11592

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UE/LSC/2015/0054**
Property	:	**3, 5 & 10 Regent Gate, Crown Street, Kettering, Northamptonshire NN16 8JD**
Applicant	:	**Powell & Co Property (Brighton) Limited**
Representative	:	**Mr Sean Powell, Director accompanied by Mr R J T Eisler**
Respondent	:	**Mr D P Patel, Flats 5 and 10** **Mr U P Patel, Flat 3**
Representative	:	**Mr D P Patel & Mr U P Patel**
Type of Application	:	**Determination under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Miss M Krisko BSc (Est Man) FRICS** **Mr D S Reeve**
Date and venue of Hearing	:	**Kettering Magistrates Court on 15th February 2016**
Date of Decision	:	**6th April 2016**

DECISION

DECISION

The Tribunal determines that the sums payable in respect of the service charge year ending March 2014 are as shown on the schedule annexed hereto.

BACKGROUND

1. There has been a history of litigation involving flats at Regent Gate and Kings Walk at Crown Street in Kettering now in the ownership of Powell and Co (Brighton) Limited, the Applicants in this case. A number of leaseholders have been involved in proceedings including applications before this Tribunal and before the County Court.
2. This matter came before us on 15th February 2016 as a result of an order made by the County Court at Northampton on 9th June 2015 in action between the Applicant and the Respondents in claim number 3QZ51990. The order was made by the District Judge transferring the case to this Tribunal for the sole purpose of hearing and determining the reasonableness and payability of service charge incurred for the year to 24th March 2014.
3. Directions were subsequently issued by this Tribunal which confirm that the three Court claims that have been transferred had been consolidated with the claim involving Flat 5 being the lead case.
4. Prior to the hearing of the matter we received a substantial bundle of papers prepared by the Applicants. These included correspondence passing between the Applicants and the County Council and Kettering Borough Council relating to the property. We were also supplied with copies of the correspondence passing between the Applicants and solicitors acting for the Respondents, a bundle of invoices, the actual accounts as well as the estimated accounts for the period 25th March 2013 to 24th March 2014. In addition there were witness statements prepared by Mr D Patel dated 13th January 2016 with some exhibits as well as witness statements prepared by both Respondents dated 10th September 2014 with exhibits which included a draft defence filed in the County Court action. Continuing on in the bundle was a witness statement from Mr Richard Eisler who owns flats at the development but also acts as caretaker for the applicant company. This statement too had exhibits attached to it. In addition, there was a witness statement from Mr Powell on behalf of the claimant company dated 17th March 2014 on the front page although in fact unsigned and undated at the end of the document. A further statement by Mr Powell dated 25th November 2015 was included, but again unsigned. Finally, we had copies of the leases for the three flats.
5. In addition to this documentation and as a result of our request for further information, we received letters relating to the insurance premium being claimed by the Applicants which we will refer to in due course which prompted various additional enquiries made by the Respondents. It should be noted that our letter which was sent immediately following the hearing required the Applicants to produce a copy of the insurance schedule confirming the premium paid and the letter explaining why the premium had doubled from the year ending 2013 to the year in question. The Respondents were invited to let us have any comments they wished on this information but they did not limit themselves to this instead making further enquiries with the brokers which were not helpful to us. The last of these made in March resulted in an email to the Tribunal, the contents of which are noted

and which also included a bricks and mortar property insurance quotation arranged by Saffron Insurance and underwritten by Aviva Insurance. Again we will return to this documentation in due course.

