of the water tanks, the problem did

				manufacturer. It was reported that the Caretaker delayed in having the problem solved in order that his own Company could benefit. No quotes obtained for works.			not fall under the warranty and, therefore, works had to be undertaken and funds had to be made available from the reserve fund.
8	General Maintenance	£10,943	£71.13	Nearly new development should be relatively maintenance free. Mainstay charges £1,116.28 for unspecified out of hours calls £827 spent on pest control available free from City Council. There is a judgment from the County Court for £4,294 £467.08 for no smoking signage available for government website Bills for checking out leaks	Efficient management to control costs	£27.55	The accounts and budgets have been made available for the leaseholders inspection, as per the letters that are sent to the leaseholders inviting them to inspect the budget and accounts online Due to the context and the difficult tenant of the development, extra and regular maintenance was, and is needed. The Respondent is under an obligation to maintain the communal areas.
9	Communal Electricity	£23,270	£151.31	Accounts are not controlled or terms negotiated. Many lights are left not working on stairs and vulnerable areas and other areas such as lobbies with natural day light and the car park with powerful fluorescents are left on 24/7. There is no control over the electricity usage or costs	Negotiate contracts with one supplier, have all accounts sent monthly and check by reading meters on a regular basis Install PIR systems for entrance lights and car parking. Reduce lighting levels and introduce energy saving lighting where practical. Total bill should be maximum £15,000.00.	£53.81	As explained previously there is a high level of arrears owed to the Respondent by way of service charges. This is particularly relevant when considering the bargaining position when seeking to enter into utility contracts. The poor credit rating has directly resulted in payments of higher premiums. Furthermore, the Respondent has taken steps to minimise the usage by implementing a reduction in the use of lights in well lit arrears.
10	Cleaning and Gardening	£24,479 Respondents File 2	£159.00	Extremely poor standard of cleaning if any was carried out. No supervision. Cleaners not on site for times invoiced. Mainstay are too far away to supervise works and not on site on	Tenders for cleaning. Payment on results not on hourly basis. Local supervision by Managing	£109.00	The Respondent clearly stated in the budget for 2007-2008 that the state of communal area was of a poor standard due to

		Applicant's Photos Bundle	<p>frequent basis.</p> <p>Cleaning Company is owned and managed by the Caretaker. Both also work on another site.</p>	<p>Agents. Better cleaning and gardening could have been achieved at much less cost.</p>	<p>difficult tenants. As can be seen though the budgets, accounts and various invoices the service was provided. In the context the service provided, it was to a reasonable standard.</p>
1 1	Overspend Service Charge Demands	Letter Applicant's Bundle SC18	<p>Letter informing applicants of deficit in connection with Notice Section 20b is incorrect.</p> <p>Service charge demands are incorrect in that they do not comply with the Lease or legislation on service for addresses. They have no breakdown of calculation.</p>	<p>Send out correct and detailed demands at least showing the percentage rate of charges.</p>	<p>The Respondent has satisfied the requirements under Section 20B(2) in that they have been informed that there is service charge due pursuant to the terms of the Lease, thereby putting the Applicant on notice.</p> <p>Terms of the Lease are silent with relation to the demand of service charges, they are however clear as to how the services charge is apportioned in that it amounts to 0.65% of the total costs and expenses incurred by the Managers.</p> <p>The 'Percentage issue' is accepted and it has been agreed by the parties to be addressed at a later date.</p> <p>The failure, with respect, of the Applicant to particularise the point relating to the demands, has resulted in the Respondent being unable to reply. The Respondent in any event maintains that the demands that were served are valid.</p>

Item	Cost- Refer to bundle	Tenant's contribution	Complaint	Tenant's alternative proposal	Un-reasonable Cost to Tenant	Landlord's response	Tribunal's determination
Buildings Insurance	£66,901 Respondents File 2 P3 Applicants Bundle 24A Section 3. P1	£391.79	<p>Premium not competitive and Brokers fee too high at 25. Another commission paid to a third party but our written enquiries with the Broker have been referred to Mainstay. We can therefore only assume that the commission is taken by the Landlord.</p> <p>Actual cost was £46,000 in 2011 and cheaper available was obtained in August 2011 at £28,000.</p> <p>Claims history is given as an excuse for the higher premium but policies are available where this is not a factor such as the current one. The excess for a claim was £2,500 making any reasonable claim not viable. The Managing Agents made no attempt to manage the claims and to identify, rectify and warn Tenants and Occupiers of the problems.</p> <p>See 2010-2011 comments.</p>	More competitive policy available with a local broker to sort out claims and problems available for site visits and recommendations. Set Brokers fee for Brokers' services and no commission paid to third parties.	£209.79	<p>As explained in the Respondents Statement of Case, there have been a number of claims due to water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore the Respondent is required to provide insurance under the terms of the Lease</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the insurance has been renewed on a yearly basis.</p>	

2	Refuse disposal	£9,473 Respondent's File 2 Page 25 Applicants Bundle B51-B52	£61.57	Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990	Euro Bins should have been provided at the expense of the Developer in 2003. Plastic wheelie Bins available free with local Council. This is a totally avoidable charge.	£61.57	The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition. As the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount requested is reasonable.
3	Managing Agents Fees	£33,520 £430 accountancy Total £33,950 Respondent's file 3 P 10 and 4 File 2 Matrix Lists P9, P10 and P11	£220.87	Management is 2 hours away and over 80 miles so the Managing Agent needs someone on site to do their job so have employed a Caretaker to "monitor the development and report any issues to Mainstay and to ensure that Leaseholders/residents are adhering to the terms of the Lease" No consultation under Section 20. The Matrix Lists show that Flats Nos 48, 49, 70, 71, 72, 73, 83, 85, 132, 133, 135, and 165 would all have paid more than £250 for Management. Mainstay's contract was a rolling contract as was confirmed by Bretherton's Solicitors, and no contract has been produced for that period so we can only assume that there was not one in place or we are not wanted to have sign of it. As this contract is continuous and represents more than £100 per flat that is the only amount that can be claimed.	Local Agents Fees in 2008 were £160 per unit inclusive of VAT. on a large quantity of flats a set fee would be negotiated. Other Managing Agents should have been asked to quote.	£20.00 £120 for inadequate management performance	The Respondent has provided accounts and supporting invoices to show that a necessary standard of service required under the terms of the Lease was provided. There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.
4	Professional Fees	£22,886 Respondent	£148.63	No accounts have been submitted to the Applicants showing these costs but	This is not a service charge expense.	£148.63	The professional charges relate to legal

		s File 2 P25 Section E, P6		according to the Notes to the service charge budget Section E this cost is an allowance to cover the costs relating to the Deed of Variation.	Charges should be attributed to the Landlord who's solicitors assumingly made the errors in drawing up the leases. The Tribunal has agreed with the Respondents that they will submit an application to the Tribunal for the Leases to be varied. If this amount was previously spent why has the application to the Tribunal not already been made? These fees have been wasted as no leases have been varied or registered with the Land Registry. Our understanding is that individual leases cannot be varied without application to the LVT or the agreement of all other parties. The Applicants have been penalised because their percentage of service charges are incorrect.		fees that were incurred in an attempt to remedy the 'Percentage Issue'. They are due under the terms of the Lease.	
5	Lift Maintenanc	£14,055 Comprising:	£91.35	Fully comprehensive lift contract not necessary.	Local contractor can provide a better	£47.00	The Respondent is required under the terms	

