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**HM Courts
& Tribunals
Service**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
EASTERN REGION
LEASEHOLD VALUATION TRIBUNAL**

Case No : CAM/26UD/LSC/2012/0115

Properties : Nos 5,10,15,16,17&19 Watson's Yard, Hadham Road,
Bishops Stortford, Herts CM23 2WH

Applicant : Hadham Road Management Company

Respondents : Mr Darren Orbart (Nos 5,10,15,16 & 19)
Mrs Carol Orbart (No 17)

Inspection : 18th January 2013

Hearing : 18th January 2013

Determination : 18th January 2013

Tribunal : Mr S Reeder (lawyer chair)
Mr Stephen E Moll FRICS (valuer member)
Mr David W Cox (lay member)

Decision : Determination of the reasonableness of service
charges and administration charges.

DECISION

The preliminary issues

- (1) The respondents' request for a stay of the applications pending the conclusion of the county court proceedings is refused.
- (2) The respondents' request to dismiss the applications due to the applicant's technical error of giving an incorrect given name for Mr Orbart is refused.

(3) The respondents' request for an adjournment due to non-attendance is refused.

The service & administration charges which are reasonable and payable

2007/08

Accountancy	£689 for the estate (£32.81 per flat)
Cleaning & gardening	£3,725 (£177.38)
Repairs & maintenance	£3,459 (£164.71)
Telephone	£383 (£18.24)
Heating & lighting	£4,515 (£215)
Insurance	£4,771 (£227.19)
Water	£1,771 (£84.33)
Sundry expenses	£269 (£12.81)
Management fees	£5,405 (£257)

2011

Accountancy	£975 (£46.43)
Cleaning & gardening	£4,608 (£219.43)
Repairs & maintenance	£8,715 (£415)
Telephone	£652 (£31.05)
Heating & lighting	£2,282 (£108.67)
Roller shutter maintenance	£922 (£43.90)
Insurance	£7,346 (£349.81)
Water	£3,435 (£163.57)
Sundry expenses	£465 (£22.14)
Management fees	£6,040 (£287.62)

2012

HRMC has presented an estimated budget of costs for 2012 and so there are no final actual costs for the Tribunal to consider. Those estimates appear to be unremarkable when considered against the earlier years determined. The proposed substantial cost (£6,900) of roller shutter maintenance appears to be reasonable in the circumstances.

The costs of these Tribunal proceedings

The applicant seeks a determination that it is entitled to recover the costs of these Tribunal proceedings. Clause 3(4) and/or paragraphs 4, 6 and 10 of the Fourth Schedule are relied upon. The Tribunal finds that the lease does provide for the recovery of such costs as service charges by operation of those clauses.

REASONS

The application & issues

1. This is an application by the Hadham Road Management Company ('HRMC') in respect of 5, 10, 15, 16 & 19 Watson's Yard, Hadham Road, Bishops Stortford, Hertfordshire CM23 2WH. The respondent lessee in respect of 5, 10, 15, 16 & 19 is Mr Darren Orbart. The respondent lessee in respect of 17 is his wife Mrs Carol Orbart. The application was received in September 2012. The Tribunal issued a Directions Order on 2nd October 2012. The properties were inspected, hearing held, and decision made on 18th January 2013. The respondents did not attend the inspection or hearing. Nor did they provide a statement to the Tribunal identifying which of the service/administration charge items were disputed and why, despite being directed to do so by paragraph 3 of the Order dated 2nd October 2012. On 16th November 2012, 28th November 2012, 14th December 2012 and 9th January 2012 Mr Orbart wrote to the Tribunal claiming that he had sent a 'Reply' document at the beginning of November 2012. No such document was received by the Tribunal office. HRMC states they received no such document. By letter dated 3rd December 2012 the Tribunal directed that the respondents serve and file a 'further' copy of that document immediately. No such document has been received by the Tribunal. No 'further' copy of any such document was provided by Mr Orbart with any of his correspondence. HRMC states that it has received no such document. The Tribunal concludes that no such document has been filed and served.

2. The application seeks a determination as to the reasonableness of the service and administration charges for the accounting years 2007/8, 2011 & 2012. The component charges arising in one or more of these accounting years charges comprise –
 - (i) Roller shutter maintenance
 - (ii) Repairs & maintenance
 - (iii) Cleaning & gardening
 - (iv) Heating & lighting
 - (v) Telephone
 - (vi) Water
 - (vii) Insurance
 - (viii) Sundry expenses
 - (ix) Accountancy fees
 - (x) Company secretarial fees
 - (xi) Surveyors fees
 - (xii) Management fees

3. The applicant, HRMC is the lessee management company which manages the 21 residential properties which make up the Watson's Yard development. Hurford Salvi Carr ('HSC') are the managing agent appointed by them. There is a long standing dispute between HRMC and the respondents relating to service and administration charges. In January 2011 the Tribunal dealt with a similar application between

these parties relating to the service/administration charges in the 2009 accounting year (CAM/26UD/LSC/2010/0081).