6. Finally, it is appropriate to record that there have been decisions made by the Tribunal in connection with the estimated charges for the year ending March 2014. This was in a decision following a hearing on 17th April 2014 and issued on 18th June 2014. The case reference number is cases CAM/34UE/LSC/2014/0008, 9, 33 and 34. The present Respondents were not parties to this matter, it relating to Flats 7 Regent Gate and Flat 11 Kings Walk. However, it is appropriate to note that in respect of the estimated charges, which includes the year in question for us to decide, the Tribunal confirmed that an application in relation to the reasonableness of the costs and standard of works in relation to the actual costs of the service charges could still be made. In respect of the matters determined in relation to the estimated charges to March 2014, we have noted all that has been said but of course this matter related to other Respondents and related to estimated charges. In these proceedings we are dealing with actual costs and although some cognisance is given to the findings of our colleagues we do not consider them to be binding upon us in this determination.
7. We would also briefly mention an application that came before the Tribunal under case number CAM/34UE/LSC/2013/0130 which was again an application under Section 27A of the Landlord and Tenant Act 1985 involving other leaseholders who had retained an expert. We will refer to certain comments made in that decision in due course.
8. We did not consider that an inspection of the subject premises was necessary. It is well known to the Tribunal.

HEARING

9. The Respondents confirmed that those matters set out in their witness statements were still live issues and that they wished to proceed to consider those in the course of these proceedings. The latest witness statement we have is dated in January of 2016 and we paraphrase that which is said therein. It is alleged that the service charges are excessive, unreasonable and improper and that despite requests for documentation to be provided to the Respondents this has not been forthcoming. It was also said that the accounts had not been signed off by a qualified accountant and this was something which the Respondents found to be unacceptable. A spreadsheet had been prepared, purportedly listing all the various invoices, and apparently listing certain costs, which on the face of the schedule appeared to be sums they were prepared to pay.
10. The specific challenges related to the architect's fees, legal costs and a general complaint as to the conduct of the Applicants, which in some instances had led to leaseholders filing for bankruptcy and forfeiture.
11. In earlier witness statements made in connection with the County Court proceedings further detailed complaints are raised in respect of general maintenance, electricity, architect's invoices, caretaker's invoices, meeting costs, management fees, building insurance, surveyor's fees and administration costs. These were echoed to an extent in the document headed Draft Defence which was dated 18th March 2014. In support of these statements we heard from the Respondents.
12. For the Applicants reliance was placed upon the witness statement by Mr Eisler dated 14th December 2015 which set out his knowledge of the development and the work that he undertook as Caretaker being paid, it was said, at a flat rate of £425 per

month. There were a number of indistinct copy photographs annexed to the statement.

13. Mr Powell had provided a witness statement, again as with the Respondents in the County Court proceedings dated March 2014, which to an extent gave a history as to how the matter came to the County Court and responded in part to the issues raised with regard to service charge costs. A reply to the Defence had been lodged and this was dated 1st April 2014 and the latest statement from Mr Powell in these proceedings was dated 25th November 2015. The statement responded to matters raised in the directions order issued by the Tribunal and said that there were no outstanding service charges for the year ending 24th March 2014 and that the Applicants had done all they could to assist the Respondents in understanding the issues, indeed even taking them for a meal.

14. It might be helpful at this stage to set out the estimated and actual costs which we are being asked to deal with.

Estimated Budget (25th March 2013 – 24th March 2014) Estimated service charge for the whole building (24 flats)	
Description (Estimated expenses)	**Amount**
Insurance	£9,000.00
Electricity	£800.00
Maintenance	£5,000.00
Caretaker/cleaning	£6,000.00
Administration	£700.00
Management fee inc VAT @ 20%	£7,200.00
Fees for buildings regulation requirements	£2,000.00
Fire risk assessment	£1,000.00
Surveyor's fees	£6,000.00
Architect's fees	£6,000.00
Reserve fund 2013-14	£2,380.00
Total estimated service charge expenditure	**£46,080.00**
Estimated Service Charge per Flat	
Each flat's share of the estimated service charge (to be paid yearly)	£1,920.00

Actual Accounts (25th March 2013 – 24th March 2014)	
Expenses	**Amount**
General maintenance invoices totalling	£1,938.63
Electricity invoices totalling	£936.32
Architect's invoices totalling	£7,066.40
Caretaker's invoices totalling	£5,420.00
Meeting costs	£368.29
Management fee inc VAT @ 20%	£7,200.00
Reserve fund 2013-14	£2,380.00
Buildings insurance	£11,442.40
Surveyor's fees totalling	£3,870.00
Legal costs and court fees	£8,849.73
Total actual expenditure relating to the building for the above period	**£49,471.77**
Each flat's share of the total actual expenditure	**£2,061.32**