e	<p>Maintenance £9,955</p> <p>Insurance £2,392</p> <p>Telephone lines £1,708</p>	<p>£1138 is paid to a company to advise on lift maintenance but contract is not changed from how it has always been in place.</p> <p>No bills disclosed for lift insurance for £2,392</p> <p>Telephone bills include extra unnecessary costs for maintenance and late payment charges</p>	<p>service at cheaper cost £2,160 normal annual costs (2011) price</p> <p>Insurance can be obtained cheaper. Lift insurance and inspection £1,387</p> <p>Pay bills by Direct Debit and cut maintenance charges Cost £1,272 saving £436</p> <p>Call out costs £2000 maximum.</p> <p>Telephone lines and calls £1272</p> <p>Total max spend £6,819</p>	<p>of the Lease to ensure that the lift is maintained. As the Tribunal is aware there is no requirement to provide the cheapest possible service and thus the Respondent submits that the amount requested is reasonable.</p> <p>The Respondent has provided all invoices that it has in their possession as it appears some maybe missing. The accounts were, however, based on these invoices and prepared by an accountant. Therefore, should be deemed as reliable.</p> <p>Maintenance charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the Lease to ensure maintenance of the lifts.</p> <p>The composition of how the electricity bears no relevance on the reasonableness of the service charge.</p>		
8	<p>General Maintenance £15,658</p>	<p>£101.77</p>	<p>The majority of general maintenance seems to be for additional charges for</p>	<p>Keep insurance claims separately.</p>	<p>£67.77</p>	<p>The Respondent is required under the terms</p>

e File 2 P 19			meetings and director's expenses, dealing with leaks, repairing the roof and the doors. Most work is done at out of hours rates by Contractors travelling great distances. Contractors are sent from South Staffordshire and similar areas to carry out simple tasks some of which prove to be unnecessary. We do not agree with the majority of general maintenance accounts a few are listed as: £164.50 to check a door which turned out to be working ok. £1,195 for Directors to travel and expenses (no bills) £317 for site meeting with Mainstay and Police £825 Mainstay's meeting in Ireland (no bills) £188 Mainstay's problem with a cooker (no bill) £47 Mainstay's fuse blown inside apartment (no bill) Property Rescue are Company just formed and controlled by the Caretaker Jim McCullum. Have since been struck off and dissolved.	Do not pay Leaseholder's insurance claims as they are not service charge expenses. Insurance Claims paid out for £10,400 B Taylor (Director) £5,600 N Mellon (Landlord) Use local contractors and Managing Agent to make sure work is necessary before sending contractors on wasted journeys. Total amount of invoices for general maintenance submitted totals £5,230.12		of the Lease to ensure that the Management is to an acceptable standard. As the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount requested is reasonable. Furthermore, the Managing Agent on behalf of the Respondent is free to choose the staff that they employ, as above the cheapest is not necessary. Due to the context of the difficult tenants of the development, extra and regular maintenance was, and is needed. The Respondent is under an obligation to maintain the communal areas. The Director's expenses are an ordinary expense to be charged through the Management. They form part of the Audited accounts.
Out of hours	£743 Respondent's File 2, Section E P124	£4.80	Out of hours charged twice. Many invoices still missing		£4.80	
Pest control	£827.20	£5.37	Council will do free of charge		£5.37	There has been a substantial pest problem within the communal

							areas of the development. As such, the Respondent has taken steps to tackle this issue. The Respondent is not sure what is meant by the Applicant in that the Council will do it for free?
7	Gardening	£4,007	£26.00	Cost of gardening has increased by 20% Contract is not put to tender	Negotiate contract	£5.20	There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary
8	Communal Electricity	£33,197	£215.78	The actual cost of power is 29% more than last year and £9,197 more than the budget figure and an 80% rise since 2005. It appears that there is no control of accounts and no evidence of any negotiated contracts. Units charges escalate because rates and contracts are not in place. Daily standing charges are on some meters £3 (!) per day. There are 2 suppliers in place and on one meter the charges seem unusually high. Many lights are left not working on stairs and vulnerable areas and other areas such as lobby's with natural daylight and the car park with power fluorescents are left on 24/7. There is no control and no saving measures put into place.	Negotiate contracts with one supplier, have all accounts sent monthly and check by reading meters on a regular basis. Install PIR systems for entrance lights and car parking. Reduce lighting levels and introduce energy saving lighting where practical.	£130.00 (assuming 30% increase in electricity costs since 2005 the electricity costs should be no more than £17,585. With simple usage saving methods further reduced by 25% i.e., £13,188)	As explained previously there is a high level of arrears owed to the Respondent by way of Service Charges. This is particularly relevant when considering the bargaining position when seeking to enter into utility contracts. The poor credit rating has directly resulted in payments of higher premiums. Furthermore the Respondent has taken steps to minimise the usage by implementing

							a reduction in the use of lights in well lit areas.	
9	Expenditure – water pump maintenance, repair lights and handrails, remedial works to stairway	£9,704	£63.00	These are service charges but costs are taken from "renewals sinking fund". The reserve fund is being used for items deemed to be regular maintenance and general repairs. The reserve fund should be accumulated for major works and regular cyclical maintenance. No bills have been submitted for these items.	These costs should be attributed to the general maintenance costs	£63.00 (funds should be put back into the reserve account)	Due to the problems occurring after the budget was produced, works needed to be undertaken. The reserve fund was used to fund such works that were necessary.	
10	Cleaning	£22,101 Respondent's File 2 Applicants Photos Bundle	£144.24	Extremely poor standard of cleaning if any was carried out. No supervision. Cleaners not on site for times invoiced. Mainstay is too far away to supervise works and not on site on frequent basis. The Cleaners are employed by the Caretaker for his company called Joan Jules (the caretaker's partner). Mainstay invoice in February for cleaning services carried out in March for £1,833. This account is not available	Tenders for cleaning. Payment on results not on hourly basis. Local supervision by Managing Agents. Better cleaning and gardening could have been achieved at half the cost. A reasonable estimate to clean the areas is a maximum of 25 hours per week. The maximum spent on cleaning should be £13,000	£60 (inflated cost) £50 (poor standard)	The Respondent clearly stated in the budget for 2008-2009 that the state of communal area was of a poor standard due to difficult tenants. As can be seen through the budgets, accounts and various invoices the service was provided. In the context, the service that was provided was to a reasonable standard.	
11	Communal Window Cleaning	£2,074 Respondent's File 3 Section E P10	£13.48	No evidence of this work ever being done. No supervision on site. Windows were not cleaned for flat 26.	Supervision and better contractor	£13.48	There is no requirement under the terms of the Lease to supervise a contractor who has been employed to provide a service. If the standard was unacceptable the Applicant should have informed the Respondent so that necessary steps could be taken to remedy the situation. It can be seen	

							from the accounts and invoices that have been supplied, therefore services were provided.	
12	Maintenance Cost Testing of Fire System, Smoke Vent, Emergency Lights, door entry systems, gate	£10,844	£70.48	Maintenance and testing is purchased much the same as an extended guarantee with no evaluation of whether it is effective value. Regrettably repairs are not covered in any of the contracts so a maintenance contract seems not good value for money. Contractors come from a distance which means out of hour's calls costs more and take time to arrive.	Evaluate reason and effectiveness of maintenance. Use local contractors	£42.00	The Respondent is required under the terms of the Lease to ensure that general maintenance and testing of such equipment is undertaken. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus, the Respondent submits that the amount requested is reasonable.	
13	Overspend Service Charge Demands	Letter Applicants bundle SC18		Letter informing applicants of deficit in connection with Notice Section 20b is incorrect Service charge demands are incorrect in that they do not comply with the Lease or legislation on service for addresses. They have no breakdown of calculation.	Send out correct and detailed demands at least showing the percentage rates of charges		The Respondent has satisfied the requirements under Section 20B(2) in that they have been informed that there is Service Charge due pursuant to the terms of the Lease, thereby putting the Applicant on notice. Terms of the lease are silent with relation to the demand of service charges, They are, however, clear as to how the Services Charge is apportioned in that it amounts to 0.65% of the total costs and expenses incurred by	