4. In November 2008 HRMC issued a number of claims in the county court alleging unpaid service charges in respect of each of the respondents' flats. In December 2008 those claims (8BT04891, 8BT04892, 8BT04893, 8BT04894, 8BT04895 & 8BT04896) were consolidated. In May 2009 they were stayed by consent until 21st July 2009 for the parties to attempt a mediated settlement. No settlement was reached. No further steps were taken in that litigation. On 21st September 2012 HSC issued this application to the Tribunal on behalf of HRMC and stated that it is intended as a precursor to continuing the county court claims and/or forfeiture proceedings against the respondents.
5. HSC states that Flat 5 was re-possessed in late 2012, and that the mortgagee in possession settled the service and administration charges outstanding. HSC further state that they have recently been contacted by mortgagees in possession of Flats 15 and 19. HRMC seeks determination of the reasonableness of the service and administration charges so that it can seek undertakings to discharge the same from the mortgagee prior to disposal, and seek to enforce sums in the county court proceedings which have been determined to be the reasonable service charges payable by this Tribunal.
6. In the circumstances, and having particular regard to the absence of the respondents, the Tribunal carefully considered each of the component service and administration charges to determine whether it is payable and reasonable.
7. The inspection was carried out by the valuer and lay member as the Chair was delayed due to the extreme weather conditions. The Chair and the valuer member have previously inspected Watson's Yard in October 2010. It is a small development of 21 residential flats with a rear high level garden, a communal patio area, and a secure basement car park. The water penetration into the basement car park which was observed to be causing problems in October 2010 is now managed and accommodated by a purpose made water collection and drainage system which appears to have alleviated the pooling and dampness.

The hearing

8. The applicant has been represented by Mr Jim Thornton (managing director of HSC) and Miss Fiona Harris (property manager for HSC) who have both patiently answered the Tribunal's many questions about the management of Watson's Yard. The respondents have not attended but have sent correspondence of various dates to the Tribunal written and signed by Mr Orbart. As with the previous Tribunal proceedings Mr Orbart acts on behalf of himself and, in relation to Flat 17, Mrs Orbart.

Determination of the preliminary issues

9. In the correspondence received the respondents have made a number of applications which the Tribunal has dealt with as preliminary issues and decided as follows.

Stay pending the conclusion of the county court proceedings

10. By letters dated 26th November 2012 and 9th January 2013 the respondents seek an order that these Tribunal proceedings be stayed for the parties to seek a mediated settlement as provided for in the county court proceedings. It is said that it will be an abuse of process to proceed with this application before the county court proceedings are concluded.
11. The county court proceedings were issued by the applicant in November 2008. The amalgamated claims were stayed by consent in May 2009. By that court order they were stayed until 21st July 2009 for the parties to attempt a mediated settlement. No settlement was reached. On 21st September 2012 HSC issued this application to the Tribunal. Both parties appear to blame the other for not properly engaging in any attempt to mediate. What is clear is that no mediation has ever taken place and that no further substantive steps have been taken in that litigation.
12. As a matter of principle, neither the county court proceedings themselves nor the order made in those proceedings in May 2009 is a bar to this application or to the jurisdiction of this Tribunal to determine this application. The scope of the jurisdiction of this Tribunal is clearly stated in *section 27A(7) of the Landlord & Tenant Act 1985*: the jurisdiction conferred on this Tribunal is in addition to the jurisdiction of a court in respect of the matter in dispute. We note that the order of District Judge Pearce dated 21st May 2009 states that at the end of the stay the parties should explain "why the LVT is not the appropriate forum". Neither party appears to have proffered any such explanation.
13. In considering the merits of the request for a stay the Tribunal has regard to *Regulation 15 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003* and to all of the circumstances of the case and arguments pursued by the parties.
14. Whilst the county court proceedings may relate to the 2007/08 service charge year they cannot relate to the 2011 or 2012 accounting years. Watson's Yard is a small development managed by the lessees themselves via HRMC. Adequate services and maintenance can only be funded if service charges are paid. It follows that it is in the interests of both parties for the disputed service charges to be determined without further delay. Any delays or other failings by either party in the county court proceedings fall to be considered by that court if and when those proceedings are returned to court. There is no merit in the request for a stay. Such a stay would cause inconvenience and prejudice to

HRMC who seeks to recover service charges, some of which are long overdue, from the respondents and/or from the mortgagees in possession in advance of any disposal of the properties.