Reserve Fund	Amount
Reserve Fund 2012-13 (if arrears paid by leaseholders)	£2,061.32
Reserve Fund 2013-14 (if arrears paid by leaseholders)	£2,380.00
Total money held in reserve fund	£4,660.00

15. Turning now to the specific complaints raised, starting with Maintenance – in the estimated account a figure of £5,000 is recorded but the actual costs were £1,938.63 made up of bin emptying, a fire assessment of £390 and an invoice from Drage Electrics in the sum of £184.63. The fire risk invoice of £390 was not challenged and in truth the claim for £148.63 on the part of Drage Electrics was not pursued Mr Eisler having commented he had seen the electricians carrying out the work and they were an established company who had acted for the Applicant on a number of occasions. The issue therefore settled around the costs of emptying the bins at the property. The work appeared to be carried out by National Property Management, a company sited in Brighton apparently run by Mr Powell's sister. Although the bins are apparently emptied by the local authority, National Property Management adds an additional 20% to the costs for organising same. In addition to National Property Management who handle the refuse there is a management company called Carvalho Concept Limited, which we understand is also a company that is controlled by Mr Powell. Although the Respondents challenged the quantum of the charges, they did not initially produce any evidence to show that the amount being claimed was unreasonable. After the luncheon adjournment Mr D Patel said that he had spoken with the council who told him that they would charge £13.85 per bin per collection. This gave a figure of £69.25 for each collection. The invoices from National Property indicated that the bins were emptied on a fortnightly basis and there appeared to be no challenge to this. That being the case there would be an annual charge payable to the local authority for them dealing with the matter direct for some £1,800. In fact National Property appeared to charge the Applicant, who then passed on the cost, £350 per quarter giving a total of £1,400 for the year. Accordingly, on the face of it the evidence produced by the Respondents appeared to indicate that the Applicant's costs were less than the Council's.
16. Insofar as the electricity was concerned, a number of invoices had been produced and we were told that payment was made both my direct debit and by payment relating to invoices produced. This was somewhat confusing. A sheet of actual expenses behind tab 14 of the bundle showed a total of £936.32 having been paid by this mixed method of direct debit and individual invoices. The explanation appeared to be that the invoices produced only related to half the development. The Respondents did not produce any compelling evidence to challenge the electricity accounts.
17. We then turn to the question of the architect's invoices, which on an estimated account had been £6,000.00 but in actual costs came to £7,066.40. These costs related to Landivar Architects Company based in Brighton. There were four fee notes included in the bundle, one of £4,000 for construction and tender drawings. Second invoice was for architectural professional services in connection with the property in the sum of £595.00 and a third invoice in the sum of £1,796.40 this time including the preparation and issuing of construction tender documents and printing. Bank statements indicated that another £350 had been paid and the final invoice appeared to be for travelling to Kettering including accommodation and attending a public meeting totalling £325.00. We were told by Mr Powell that these

costs related to work being undertaken to correct the current building problems. In the papers before us was correspondence with Northamptonshire County Council in respect of fire safety and Kettering Borough Council in respect of the lack of final building regulation approval. The letter of 7th October 2015 is particularly interesting. It indicates that building control services, who appeared not to have signed the project off, for reasons that are unknown, had undertaken work to ascertain the development's compliance with building regulations. Two matters that appear to cause them difficulties were that there appeared to be certain issues relating to Flat 3 at Kings Walk which may well also impact upon other flats and also matters relating to the communal areas. An outstanding schedule of works had been attached which included extensive requirements in respect of fire safety, external walls and rain water goods. In addition, there were problems associated with some stairs, the requirement for an electrical installation certificate to be produced and that the glazing met the necessary safety requirements.