							<p>the Managers.</p> <p>The 'Percentage issue' is accepted and it has been agreed by the parties to be addressed at a later date.</p> <p>The failure, with respect, of the Applicant to particularise the point relating to the demands, has resulted in the Respondent being unable to reply. The Respondent in any event maintains that the demands that were served are valid.</p>	
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No	Item	Cost- Refer- to bundle	Tenant's contribution	Complaint	Tenant's alternative proposal	Un-reasonable Cost to Tenant	Landlord's response	Tribunal's determination
1	Buildings insurance	£72,157 Respondents File 3 P10 Applicants Bundle 24A Section3 Page 1	£469.00	Insurance Premium and Brokers fee too high and not competitive. Claims history is given as an excuse for the higher premium but cheaper policies are available which ignore claims history. Claims have not been supervised satisfactorily by the Managing Agents to minimise costs. There is a total of £5531.57 of accounts attributed to leaks included in the service charges as general maintenance which appear to have not been subject to any insurance claims. No Claims history has been submitted to the Applicants despite repeated requests. See comments 2010-2012	Better Policy at a premium of £28,000 with less excess and inclusive of Local Brokers fee of £2650. Saving £44,157 See comments 2010 to 2012	£287.00	As explained in the Respondents Statement of Case, there have been a number of claims made due water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore, the Respondent is required to provide insurance under the terms of the Lease There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the insurance has been renewed on a yearly basis.	
2	Refuse Disposal	£9,302 Respondents File 3 P10 Applicants Bundle B51-B52	£60.46	Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990	Euro Bins should have been provided at the expense of the Developer in 2003. Plastic wheelie Bins available free with local Council.	£60.46	The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition. As the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount	

					Nottingham City Council will collect large items free of charge.		requested is reasonable.
3	Managing Agents Fees and expenses	£33,930 in total: £33520 basic £410 accountancy	£220.54	<p>There is a breach of the obligations to the Tenant to provide adequate management to:</p> <ol style="list-style-type: none"> 1. Provide competitive services 2. Comply with good practice 3. Seek consultation 4. Provide transparency 5. Comply with codes of practice <p>The Management Agent provides a poor quality of service at a considerable distance from the property and offloads management tasks at an added expense to the service charges.</p> <p>No consultation under Section 20. Management Agreement is rolling agreement as confirmed in writing by Bretherton Solicitors. There are no written terms of the Management Agreement.</p> <p>The Managing Agents do not arrange meetings for discussion on level of services or disputes. The Company does not invite Shareholders to any meetings Part 18 RICS code.</p> <p>There is no tendering for the contract and the agreement is not in writing as 2.1 RICS code.</p> <p>2.2 The service does not comply with the Supply of Goods and Services Act</p>	<p>Management Fees at the going market rate are £180 per unit including Company Secretary fees, out of hours, accountancy and usual on site management. As a large development this can be negotiated further.</p> <p>Local agent with local knowledge required within easy reach of Nottingham.</p> <p>Consult with Leaseholders about choice of Agent and level of services. RICS cost 16.5 and Part 18.</p> <p>Negotiate terms and contract each year based on requirements and performance.</p> <p>Directors should insist on the standard RICS Management Contract terms as a basic agreement.</p>	<p>£25.00 (over and above usual rates for a large development where there are economies of scale)</p> <p>£120 (poor performance)</p>	<p>The Respondent has provided accounts and supporting invoices to show that a necessary standard of service required under the terms of the Lease was provided.</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.</p> <p>The points raised by the Applicant bear no relevance on the reasonableness of the service charge.</p>

				<p>1982.</p> <p>Company Secretary services fail in not keeping records up to date. Not replying to correspondence and not submitting accounts in time.</p> <p>The Managing Agents submit its own accounts without independent receipts for purchases and services.</p>	<p>The only bills from the Managing Agent should be those as agreed for management</p>		
4	Communal Electricity	<p>£52,163</p> <p>Respondents File 3 P 10.</p> <p>Example Account P396</p> <p>Southern Electric 30p day unit, 20p night unit</p>	<p>£339.00</p>	<p>Electricity costs have more than doubled in a year. This is due to negligent Management because contracts have not been negotiated with suppliers so default unit costs applied. Available daytime rates in 2009 vary from 07.49p to 09.91p. Night units available from 03.51p to 05.43p</p> <p>The electricity accounts provided in the bundle File 3 and missing accounts do not relate to the costs in the year end service charge accounts or the amounts on the list.</p> <p>If a yearly fixed rate unit charge had been negotiated then the cost would have been reduced by £40,000 priced even at 2012 rates.</p> <p>Many lamps were removed from light fittings in an effort to reduce consumption leaving areas vulnerable instead of sensibly managing the lighting and other power sources.</p> <p>No Section 20 consultation made. Electricity supply was long term contract</p>	<p>Negotiate contracts at best rates.</p> <p>Manage power and lighting.</p>	<p>£260.00</p>	<p>As explained previously there is a high level of arrears owed to the Respondent by way of service charges. This is particularly relevant when considering the bargaining position when seeking to enter into utility contracts. The poor credit rating has directly resulted in payments of higher premiums.</p> <p>Furthermore the Respondent has taken steps to minimise the usage by implementing a reduction in the use of lights in well-lit areas.</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.</p>

5	Communal Window Cleaning and gardening	£5,363 Respondents File 3 P 10	£34.86	as was continual. Poor quality service for windows. No supervision or confirmation work done. Definition of gardening duties conflicting with caretaker and cleaning duties.	£4,536	£20	There is no requirement under the terms of the Lease to supervise a contractor who has been employed to provide a service. If the standard was unacceptable the Applicant should have informed the Respondent so that necessary steps could be taken to remedy the situation. It can be seen from the accounts and invoices that have been supplied, services were carried out and the requirement of supervision directly from the respondent would have increased costs.
6	Lift Maintenance	£12,680 Maintenance £8,438 Insurance £2,631 Telephone Lines £1,611	£82.42	Local contractor can provide a better service at cheaper costs Insurance can be obtained cheaper Telephone lines have avoidable additional late payment charges totalling £457 Telephone costs too high because paying payment and late payment charges.	Local Nottingham based contractor can provide a better service at cheaper cost. £5,000 for first years to include autodialler. £2,160 normal annual costs. Lift insurance and inspection £1,387. Lower call out costs £2,000 maximum. Total spend £5187.00. Telephone lines and calls £1,144 Total £6,691 Pay accounts in time and by Direct Debit. Maintenance charge unnecessary and is not deemed necessary	£38.92	The Respondent is required under the terms of the Lease to ensure that the Lift is maintained. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable. Maintenance charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the lease to ensure maintenance of the lifts. The composition of the electricity bears no relevance on the reasonableness of the service charge.