15. The respondents' request for a stay of the application is refused.

Dismissal due to technical error in the application

16. By letter dated 9th January 2013 and earlier email the respondents seek an order dismissing the application on what Mr Orbart refers to as "the technical point" that it cites his given name as "Daniel" rather than the correct "Darren".

17. *Regulation 2 of the 2003 Procedure Regulations* requires that the name and address of the respondent and the address of the relevant properties are included in the application. This, taken with the other requirements of the Regulations and information required on the pro forma application on *Form LVT4*, combine to ensure that a respondent is notified of the application, of the properties it relates to, and of the nature and detail of the application so that they are in a position to adequately respond to the application. It is not disputed that the respondents have received the application together with the Directions order and subsequent letters from the Tribunal. They have responded to the same by correspondence. They know well that the application relates to them and to their Watson's Yard properties. The Tribunal is satisfied that they received the Directions Order made on 2nd October 2012 which makes abundantly clear the issues to be determined and their role in the determination process. They have positively decided to take no effective part in that process. The error in misnaming Mr Orbart is of no practical effect. It certainly does not result in any substantive or procedural unfairness to either respondent.

18. The respondents' request to dismiss the applications for technical error is refused.

Adjournment due to non-attendance

19. By letter dated 9th January 2013 Mr Orbart stated that the respondents will not be attending this hearing and have instructed solicitors "to take this matter up with the court". In a subsequent email shortly before the hearing Mr Orbart notified the Tribunal that neither respondent were able to attend this hearing because both had an appointment today which they must attend. The nature of that appointment is identified but with a request that it not be notified to the applicant as it is a personal and private matter. The Tribunal has treated this position as a request for an adjournment of this hearing from both respondents.

20. The respondents have had proper and adequate notice of this hearing and the requirements of Regulation 14 of the 2003 Procedure Regulations have been complied with. The type of appointment referred

to may be re-arranged with reasonable effort and in any event does not last a whole day whereas the Tribunal has convened an inspection and hearing and set aside a full day for the same at public expense. In relation to the merits of the request the Tribunal has regard to Regulation 15 of the 2003 Procedure Regulations and repeats its earlier findings. The Tribunal has decided that it is appropriate to exercise the power provided by Regulation 14(8) of those Regulations and proceed with the hearing in the absence of the respondents.

21. The respondents' request for an adjournment due to non-attendance is refused.

Determination of the reasonable service charges recoverable

22. In the absence of the respondents the Tribunal has carefully considered each of the component service and administration charges to determine whether it is payable and reasonable. We have had the benefit of a comprehensive and well ordered bundle of documents provided by HSC for HRMC which has allowed us to analyse the leases, service charge accounts, notices and requests for payment, expenditure and fee documents, and correspondence between the parties.

The leases

23. The relevant leases are in similar terms. Clause 1(1.19) provides that the management company (of which the tenant is a member) has been formed for the purposes of inter alia maintaining and managing the development and the provision of services there for the benefit of the tenant. Clause 1(1.9) provides that the tenant shall contribute towards the costs of maintenance management and the provision of services in accordance with the Fourth Schedule. Clause 1(1.9) defines the 'service charge' as the costs expenses and outgoings and matters mentioned in the Fourth Schedule of the lease. Paragraph 7 of the Particulars defines the service charge percentage for each flat as 4.82 of the total expenditure incurred. It appears that the managing agents have applied a pro-rata reduction to 4.707 to each flat to reflect the fact that the aggregate proportions arising from the lease term exceeds 100%. Clause 5 requires the tenant to pay his/her due proportion of the total service charge. It provides for the landlord to serve an estimated service charge demand so soon as practicable after the start of the service charge year. It provides for the estimated charge to be paid by instalments on January 1st and July 1st. It provides for the final service charge to be certificated by the accountants as soon as is practicable after the end of the service charge year. Clause 1(1.7) and Part IV of the First Schedule define the 'maintained parts' which are the responsibility of the landlord and management company. Clause 1(1.8) defines the service installations to include sewers drains channels pipes water courses gutters mains wires cables conduits aerials tanks and soakaways. Clause 7 sets out the management company covenants to

maintain repair and renew the maintained parts, maintain installations and arrange insurance etc. Part IV of the First Schedule defines the maintained parts. The Fourth Schedule defines the costs, expenses, outgoings and matters in respect of which the tenant is to contribute. This includes the Clause 7 costs, fees and disbursements paid to managing agents,

The relevant law – service charges

24. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. The relevant sections are set out below (adopting the numbering of the Act).