18. Suggestions were made that the architect's fees had not been the subject of consultation and therefore were in breach of Section 20 of the Landlord and Tenant Act 1985. Mr Powell told us that as he had bought the project at auction he had not had a survey carried out and this of course also drifted into the challenge to surveyor's fees, which in the final account total some £3,870.00. Mr Powell's case was that as far as he was concerned the lease enabled the recovery of these costs by reference to clause 4(a) of same whereby the landlord covenanted with the tenant to repair, maintain, renew, uphold in keeping good and substantial repair and condition the main structure of the building as defined in the lease, the common parts, the boundary walls, other accommodation and other parts of the building.

19 Mr Patel said that they did not consider they were responsible for these costs which were in effect putting the property into a condition that it should have been when the development was first concluded. However, as is known, the original developers had gone bankrupt and the Council had not issued final certificates which confirmed compliance with building regulations. Neither Respondent had instructed a survey to be carried out for the properties when they purchased.

20. Mr Powell confirmed his belief that all costs associated with bringing the property up to standard should be borne by the leaseholders. Mr Patel told us that they had commenced proceedings against solicitors/surveyors and reminded us of the previous decision where Section 20 notices had been challenged and dispensation was not granted. He told us that there had been further Section 20 notices issued at the beginning of 2015 but these architect's fees were not part of that process. We were also told that drawings of a number of flats did not accord with the original layout which had been an issue picked up by the local authority. Apparently there had been some form of refund from NHBC but that fund was still being held on behalf of the leaseholders. With regard to the specific costs it was said it was inappropriate for the Respondents to pay the architect's and surveyor's fees as there was no proper breakdown and that in the year ending March 2013 the lessees had already been called upon to pay architect's fees of £5,957.60 and surveyor's fees of £5,996.60. It was also pointed out that the architects were based in Brighton although Mr Powell responded that a lessee nominated contractor would be carrying out the works. Comment was also made that the architect's fees related to works required to correct the building regulation issues and, therefore, from the Respondents' point of view should not be an expense chargeable to them.

21. We then turn to the question of caretaking costs. The Respondents complained as to the extent of the work undertaken. Mr Eisler defended himself saying that he attended on a daily basis usually after taking his son to school and often then on the

way home. He estimated that he did an average of seven to eight hours a week. His brief was to keep the property clean and tidy and to remove dumped items, which was a frequent problem. Some challenges were raised as to specific invoices one of which included a sum of £155 paid in respect of skip hire. There was also a complaint made that the invoices make no mention of the Applicant.

22. After the lunch adjournment Mr Powell produced other invoices to support the costs for electricity and as we know it was at this stage that Mr Patel provided us with information that he had received from the Council concerning the costs of emptying the bins.
23. We then moved on to the costs associated with meetings to discuss issue relating to the property. Although this did not appear as a specific item in the estimated costs, it did in the actual costs with a charge of £368.29. This included travel by Mr Powell as evidenced by rail tickets of £132 and the hire of Kettering Conference Centre at a cost of £122.63. The challenge put forward by the Respondents appears to indicate that they accepted the cost of the meeting room at the conference centre but challenged the travel costs.
24. Insofar as the management fees were concerned these were estimated at £7,200 and charged at that amount. This was £250 plus VAT per flat. The Respondents said that a fee of £200 plus VAT per flat would be reasonable but produced no comparable evidence. On the question of the reserve fund this was not disputed provided that the payments were held in a trust account, which Mr Powell told us they were.
25. We then turned to the question of building insurance. Little or no evidence was produced to assist us on this matter at the hearing. Mr Powell said he had the information but it was not available to us. It was for that reason we requested further details be provided by seven days after our letter of request. That documentation duly arrived and included a copy of the insurance schedule and a letter from On Cover Insurance dated 23rd February 2016 which was also provided to the Respondents. This again included a cover/debit note showing that the property had been insured for £4,569,322.00 with a total premium payable including insurance tax of £11,442.40. The letter from On Cover explained the contents of a building survey provided by the Applicants and confirmed that the insurance AXA had carried out a survey prior to issuing cover. The writer of the letter, Mr Prodromou, confirmed that *"due to the general poor condition of the property insurers would not have offered cover for this property on its own and the decision to offer terms for this property was based on the size of your property portfolio."* The premium charged for this premises took into account the potential exposure with this property and the large sum insured.
26. On the question of legal costs, we had before us an invoice from Edwin Co LLP in the sum of £6,168.00 purportedly in relation a dispute with the West Bromwich Mortgage Company Limited. The narrative of the invoice is as follows: *"Attendances, telephone conversations and correspondence in relation to defending a claim for unlawful forfeiture or relief from forfeiture including meeting with Morris Moore, liaising with you, instructing Counsel and liaising with Lightfoots LLP."* The disbursements included Counsel's fees of £1,800, a consent order with the Court of £45 and a Land Registry fee of £3. No further information was given to us to explain this invoice.
27. Finally, by a letter dated 4th February 2016, SP Law solicitors acting for Mr D Patel had asked that an order be made under Section 20C of the Act. Mr Powell confirmed that he had no objection to such an order being made and there were no other applications made at the hearing.