					in new contract in place in 2012.		
					This saving is £467.		
7	General Maintenance	£20,706 File 3 P 10 Other accounts as submitted in File 3 Respondents File 3 P 11 Applicants additional spreadsheet list for Mainstays charges Signage Accounts P22 and P297 Gate fobs P293	£134.59	General Maintenance would be expected to be attributed to the upkeep of the building. The service charge accounts are confusing. In the accounts all manner of items are attributed to this which would be expected to be charged elsewhere: B Taylor (Director) professional charges - £434.75 Director expenses phone calls and Hotel £815.80 Director expenses £202.40 Directors expenses, phone, travel and computer virus £1,277.73 Director expenses £63.35 Phone costs £736.24 Concierge Toilet Facility £100 per year Train invoice from PIN £155.25 Petty Cash £300 Professional fees total £15122.70 according to the invoices submitted yet these are not separately listed Pat Testing - subcontractors should have their own machinery and be liable for this cost £100.68 Capital Purchasers are not necessary as they should be supplied by contractors such as: Vacuum machine £107.53 Janitorial trolley Spot Washer Vacuum cleaner	Use local contracts. The total maintenance accounts total only £10781.43, £5531.57 of that are attributed to leaks. Professional (Solicitor) Fees which total must be listed separately in the accounts and not grouped in with maintenance. Pest control for rats is available free from Nottingham City Council	£64.51	The Respondent is required under the terms of the Lease to ensure that the Management is to an acceptable standard, as the Tribunal is aware there is no requirement to provide the cheapest possible services and thus the Respondent submits that the amount requested is reasonable. Furthermore, the Managing Agent on behalf of the Respondent is free to choose the staff that they employ, as above the cheapest is not necessary. Due to the context and the difficult tenants of the development, extra and regular maintenance was, and is needed. The Respondent is under an obligation to maintain the communal areas. The Directors expenses are an ordinary expense to be charged through the Management. They form part of the Audited accounts. The various items that have been purchased are an expense that has been incurred as part of general management of the development. Again what is purchased is discretion of the Respondent and should not impact on the reasonableness of the service charge.

	<p>Respondents Bundle File 3 P15 to P19 File 3 Accounts</p>	<p>Catering Um Hand Towel £399.23 Henry Hoover 3 grit bins £822.82 (contested as unwise expense as insurance companies were recommending that this could accept liability and also impossible to have the man power to continually grit all external pathways).</p> <p>It has taken 7 years and numerous reports for compliance with safety regulations for signage. There are 2 accounts presented by Mainstay totalling £851.51 for safety signage yet there is an absence of signs in some areas. There are 84 signs for "fire doors keep shut" on one bill and 80 on another. Their bill is not backed up by independent purchase accounts.</p> <p>There is an account for £1438.20 for 20 gate fobs costing £71.91 each. In 2009 they were available on the internet for less than £25 each. In 2012 they are available singularly at £28 each and less in quantity. These fobs are therefore being sold to the Management Company at a profit to Mainstay of £938.20 on just this one account. Some accounts are missing in the Respondent's bundle. Random contractors are paid to program the fobs and the charge made back to the service charges.</p> <p>Mainstay submit random accounts with no evidence that the expense has occurred. For instance Out of Hours</p>			<p>This bears no relevance on the reasonableness of the Service Charge.</p> <p>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</p>
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				fees. Mainstay submit accounts for cleaning services and door fobs but there is no evidence of any agreement being made for these services to be provided by them.			individual codes on site	
8	Communal cleaning and Caretaker	£31,395	£204.00	Employed by Mainstay who "mark up" their costs. This amount should be disclosed separately. RICS Code 2.6 See comments 2011-12	Cleaning, and on site routine maintenance to be allocated to reliable local Cleaning Contractor with precise job specification at market rates and competitive quotations having own equipment or employed Cleaner or Caretaker to be charged at actual waged costs. Maximum reasonable cleaning cost £15,000 including small repairs	£106.56	The Respondent clearly stated in the Budget for 2009-2010 that the state of communal area was of a poor standard due to difficult tenants. As can be seen through the budgets, accounts and various invoices the service was provided and in the context the service that was provided was to a reasonable standard.	
9	Water testing and Pumps	£1,295	£8.41	Local contractor cost less. £650 at 2012 costs		£4.19	The Respondent clearly stated in the budget for 2009-2010 that the state of communal area was of a poor standard due to difficult tenants. As can be seen through the budgets, accounts and various invoices the service was provided and in the context the service that was provided was to a reasonable standard.	
10	Maintenance cost testing of fire system.	£10,844	£70.48	Maintenance and testing is purchased much the same as an extended guarantee with no evaluation of whether it is effective value. Regrettably repairs	Evaluate reason and effectiveness of maintenance.	£42.00	The Respondent is required under the terms of the Lease to ensure that general maintenance and testing of such equipment is undertaken. As the	

<p>smoke vent, emergency lights, door entry system, gates, water pumps etc</p>			<p>are not covered in any of the contracts so a maintenance contract seems not good value for money. Contractors come from a distance which means out of hours calls cost more and take time to arrive</p>	<p>Use local contractors</p>		<p>Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable.</p>
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No	Item	Cost- Refer to bundle	Tenant's contribution	Complaint	Tenant's alternative proposal	Un-reasonable Cost to Tenant	Landlord's response	Tribunal's determination
1	Buildings insurance	<p>£71,934</p> <p>Respondent's File 4 P6, 12</p> <p>Applicants Bundle 24A Section3 Page 1</p> <p>Applicants bundle appointment of Manager W1, 2 and 3</p>	£467.71	<p>Premium not competitive at £71,934.</p> <ol style="list-style-type: none"> Brokers fees too high and a fixed fee should have been negotiated. A percentage commission gives no incentive to obtain cheaper quotes. Local Brokers would have agreed a fixed fee and been available for help and advice. Actual cost was £46,000 according to Aviva Cheaper was available elsewhere as obtained in August 2011 at £25,000. Claims history is not a relevant excuse for the higher premium as policies are negotiable where this is not a factor. The policy put into force Aug 2011 is not based on claim history but allows a discount return for no claims. Management of claims and effective site management would have avoided most claims. Mainstay disclosed in their reply to our application that the Broker was paid 25% but that leaves an amount of £14,434 paid to the insurance Broker that is not identified and not accounted for. We can only assume that this amount has gone to the Landlord 	<p>Better Policy at a premium of £28,000 with less excess and inclusive of Local Brokers fee of £2650. Saving £43,934</p> <p>See comments Year 2011 – 2012</p> <p>Disclosure of recipients of commissions</p> <p>Insurance Valuation in</p>	£285.71	<p>As explained in the Respondents Statement of Case, there have been a number of claims made due water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore the Respondent is required to provide insurance under the terms of the lease.</p> <p>Many of the points raised by the Applicant are not relevance to the Reasonableness of the Service Charge.</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the insurance has been renewed on a yearly basis.</p>	

				<p>or his solicitors who contribute nothing to the insurance process.</p> <p>6. We estimate that the building may be several million pounds over insured</p> <p>7. Arrangements should be made to pay the premium without added credit charge and interest payments.</p> <p>8. No consultation process</p>	accordance with the RICS code.			
2	Refuse Disposal	£9,755 Respondent's File 4 P2 Applicants Bundle B51-B52	£63.41	Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990	Euro Bins should have been provided at the expense of the Developer in 2003. Plastic wheelie Bins available free with local Council. £9755 totally avoidable charge	£63.41	The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition, as the Tribunal is aware there is no requirement to provide the cheapest possible services and thus the Respondent submits that the amount requested is reasonable.	
3	Managing Agents Fees and expenses	£36,317 Respondent's File 4 P13	£236.06	<p>Agents Invoices Fees £34,250 basic £1,625 sec fees £442 accountancy</p> <p>There is a breach of the obligations to the Tenant to provide adequate management to:</p> <ol style="list-style-type: none"> 1. Provide competitive services 2. Comply with good practice 3. Seek consultation 4. Provide transparency 5. Comply with codes of practice <p>The Management Agent provides a poor quality of service at a considerable distance from the property and offloads</p>	<p>Management Fees at the going market rate are £180 per unit including Company Secretary fees, out of hours, accountancy and usual on site management</p> <p>Local agent with local knowledge required within easy reach of Nottingham and would negotiate fees downward.</p> <p>Competent,</p>	£30.00 (over and above usual rates for a large development where there are economies of scale)	<p>The Respondent has provided the 2010-2011 accounts and supporting invoices to show that a necessary standard of service required under the terms of the Lease was provided.</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.</p>	