18. Meaning of 'service charge' and 'relevant costs'

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
 - (a) Which is payable , directly or indirectly, for services, repairs, maintenance, improvements¹ or insurance or the landlord's costs of management, and
 - (b) The whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose –
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19. Limitation of service charges : reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
 - (a) only to the extent that they are reasonable incurred, and
 - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard ;

and the amount payable shall be limited accordingly.

¹ 'Improvements' were added to the definition of 'service charge' by the Commonhold & Leasehold Reform Act 2002

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

Section 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 court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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.
- (2) The application shall be made –
 - (a)
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

27A. Liability to pay service charges : jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which is payable.

The relevant law – administration charges

25. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine the Payability and reasonableness of administration charges. The relevant sections are set out below (adopting the numbering of the Act).

Section 1 - meaning of "administration charge"

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly--
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither--

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Sections 2 & 3 - reasonableness of administration charges

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that--

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be--

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Section 5 - liability to pay administration charges

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

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

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which--

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination--

- (a) in a particular manner, or
- (b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Service charges for accounting year 2007/08

26. This accounting year takes account of the transfer of management from Defries & Associates to Hurford Salvi Carr and the accumulated

account prepared by the latter to the accounting year end on 31st December 2008. An analysis of the sums due and the payments made by the respondents is provided in a schedule at pages 26-31 of the bundle. They have paid the first 3 months of 2008 with the remaining 9 months remaining unpaid. A breakdown of the individual service and administration charge items is provided at page 239. We have considered each individually.

Accountancy fees

27. Darrel Palmer at Messrs Ashby & Horner deals with all of Hurford Salvi Carr's ('HSC') regional client accounts and is actually provided with desk space in the HSC office. Mr Thornton and Miss Harris both state that this volume work arrangement provides their clients with economies of scale such that his fees are 10-20% less than the accountancy fees typically seen when they take on new accounts with existing accountants. The charge of £689 is unremarkable given the scale and nature of this development and the resulting accounts. The Tribunal determines that the charge is reasonable and payable.

Cleaning & gardening

28. These services are carried out by the same contractor Messrs S & R who are, in effect, a 'one man band'. He works on a number of blocks managed by HSC and provides a basic service which is demand led by Miss Harris and occupiers. He visits when asked to and charges per visit. Miss Harris visits monthly to assess what is needed and any work done by him. She states that this is presently a "cheap and cheerful" service and that whilst the lessees would like a more regular and comprehensive service they accept that the service charge income is not presently available to fund such a service.

Repairs & maintenance

29. The individual repair and maintenance items are listed in the computer generated ledger included in the bundle. They are all responsive items as HRMC have no accrued service charge fund to apply to planned and/or cyclical maintenance. Miss Harris explains that HSC has a list of tried, tested and approved contractors which it uses to carry out works. Given the lack of service charge funds available at Watson's Yard she uses the "budget end" of that list to select suitable contractors for each job. She then checks completion and quality and only 'signs off' on payment when she is satisfied with the work done. The items described and the relevant costs are unremarkable. The respondents have not raised any detailed challenge to the same. The sum charged of £3, 459 is reasonable and payable.

Telephone

30. The sum of £383 (£18.24 per flat) relates to the estate wide entry-phone system seen on inspection. Miss Harris explains that the size of HSC's management estate provides purchasing power and she has been able to obtain a package that provides good value for money. The respondents have not raised any detailed challenge to the same. The sum charged is reasonable and payable.

Heating & lighting

31. The sum of £4,515 charged is the actual cost charged by the utility providers. It relates to the communal parts. Miss Harris explains that HSC uses a broker annually to identify providers for that year and so ensures value for money. The respondents have not raised any detailed challenge to the same. The sum charged is reasonable and payable.

Insurance

32. The provision of insurance is reserved to the freeholder under the provisions of the lease and HRMC received an annual invoice which they recharge as a service charge. Miss Harris and Mr Thornton describe the resulting charges as "unsurprising" and have not had cause for concern over value for money. Mr Moll shares that view on the sum of £4,771 charged. The respondents have not raised any detailed challenge to the same. They did not challenge this item before the previous Tribunal. The sum charged is reasonable and payable.