THE LAW

28. The law applicable to this matter is set out in the appendix attached.

FINDINGS

29. We will make comments on the various items of expenditure indicating what sums we have allowed and what sums have been reduced with reasons why. The parties will also find at the foot of this decision a schedule of those costs which have been allowed against the amounts claimed.
30. We start firstly with the general maintenance costs. The invoices for Foresight Consulting Limited in connection with health, safety and fire risk assessment at £390.00 is not challenged and is allowed. Likewise the invoice with Drage Electrics Limited at £148.63 was not in reality really challenged and is likewise allowed. The remainder of the invoice relates to the quarterly charge for the emptying of bins. It was clear from information given to us by Mr Patel that the costs were not excessive. However, we do not understand why National Property Management (NPM)are dealing with the bins when there is a management company Carvalho Concept Limited who could presumably easily arrange a contract with the local authority or whomsoever NPM deal with. They have charged an additional 20%. We do not understand why and do not think that is a reasonable expense for the Respondents to have to pay. Accordingly extrapolating that percentage, we conclude that the annual cost for cleaning with the bins should be reduced to £1,160 to which should be added the Drage invoice of £148.63 and the fire assessment of £390, giving a total payable of £1,698.63 for maintenance.
31. Insofar as the electricity costs are concerned, we are satisfied with the information provided by Mr Powell both before and during the course of the hearing. This shows the sum of £936.32 as being the total invoice for the communal areas which does not seem unreasonable and is in the main supported by invoices. We therefore allow that.
32. As far as the caretaking costs are concerned, these were estimated at £6,000 and reduced to £5,420. The costs of something just around £450 per month for the attendance of Mr Eisler is not in our view unreasonable. We accepted his evidence that he attends on a regular basis and has quite a lot to contend with. It appears that unfortunately not necessarily the Respondent's tenants but certainly some tenants at the development do not act in a wholly tenant-like manner and do cause problems which require Mr Eisler's attendance. Accordingly, the sum claimed we find is wholly reasonable.
33. In so far as the meeting costs were concerned, these are charged at £368.29. The tickets produced to substantiate the figures are unhelpful. One is a ticket for 25th June 2014 from London to Kettering on a return of £101 and another is 7th October 2013 from London to Kettering showing a charge of £66. We understand that Mr Powell's co-director attended. It can only be the ticket relating to the meeting on 7th October as that is consistent with the Kettering Conference Centre and if we allow two tickets at £66 each that gives a figure of £132 plus the hire charge and we understand a copying fee of £5 which was not in truth disputed. Accordingly, in respect of the meeting costs we allow the sum of £259.63.
34. Moving on the question of management charges, the estimated figure was £7,200 giving a fee of £250 plus VAT for each flat. Our colleagues in the decision in June 2014 indicated that the management fee should be as it was in the actual costs for March 2013 of £5,760. That is £200 plus VAT for each flat. No explanation was given as to why this should have increased by £50 in this period. We do accept,

however, that this is not a straightforward development to manage and doing the best we can we would propose that for this year in question a reasonable uplift from 2013 is to be expected and that therefore the management charge should be £225 plus VAT per flat which gives a total of £270 per unit or £6,480 for the year.