				<p>management tasks at an added expense to the Service Charges.</p> <p>No consultation under Section 20, Management Agreement is rolling agreement as confirmed in writing by Breitherton' Solicitors. There are no written terms of the Management Agreement.</p> <p>There are no meetings arranged between the Managing Agents and the Leaseholders over services provided. The Company does not invite Shareholders to any meetings Part 18 RICS code.</p> <p>There is no tendering for the contract and the agreement is not in writing as 2.1 RICS code.</p> <p>2.2 The service does not comply with the Supply of Goods and Services Act 1982.</p> <p>Company Secretary services fall in not keeping records up to date. Not replying to correspondence and not submitting accounts in time.</p>	<p>experienced efficient manager required.</p> <p>Appoint efficient company secretary</p>	<p>£120 (poor performance)</p>	<p>The points raised by the Applicant bear no relevance on the reasonableness of the service charge.</p>
4	Adjustment re square footage	£16,073 Respondents File 4 P13	£104.47	<p>Not a service charge or maintenance fee and therefore not payable under the Lease.</p> <p>We verbally have asked at a meeting with the Managing Agent and 2 Directors that this be explained. No person was able to provide an explanation at the time and although advised it would be investigated but still none received.</p>		£104.47	<p>The professional charges relate to legal fees that were incurred in an attempt to remedy the 'Percentage Issue'. They are due under the terms of the Lease.</p> <p>The points raised by the Applicant bear no relevance on the reasonableness of the service charge.</p>

5	Communal Window Cleaning and gardening	£4,536 Respondent's File 4 P12	£29.48	Poor quality service. No supervision or definition of role, gardening duties conflicting with caretaker and cleaning role. No competitive tendering. Same Contractor used since 2004.	Gardening to be incorporated into cleaning or caretaker role and competitive quotations obtained for effective window cleaner	£15.00	There is no requirement under the terms of the Lease to supervise a contractor who has been employed to provide a service. If the standard was unacceptable the Applicant should have informed the Respondent so that necessary steps could be taken to remedy the situation. It can be seen from the accounts and invoices that have been supplied, services were carried out and the requirement of supervision directly from the respondent would have increased costs.
6	Lift Maintenance	£14,931 Comprising Maintenance £10,730 Insurance £2,199 Telephone £2,002	£97.05	Local contractor can provide a better service at cheaper costs. ILECS Limited are paid £2326 for lift administration which is part of the duties of the managing agent. Lift inspection insurance can be obtained cheaper. Mainstay bulk buys at a competitive rate but they do not pass on the savings but actually inflate the cost. Certificates in the name of Mainstay and not Ropewalk Court. Commissions are not disclosed as RICS management code. Telephone lines have avoidable late payment maintenance and payment charges.	Local Nottingham based contractor can provide a better service at cheaper cost. (£5,000 for first years to include autodialler). £2,160 normal annual costs. Lift insurance and inspection £1,387. Total spend £3,547.00. 2 accounts have been supplied for repairs totalling £119.84 Change supplier, pay bills on time. Remove maintenance charge and is not deemed necessary in new contract. This would save £800	£65	The Respondent is required under the terms of the Lease to ensure that the lift is maintained. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable. The Respondent has provided all invoices that it has in their possession as it appears some maybe missing. The accounts were, however, based on these invoices and prepared by an accountant and therefore should be deemed as reliable. Maintenance charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the lease to ensure maintenance of the lifts.

					Total spend – Maintenance of lift £2160 Inspection insurance £1387 Call out repairs £119.84 Telephone £1268 Total £4935 Saving £9996		
7	Risk Assessment	£1,454	£9.45	<ol style="list-style-type: none"> 1. Fire Risk and H&S Reports required only from time to time or when significant alterations to the building are carried out. 2. Ideally carried out by a competent independent person. Mainstay's report state no mention of Assessors ability or experience or qualifications 3. Faults identified on previous reports are repeated but no progress made on rectification 4. Mainstay are overcharging and creating new reports rather than delivering the results on the existing 	Use local contractors. Cost of £540 quoted from Chartered professional qualified experienced risk assessor	£9.45	<p>The points raised by the Applicant bear no relevance on the reasonableness of the service charge.</p> <p>Risk Assessments are an essential part of management on a development, let alone a development of this size and type of tenants. The Respondent submits that the service provided was both necessary and reasonable.</p>
8	General Maintenance	£29,332 £18822 plus £10,510 from reserve funds File 4 P15	£190.66	<p>Contractors are travelling from Birmingham and West Midlands to do small jobs. Some call outs are unnecessary and find no fault. Roof repairs total more than £4,000 and there is clearly a massive problem with a 8 year old roof..</p> <p>5 minute jobs to adjust closures cost £110. There are many accounts for visits by contractors which are clearly not</p>	Costs can be halved by using local contractors and having competent caretaker/handyman doing trivial repairs while on site	£95.33	<p>The Respondent is required under the terms of the Lease to ensure that the Management is to an acceptable standard. As the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount requested is reasonable.</p> <p>Furthermore, the Managing Agent</p>

		<p>File 4 P418 – P516 P59</p>	<p>general maintenance. For instance:</p> <ol style="list-style-type: none"> 1. Directors expenses total £4846.02 but not all are substantiated with receipts 2. Mainstay's Court Attendance £951.75 3. Late filing penalty £150.00 4. Construct kitchen and toilet £4393 for which there is no permission. An application for building regulations is made in retrospect but still not granted 5. £1778.37 is spent maintaining the Cleaner and toilet facilities including: Pens, pens and pens Labels Mobile phone Stamps Still water Baby oil Rich tea biscuits Coffee, tea, sugar Pedal bin 2 first aid kits 2 step ladders Clip board 6. Mainstay's accounts for out of hours calls 7. Query £350 Design and Build invoice dated 1.6.2009. Company director is Jacqueline Butchart who is partner of Jim McCullum. Company is struck off and dissolved. <p>There are 5 different electrical companies employed to carry out at Ropewalk Court</p>		<p>on behalf of the Respondent is free to choose the staff that they employ, as above the cheapest is not necessary.</p> <p>Due to the context of the difficult tenants of the development, extra and regular maintenance was, and is needed. The Respondent is under an obligation to maintain the communal areas.</p> <p>The Director's expenses are an ordinary expense to be charged through the Management. They form part of the Audited accounts.</p> <p>The various items listed by the Applicant are those that would ordinarily be found as expenses. The Respondent maintains that the service charge requested is reasonable.</p>
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9	Communal Electricity	£29,321	£190.59	<p>Lighting on in all areas 24/7. Storage heating unnecessary in communal areas except for exceptionally cold weather.</p> <p>Contracts with suppliers not negotiated so that default rates are charged. Unit rates are charged out at 30p day and 20p night with a standing charge of 89p per day.</p> <p>Haven rates are 0953p and 0.603p Better rates were available last year through British Gas so even cheaper rates could have been agreed.</p> <p>Based on new negotiated rates the cost of the supply based on last year's consumption and with cost savings using timing switches and PIRs would be £12,065</p>	Negotiate new contracts annually for best rates	£112.16	<p>As explained previously there is a high level of arrears owed to the Respondent by way of service charges. This is particularly relevant when considering the bargaining position when seeking to enter into utility contracts. The poor credit rating has directly resulted in payments of higher premiums.</p> <p>Furthermore the Respondent has taken steps to minimise the usage by implementing a reduction in the use of lights in well-lit areas.</p>
10	Additional cyclical contribution	<p>£4,799 Resp File 4, P13</p> <p>Applicants Bundle A4. Copy Lease Section 3 Clause 4</p>	£31.19	Amounts collected in excess of the service charges must be redistributed to Tenant in accordance with the Lease	Credit returned to Tenant	£31.19	Clause 3.(4) clearly states that Managers can decide to hold an additional reserve if there is an overpayment.
11	Communal cleaning and Caretaker	£33,200 £26250 and £6950	£215.80	<p>Employed by Mainstay who "mark up" their costs. This amount should be disclosed separately. RICS Code 2.6</p> <p>See comments 2011-12</p>	Cleaning, and on site routine maintenance to be allocated to reliable local Cleaning Contractor with precise job specification at market rates and competitive quotations having own equipment or employed Cleaner or Caretaker to be	£118.30	The Respondent clearly stated in the Budget for 2010-2011 that the state of communal area was of a poor standard due to difficult tenants. As can be seen though the budgets, accounts and various invoices the service was provided and in the context the service that was provided was to a reasonable standard.