Water

33. The sum of £1,771 charged is the actual cost charged by the utility provider and relates to the lessees supplies. The respondents have not raised any detailed challenge to the same. The sum charged is reasonable and payable.

Sundry expenses

34. Mr Thornton states that this sum of £269 is written into the accounts by the accountant and comprises the company secretarial fee and the directors' liability insurance for HRMC. The respondents have not raised any detailed challenge to the same. The sum charged is reasonable and payable.

Management fee

35. The charge of £5,405 is based on a fixed fee per unit over the 21 units under management at Watson's Yard. It equates to approximately £257 per unit. Mr Thornton states that this fee takes account of the fact that Watson's Yard was presented to them by HRMC as a "problem block" and has proved so, requiring more management time due to the

respondents' reluctance to pay the service charges demanded, the lack of a reliable timely service charge income and accruing fund, and the resulting juggling of maintenance needs with available funds. Miss Harris speaks of her direct management role and states that HSC have "earned every penny" each year. She refers to the work done to identify and acceptable and affordable remedy to the water ingress into the basement car park which has now been achieved. She refers to the difficulties involved in managing the expectations of lessees who pay their service charges promptly and want to see repairs carried out promptly when others do not pay and so the accruing fund is insufficient to carry out all repairs timeously. She states her belief that HSC's efforts have gone some way to safeguarded marketability and saleability of the flats in Watsons Yard at a time when the market is volatile.

36. The Tribunal accept all of the points made for HSC. The fee charged is reasonable in the present circumstances which remain a "problem block". Once the present service charge arrears and prompt payment problems have been remedied the Tribunal would expect to see this charge reduce to reflect that new circumstance.

Service charges for accounting year 2011

37. The Tribunal has again carefully considered each of the relevant costs recharged in the same way as it has for 2007/8, and has compared the differing sums arising in the two years. The individual items have again been listed in a computer generated ledger included in the hearing bundle. A selection of the invoices/vouchers behind those costs have been included in that bundle and seen by the Tribunal. The charge of £922 for roller shutter maintenance found in this year but not in 2007/8 has been explained in detail by Miss Harris. It was clearly essential to ensure that the lessees' vehicular access to the secure basement car park. The respondents have not raised any detailed challenge to the same. The sum charged in respect of accountancy (£975), cleaning & gardening (£4,608), repairs & maintenance (£8,715), telephone (£652), heating & lighting (£2,282), roller shutter maintenance (£922), insurance (£7,346), water (£3,435), sundry expenses (£465), and management fees (£6,040) are reasonable and are payable.

Service charges for accounting year 2012

38. It is understandable that HRMC have requested that the Tribunal determine the charges for 2012 in order to seek to avoid any further delays in the respondents paying them as demanded in accordance with their leases, but with regret it is unable to do so. HRMC has

presented a general estimated budget of costs for 2012 and there are as yet no final actual costs for the Tribunal to consider. Those estimates appear to be unremarkable when considered against the earlier years determined. The proposed substantial cost (£6,900) of roller shutter maintenance appears to be reasonable in the circumstances as a major repair of the type proposed should avoid the wasted cost of ongoing responsive repairs whenever the shutter fails.

The costs of the Tribunal proceedings

39. The applicant seeks a determination that it is entitled to recover the costs of these Tribunal proceedings. Clause 3(4) and/or paragraphs 4, 6 and 10 of the Fourth Schedule are relied upon. The Tribunal finds that the lease does provide for the recovery of such costs as service charges by operation of those clauses.
40. Mr Thornton is clear that HRMC has pursued these proceedings to obtain a determination of the service charges as a precursor to the service of forfeiture proceedings and to reach agreement with mortgagees in possession where relevant. Miss Harris states that the respondents did nothing to progress matters after the previous Tribunal decision (CAM/26UD/LSC/2010/0081) made in January 2011 despite being urged to do so in that decision. This position appears to be borne out by the correspondence between the parties included in the last section of the hearing bundle before us.
41. In the circumstances set out earlier in this Decision the respondents have elected to take no substantive part in these proceedings. They have not made an application for an order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding HRMC from re-charging any of the costs of these proceedings to them as a service charge. Such an order was made in their favour with some reluctance in January 2011.
42. Having regard to all of the circumstances this Tribunal is satisfied that it would not be just and equitable to make such an order in this occasion.

Stephen Reeder
Lawyer Chair

22nd April 2013

Caution

The Tribunal inspected the communal parts of the buildings and grounds referred to solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the building and grounds are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the same.