35. No issue was raised with regard to the reserve fund.

36. The last item before we turn to building insurance, architect's and surveyor's fees is the question of legal costs and court fees. These amount to £8,849.73, the details of which were set out on an actual expenses sheet behind tab 14 in the bundle. They appear to relate to proceedings against a number of flats both in Kings Walk and Regents Gate. They included the solicitor's fee which we have already referred to and which appears to relate to proceedings involving the West Bromwich Building Society. It would seem from the invoice that a court order was issued, which may well have had some indication as to the fees shown but not copy of that court order was produced to us. If the costs were expended in connection with court fees one would expect to see credits coming in to the account reflecting those costs being recovered. Certainly in relation to these proceedings, which started life in the County Court there are orders for costs against the Respondents but they would appear not to require payment until the year 2015. They should, therefore, appear as credits in that year. In the absence of a proper, or indeed any explanation from the Applicant as to how these costs were incurred and what the Court order may have stated we disallow the legal fees associated with Edwin Co Solicitors in the sum of £6,167.73. This leaves the sum of £2,682 as being payable. In our view clause 4(k) of the lease containing the following wording *"to make provision for the payment of all proper legal and other costs and expenses incurred by the landlord in the running and management of the building and in the enforcement or attempted enforcement of the covenants, conditions and regulations contained in the leases granted of any flats in the building and the regulations imposed hereunder"* enables the landlord to recover the costs of actions as a service charge under paragraph 1(1) of the lease.

37. We then turn to the major issues between the parties which were the building insurance, architect's and surveyor's fees. We will deal with the insurance in due course but we turn firstly to deal with the architect's and surveyor's fees.

38. As we have already indicated a substantial sum of money was spent in 2013 and now more than £10,000 is sought for the year ending March 2014 in respect of these fees. We understand that some of the architect's fees may have been to replace plans which had been lost by the local authority or the original developer. We do not consider that to be an expense which the Respondent should have to bear. Furthermore, we have not seen the contracts entered into with the architects to be able to determine whether this in fact could be a qualifying long term agreement. There is, however, a lack of transparency and clarity on the part of the Applicants as to what exactly what works these architects undertaking. It is not clear whether they are attempting to put right the shortcomings associated with the original development and the requirements of the local authority or whether they relate to additional works which are planned to the property. We know, for example, that mention was made of the security gates of the property being brought up to standard. It is not wholly clear why security gates are required, although they do appear to be in situ but just not working properly. We do, however, recall the words of Mr Pendred the expert acting the Applicants in the 2013 Section 27A application involving Flats 4 and 6. It is recorded in that decision at paragraph 54 that he said as follows: *"It was accepted that there was some need to bring the property up to a satisfactory standard but this needs to reflect the type of building, its location and*

the nature of the leaseholders and their ability to pay. This is a conversion of a former cooperative bakery in a high density mixed use area where the housing is predominantly late Victorian terraced of mixed quality. Kettering is historically a low priced area of modest property. It is not appropriate to create high-end market style of development at the expense of the leaseholders." We are not convinced that this upgrading work is being undertaken by the Applicants in this case. It is clear that there are a number of defects associated with the original building of the property. It seems that there may be some monies recovered from NHBC. With the original developers going into liquidation there is no possibility of proceeding with any claim against them. The question, therefore, is it appropriate for the lessees to be responsible to make payment to the Applicant to correct initial and potentially inherent and/or latent defects that existed when the Applicants bought the property at auction? The wording of clause 4 of the lease is to repair, maintain, renew, uphold and keep in good and substantial repair and condition. We consider that it is taking the matter too far to expect the lessees to be wholly responsible for the payment of costs associated with bringing this property into a condition which enables certificates of compliance to be issued by the local authority, which should have been done when the flats were first marketed. That being said, it must be in the interests of the Respondents to work with the Applicants to get the property in such a condition where certificates can be issued and thus make the flats marketable.