					charged at actual waged costs. Maximum reasonable cleaning costs £15,000 including small repairs		
12	Health and Safety Assessments and Testing	£1,100 Not necessary on an annual basis	£7.15	<ol style="list-style-type: none"> 1. Fire risk and H&S Reports required only from time to time or when significant alterations to the building are carried out. 2. Ideally carried out by a competent independent person. Mainstay's report state no mention of Assessors ability or experience or qualifications. 3. The reports are not updated with rectification details. 4. Mainstay are overcharging and creating new reports rather than delivering the results on the existing. 5. Faults shown on previous reports are repeated but no progress is made on rectification 	Use local independent contractor for an impartial professional report. Cost of £540 quoted from Chartered professional qualified experienced risk assessor Update reports and rectify all health and safety breaches	£7.15	<p>The points raised by the Applicant bear no relevance on the reasonableness of the service charge.</p> <p>Health and Safety Assessment are an essential part of management on a development, let alone a development of this size and type of tenants. The Respondent submits that the service provided was both necessary and reasonable.</p>
13	Maintenance cost testing of fire system, smoke vent, emergency lights, door entry systems, gates, water pumps etc	£12,910 File 5 H, P6	£83.85	Maintenance and testing is purchased much the same as an extended guarantee with no evaluation or whether it is effective value. Regrettably repairs are not covered in any of the contracts so a maintenance contract seems not good value for money. Contractors used come from a distance.	Evaluate reason and effectiveness of maintenance. Use local contractors	£42.00	The Respondent is required under the terms of the Lease to ensure that general maintenance and testing of such equipment is undertaken. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable.

Item	Cost- Refer to bundle	Tenant's contribution	Complaint	Tenant's alternative proposal	Un-reasonable Cost to Tenant	Landlord's response	Tribunal's determination
1 Buildings insurance	£81,010 Respondents File 5 P6 and P196 Applicants (Change of Manager) Bundle No 3 P1 1-3 attached to schedule	£526.50	<p>Insurance Premium budgeted at £81,000 although new cover put into place on 14th August 2011 for £28,950 (premium is £25,000). This was after the Applicants pointed out cheaper and better cover was available.</p> <p>The same Broker in Glasgow is always used. The contract is continuous and should be subject to section 20 consultation as Brokers fee is more than £100 to some Leaseholders</p> <p>The Brokers fee of 25% has never been challenged or negotiated. The Broker has no incentive to obtain a cheaper premium as their fees are based on the full premium.</p> <p>Blaming excessive claims is not a valid excuse for high premiums. Claims should be managed rationalised and avoided by a competent Managing Agent</p> <p>There is estimation that the building may be several million pounds over insured. There has been no Buildings Valuation for 10 years.</p> <p>The management agents do not send out a copy of the insurance schedule and their on line page shows the Aviva</p>	<p>Better Policy at a premium of £28,000 with less excess and inclusive of Local Brokers fee of £2650 is available.</p> <p>A local Broker will charge less and be on hand for problems. Put contract out to several Brokers.</p> <p>Arrangements should be made to pay the premium without credit charge and interest. Consideration should have been given to not using a broker at all or agreeing a set fee.</p> <p>This area of insurance is very competitive and therefore good rates can be obtained by shopping around.</p> <p>Tender for an RICS Building Insurance valuation which insurance companies will recognise for three years and alleviates the possibility of over or under insurance RICS code 15.16</p> <p>Keep internet records up to date.</p>	£344.50	<p>As explained in the Respondents Statement of Case, there have been a number of claims made due water damage. By their very nature they are neither foreseeable nor proximate, hence why the Respondent is insured against such events. Off-loading liability would negate the need for insurance. Furthermore the Respondent is required to provide insurance under the terms of the lease.</p> <p>Many of the points raised by the Applicant are not relevance to the Reasonableness of the Service Charge.</p> <p>There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no</p>	

				Policy expiring 14 th August 2011. RICS Code 15.11			consultation process has been necessary as the insurance has been renewed on a yearly basis. The various issues raised by the Applicant do not bear any relevance on the reasonableness of the service charge.
2	Refuse Disposal	<p>£9,280 Respondents File 5 P6 Applicants Bundle B51-B52</p> <p>Attached 4 and 5</p>	£60.32	<p>Charges totally unreasonable charge. Bin hire can be totally avoided by purchasing Euro bins. The Local Authority have a duty to collect waste under the Environmental Protection Act 1990 and will provide general bins free of charge.</p> <p>Over a period of 10 years the Managers have wasted more than £80,000 worth of Leaseholder's funds and have still not made an attempt to buy Euro bins. In 2002 a Euro bin could be purchased for less than £200 each.</p> <p>The present bins are left with the lids open inviting vermin into the car park and for fire risk.</p>	<p>Euro Bins should have been provided at the expense of the Developer in 2002. Plastic wheelie Bins available free with local Council. Enough funds available to buy Euro bins from Reserve Fund.</p> <p>Close lids</p>	£60.32	The Respondent is required under the terms of the Lease to ensure that the refuse areas are in a good and proper condition. As the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount requested is reasonable.
3	Managing Agents Fees and expenses	<p>Total £37,010</p> <p>£35,680 basic £880 company sec fees £450 accountancy</p> <p>Respond</p>	£240.57	<p>There is a breach of the obligations to the Tenant to provide adequate management to:</p> <ol style="list-style-type: none"> 1. Provide competitive services 2. Comply with good practice 3. Seek consultation 4. Provide transparency 5. Comply with codes of practice <p>The Management Agent provides a poor quality of service at a considerable distance from the property. In order to compensate for the distance the</p>	<p>Management Fees at the going market rate are £180 per unit including Company Secretary fees, out of hours, accountancy and usual on site management. As a large development this can be negotiated further.</p>	<p>£35.00 (over and above usual rates for a large development where there are economies of scale</p> <p>£120 (poor performan</p>	<p>The Respondent has provided the 2011-2012 budgets and supporting invoices to show that a necessary standard of service required under the terms of the Lease was provided.</p> <p>There have been no qualifying long term agreements within the meaning set down by the</p>