39. At the moment we are asked to consider £7,066.40 worth of architect's fees and £3,870 worth of surveyor's fees. We have already indicated the wording of the invoices relating to the architects. The surveyor's fees were of no great help either. One for £2,970 merely says *prepared tendered schedule of works as agreed.* There is no reference to the property in question or what works were intended. The second merely states *provide CDMC services to Kettering Co-op Bakery project* of £900. Nobody was able to help us to explain what that was meant to be. Our colleagues in the early decision found that the architect's and surveyor's fees for the period ending March 2013 were properly incurred and payable. They record that those costs were payable prior to the qualifying works. It is recorded that the actual costs were incurred in anticipation of the qualifying works and accordingly Section 20 would not apply. For the estimated costs for year ending March 2014 our colleagues in determining that architect's and surveyor's fees for the following year, that is to say 2015, would not be reasonable, concluded that sums of £6,000 for both architect's and surveyor's fees as set out in the budget would be reasonable.
40. It seems to us it is the responsibility of the Applicant when being challenged with regard to service charge costs to produce evidence that satisfies us that the costs incurred are amongst other matters reasonably incurred and required. Unfortunately, in this instance we do not believe that the Applicant has discharged that burden of proof. In those circumstances, therefore, we feel we have no alternative but to reject the architect's invoices of £7,066.46 and the surveyor's fees of £3,870 as being reasonably incurred service charges for the year ending March 2014.
41. Finally, we turn to the question of <u>building insurance</u>. We noted all that was said in the correspondence produced both before and after the hearing and the emails sent by the Respondents. The evidence before us is that this was a difficult property to insure and we rely on the letter from On Cover dated 23rd February 2016 which explains the differences. The earlier insurance with Aviva is not compelling. It is unclear the basis upon which this insurance was placed and of course it pre-dates the involvement of On Cover. It is essential that any person seeking to insure a

property makes full and frank disclosure to the insurers. Having done so it does seem that the building insurance is now at £11,442.40, largely as a result of the condition of the property and the problems from which is suffers. We have accepted the evidence contained in the On Cover letter. The challenges raised to that by the Respondents were not helpful and the previous insurance policy, as indicated, above did not satisfy us that the building insurance actually paid for the year ending March 2014 is so unreasonable as to be interfered with. The Respondents produced no current comparable insurance evidence. If they wish to make a claim for future years then they must get proper compelling alternative evidence. Mr Powell indicated at the hearing that if cheaper insurance could be obtained he would be happy to proceed with that.

42. As with so much of the dispute centring around this property matters could be far more appropriately dealt with if parties worked together rather than resort to litigation. We appreciate that most, if not all flats, were bought for the purposes of buy to let. This in itself causes additional problems. However, it must be in the parties' interest to work together to resolve the problems with the local authority so that at least the flats become marketable in the future.
43. The Applicants did not object to an order under Section 20C, which we therefore make, considering it to be just and equitable in the circumstances.

Judge: *Andrew Dutton*

A A Dutton

Date: 6th April 2016

Tribunal's decision on the Actual Accounts (25th March 2013 – 24th March 2014)	
Expenses	**Amount allowed**
General maintenance invoices totalling	£1,698.63
Electricity invoices totalling	£936.32
Architect's invoices totalling	nil
Caretaker's invoices totalling	£5,420.00
Meeting costs	£259.63
Management fee inc VAT @ 20%	£6,480.00
Reserve fund 2013-14	£2,380.00
Buildings insurance	£11,442.40
Surveyor's fees totalling	nil
Legal costs and court fees	£2,682
Total allowed	**£31,298.98**
Each flat's share of the total actual expenditure	**£1,304.12**

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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.

(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 27A

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

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) 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