<p>ents File 5 P6 Sample accounts : File 5 P18 Mainstay Account</p> <p>£27,66.6 6 File 5 P37 Mainstay Account Fobs £2,643.51 File 6 P97 Mainstay Accountancy Fee £441.62 File 5 P14 Mainstay fees £17,435 File 5 Various – P28, P82, P83, P145, P146, P162, P160, P191, P192, P193, P194, P195.</p>		<p>Managing Agent employs its own contractors on site to "monitor the development and report any issues to Mainstay". These contractors along with their considerable expenses are charged back to the Leaseholder as "Maintenance Costs"</p> <p>No consultation under Section 20: L&T Act 1985 and Section 151 of the C&L Reform Act 2002 Agreement is worth more than £100 to any one Leaseholder</p> <p>Management Agreement is not renewed or negotiated each year and therefore rolling contract. It has never been put out to tender.</p> <p>The Management Agreement dated 1 April 2011 is the first acknowledged written agreement. It was created after this case was submitted to the Tribunal. At a meeting in November 2011 it was confirmed that an agreement was not in place. It was subsequently signed by a Director of the Management Company. It is undated, signature not identified or witnessed, and each page not initialed or identified that it has been read. It has been since confirmed verbally that the Directors had not read, understood or discussed the agreement in detail.</p> <p>Management Fees are collected more than 6 months in advance and with a 6 months' notice period contrary to recommended terms of an RICS Management Agreement</p>	<p>Local Agent with local knowledge required within easy reach of Nottingham</p> <p>Consult with Leaseholders about choice of Agent and level of services. RICS code 16.5 and Part 18</p> <p>Negotiate terms and contract each year based on requirements and performance.</p> <p>Directors should insist on the standard RICS Management Contract terms as a basic agreement.</p> <p>Directors should be aware of all Agent's costs and charges.</p> <p>Fees should be collected a maximum of 3 months in advance.</p> <p>Cleaning and on site routine maintenance to be allocated to reliable local specialist with precise job specification at market rates and competitive quotations having own equipment</p> <p>Petty Cash toilet rolls and stationery items are part of the management fees are not service charges. Refer to general maintenance.</p>	<p>ce)</p>	<p>Landlord and tenants 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.</p> <p>The various items listed by the Applicant are those that would ordinarily be found as expenses. The Respondent maintains that the Service Charge requested is reasonable.</p> <p>The points raised by the Applicant bear no relevance on the reasonableness of the service charge.</p>
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		P213, P214, P216, P225, P229 Respondents Bundle section 24, P254 Applicants 24A bundle		<p>Mainstay's invoices total more than £78,000:</p> <p>£35,680 basic £880 company sec fees £450 accountancy £770 out of hours £1,454 fire risk report £7,120 caretaker £26,900 cleaning £1700 H&S £404 pressure washer £90 FAT testing £237.71 light buzzing £82 key safe won't open etc etc</p> <p>The Managing Agents makes administration charges to Leaseholders for late payments and retains these receipts to themselves.</p> <p>The Managing Agents takes every opportunity to "load" expenses to their advantage. For instance the cost of key fobs are 3 or 4 times the actual cost.</p> <p>Management is always reactive and not proactive. Preventative work seems never carried out. Work only done once problem has occurred</p>	<p>Offset these fees against service charges made</p> <p>All Managing agents commissions and other sources of income should be declares RICS Code 2.6</p> <p>Carry out routine general maintenance of guttering, lights, carpets etc to avoid problems and large bills</p>		
4	Communal Window Cleaning and gardening	£8,000 Respondents File 5 P6	£52.00	<p>No supervision or definition of role conflicting with caretaker and cleaning role. Cost increased from £4,536 to £8,000. Increase of more than 75%. Cleaner and Caretaker undertake this role.</p> <p>The window cleaning contract has never been put to tender and has been the same contractor throughout</p>	<p>Gardening to be incorporated into cleaning or caretaker role and competitive quotations obtained for effective window cleaner</p>	£30.00	<p>The Respondent clearly stated in the Budget for 2011-2012 that the state of communal area was of a poor standard due to difficult tenants. As can be seen though the budgets, accounts and various invoices the service was provided and in the</p>

						context the service that was provided was to a reasonable standard.
Lift Maintenance	<p>£15,400 Respondents File 5 P6 £15,400 comprising £2,500 insurance Applicants Bundle Section 24A</p> <p>Resp. File 5 P133</p> <p>Attached 10</p> <p>Telephone Lines £1800 Applicants bundle section 3 P4</p>	£100.10	<p>Lift insurance can be obtained cheaper. Advisor on lifts unnecessary cost – Managing Agents Responsibility to negotiate and control contracts.</p> <p>Mainstay appear to have a block contract with Zurich but there are no invoices from Zurich, the invoices come from Mainstay who seem to have an affiliation with Oval. The insurance examination certificate is in the name of Mainstay and not Ropewalk Court Management.</p> <p>At last the telephone contract appears to have been renegotiated and are no longer paying extra charges but bills are addressed to Hocleys Garage Limited who are located in West Bridgford and who moved from Derby Road in 1999. The average quarterly line cost is £53.</p> <p>Telephone lines have taken since 2004 to cut out unnecessary costs such as maintenance charges and late payment fees.</p>	<p>Local Nottingham based contractor can provide a better service at cheaper cost. £5,000 for first years to include autodialler. £2,160 normal annual costs. Lift insurance and inspection £1,387. Lower call out costs say £2,000 maximum. Total spend £5187.00.</p> <p>Pay accounts on time and by direct debit. Maintenance charge unnecessary and is not deemed necessary in new contract.</p> <p>Telephone total costs £1,275 saving</p> <p>Total spend - Maintenance of lift £2,160 Inspection insurance £1,387 Call outs (based on excessive problems) £2,000 max. Telephone £1,275</p> <p>Total £6,822</p> <p>Saving £8585</p>	£65.75	<p>The Respondent is required under the terms of the Lease to ensure that the Lift is maintained. As the Tribunal is aware there is no requirement to provide the cheapest possible service. Thus the Respondent submits that the amount requested is reasonable.</p> <p>The Respondent has provided all invoices that it has in their possession as it appears some may be missing. The accounts were however based on these invoices and prepared by an accountant and therefore should be deemed as reliable.</p> <p>Maintenance Charges to ensure the reliability of the emergency phone lines are clearly necessary as they form part of the requirement under the terms of the lease to ensure maintenance of the lifts.</p> <p>Furthermore, the Managing Agent on behalf of the Respondent is free to choose the staff that they employ, as above the</p>

							cheapest is not necessary.
	Health and Safety Assessments and Testing	£1,700 Not necessary on an annual basis Respondents File 5,1,P104 to 203	£11.05	A Mainstay invoice: 1. Fire Risk and H&S Reports required only from time to time or when significant alterations to the building are carried out. 2. Ideally carried out by a competent independent person. Mainstay's reports state no mention of Assessors ability or experience or qualifications. 3. The reports are not updated with rectification details. 4. Mainstay are overcharging and creating new reports rather than delivering the results on the existing. 5. Faults shown on previous reports are repeated but no progress is made on rectification.	Use local independent contractor for an impartial professional report. Cost of £540 quoted from Chartered professional qualified experienced risk assessor. Update reports and rectify all health and safety breaches	£11.05	The points raised by the Applicant bear no relevance on the reasonableness of the service charge. Health and Safety Assessment are an essential part of management on a development, let alone a development of this size and type of tenants. The Respondent submits that the service provided was both necessary and reasonable.
7	General Maintenance	£16,500 Missing doc file 2010-11 P118, P120, P121 Roof repairs – P127, P128, P133, P140, P146, P166, P281, P282,	£107.25	Contactors are travelling from Birmingham and West Midlands to do small jobs e.g. to adjust door closer (5 minute job) £111.00. Some call outs are unnecessary and find no fault. Contractors are required to pay a fee to Mainstay in order to be accredited. Many invoices are for problems that should have been solved 10 years ago with the original builders but have been left to fester such as the roof, doors, faults to structure and leaks Report requisitioned from Ellis about roof leaks yet no action taken	Costs can be halved by using local contractors and having competent cleaner/handyman doing trivial repairs while on site. £8,000 maximum on site of this size which has been well managed. NHBC claim should have been made some while ago to address some of the issues with regard to the roof and structural problems. Make individual applications to the NHBC.	£55.25	The Respondent is required under the terms of the Lease to ensure that the Management is to an acceptable standard. As the Tribunal is aware there is no requirement to provide the cheapest possible services. Thus the Respondent submits that the amount requested is reasonable. Furthermore, the Managing Agent on behalf of the Respondent is free to choose the staff that they employ, as above the cheapest is not

		<p>P280, Attached 6 6a and 7</p> <p>Missing doc file P124, P129, P130, 131, P134, P136, P137, P138, P139, P148, P149, P151, 152, 153, 154, P155, P159, P163, P164, P165, P168, P169, P170</p> <p>P277, P278, P279</p> <p>P109</p>		<p>Mainstay are submitting accounts unexplained for out of hours calls and general maintenance without any evidence that works were carried out.</p> <p>There are invoices for non-maintenance items such as stationery, toilet rolls, mobile telephone calls, coffee, tea, sugar, air freshener and toilet blues.</p> <p>There are invoices for the installation of a kitchen and toilet facilities. These are not service charges or general maintenance but an unnecessary spend on facilities not suited to the building. No planning permission has been approved for the installation of these facilities.</p> <p>There are amounts listed for £1,087 for Directors expenses but no invoices</p>	<p>External Contractors not requiring these facilities</p> <p>Not general maintenance</p>	<p>Due to the context of the difficult tenants of the development, extra and regular maintenance was, and is needed. The Respondent is under an obligation to maintain the communal areas.</p> <p>The various items listed by the Applicant are those that would ordinarily be found as expenses. The Respondent maintains that the service charge requested is reasonable.</p> <p>The Director's expenses are an ordinary expense to be charged through the Management. They form part of the Audited accounts.</p>
8	Communal Electricity	<p>£37,000</p> <p>Respondents File 4</p> <p>Attached</p>	£240.50	<p>Lighting on in all areas 24/7. Storage heating unnecessary in communal areas except for exceptional weather. Contracts with suppliers not negotiated so that default rates are charged.</p> <p>Based on the better new negotiated rates the cost of the supply based on</p>	<p>Investigate low voltage lighting, motion detectors and money saving devices. Consider environmental issues of wasting energy.</p> <p>Negotiate and review new rates annually. Mainstay must disclose</p>	<p>£143.00</p> <p>As explained previously there is a high level of arrears owed to the Respondent by way of service charges. This is particularly relevant when considering the bargaining position when</p>

		8 and 9 Missing invoices file 2011-12 P161		<p>last year's consumption would be an estimated £15,000. Better rates were available last year through British Gas so even cheaper could have been agreed.</p> <p>It is widely acknowledged that Haven Power pay a commission back to large Managing Agents and therefore it is not in the interests of the Agent to renegotiate terms or change suppliers. Haven are charging to Ropewalk Court rates higher than obtainable through other suppliers such as British Gas and even Haven themselves.</p> <p>Quote from C Cairns Building Maintenance Limited: <i>"There is a time clock in the distribution board – this works but has been overridden if you had this working as the system should it will give a 50% electricity saving. The problems on site need to be looked into as there are a lot of lights not working"</i></p>	referral or quantity discounts payable to them by Haven.		<p>contracts. The negotiating has directly resulted in payments of higher premiums.</p> <p>Furthermore the Respondent has taken steps to minimise the usage by implementing a reduction in the use of lights in well-lit areas.</p>
9	Caretaker's Expenses	£7,120 Respondents File 5 P3 P6	£46.28	<p>Job function unclear and in conflict with managing agent, cleaner and gardening. According to job specification includes making sure Leaseholders and residents adhere to terms of the Lease and advise on any action, monitor development and report issues to Mainstay</p>	<p>Identify what job structure is required, incorporate this function in cleaning and specified general maintenance.</p> <p>Ensure Mainstay carry out "making sure Leaseholders and residents adhere to terms of the Lease and advice on any action, monitor development"</p>	£46.28	<p>The Lease allows for a Caretaker to be employed by the Respondent. The job specification and fact that the Caretaker is to ensure that Leaseholders adhere to the terms of the Lease have no impact on the reasonableness of the service charge. Put simply the Caretaker is an agent of the Respondent and is to ensure that the management of the development is carried out under the terms of the Lease, this includes</p>

						the Lease.	
	Facilities Technician incl communal cleaning	£26,900 Respondents File 5 P6 Appointment of Manager File Annex 6 Missing invoices file 2011-2012 P 6	£174.85	The job specification is extensive and is developed considerably from the cleaning that this position replaced. It appears that in many instances it is replacing the Managing Agents role e.g. deal with day to day enquiries and problems, log repairs, oversee, monitor the efficiency and performance of contractors, perform an overseeing role in car parking, site are, security and general site "policing" etc Cleaning invoice from Mainstay for cleaning services April to Nov 11	Tender for specific cleaning role. Greater management of site, performance and contractors by Managing Agents. There is too much responsibility off loaded to a cleaner who is not an experienced and trained manager Maximum cleaning cost £15,000 including small repairs. No explanation for charge.	£77.35	The Facilities Technician is an agent of the Management Company, their job specification does not have an impact on the reasonableness of the Service Charge. If anything the attempt to minimise costs to the leaseholders can only suggest that the Service Charge is reasonable. There have been no qualifying long term agreements within the meaning set down by the Landlord and Tenant Act 1985 and the service charge (Consultation Requirements) (England) Regs 2003. As such, no consultation process has been necessary as the management has been renewed on a yearly basis.
11.	Maintenance Cost Testing of Fire System, Smoke Vent, emergency Lights,	£12,900.00 File 5 H P 6	£83.85	Maintenance and testing is purchased much the same as an extended guarantee with no evaluation of whether it is effective value. Regrettably repairs are not covered in any of the contracts so a maintenance contract seems not good value for money. Contractors used come from a distance	Evaluate Reason and effectiveness of maintenance. Use local contractors.	£42.00	

	door entry systems, gate, water pumps etc							
12	Professional fee	£1572.16	£1572.16	This charge has never been demanded but added to a statement dated the 12 th October 2011. There is no explanation as to this cost		£1572.16		
13	NOTES Final accounts	Missing docs P270		As final accounts are not available the figures have been taken from the budget. RICS code of practice recommends accounts be available within 6 months An amount totalling £33,981 is itemised for professional fees and adjustment to square footage. This is not part of the service charges. Another £1572.16 is added to the Applicant's statement without explanation.	With up to date accounts systems financial statements should be available almost immediately.			