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**HM Courts
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Service**

LEASEHOLD VALUATION TRIBUNAL
Case No.: CAM/34UF/LSC/2012/0021

Subject Property: Northampton House, Wellington Street, Northampton NN1 3NB

Excluded Units: 105, 201, 214, 218, 307, 311, 408, 410, 508, 511, 512, 517, 604, 608, 610, 617, 716, 808, 908

Applicant: Palacemews Properties Limited

Applicant's Solicitors: Hilliers HRW Solicitors, The Old Vicarage, Bedford Road, Kempston, Bedford MK42 8BQ

Freeholder and Landlord: Palacemews Properties Limited, Princess Park Manor, Friern Barnet Road, London N11 3 FL

Respondents: Northampton House RTM Company Limited

Date of Application: 17th February 2012

Application: Application for a determination of the reasonableness and liability to pay service charges (Section 27A Landlord and Tenant Act 1985)

Date of Hearing: 30th August 2012

Tribunal: Dr JR Morris (Lawyer Chair)
Mr GRC Petty FRICS
Mr DS Reeve

Attendance:

Applicant: Mr Peter Ward, Counsel for the Applicant
Mr Robert Sheppard, Applicant's Portfolio Manager

Respondent: Ms Hazel Harman, Respondent's Representative
Mr Donogh Madigan, M & C Management, Respondent's Agent

DECISION AND STATEMENT OF REASONS

Decision

- ♦ The Tribunal found as a matter of fact that the “appropriate proportion” under subsection (4) of section 103 of the Commonhold and Leasehold Reform Act 2002 is 7.92%.
- ♦ The Tribunal determined that the consultation procedure pursuant to section 20 Landlord and Tenant Act and Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) had not been complied with because there had been no express invitation for observations and all the estimates had not been made available to the Leaseholders as required by paragraphs 4(5) (c) and (10). Therefore the costs for that item were capped at £250.00 per unit.
- ♦ The Tribunal determined that the total amount of the relevant costs of the service charge for the year ending 31st March 2012 to be reasonable were £289,622.00. The Tribunal determined that the proportion of the total service charge based upon the internal floor area of the excluded units payable by the Applicant is £22,938.00.

Reasons

Application

1. Palacemews Properties Ltd applied on 17th February 2012 in its capacity as a freeholder and leaseholder relating to:
 - ♦ A determination as to the reasonableness and liability to pay service charges for the financial year ending 31st March 2011.
 - ♦ A decision whether as Freeholder Palacemews Properties Limited is liable to pay service charges at all, in respect of unsold flats.
 - ♦ A decision whether the Tribunal can make a determination in respect of the payability of the £33,417.24 paid by Palacemews Properties Limited as Landlord in order to prevent services being withdrawn particularly with regard to security equipment
2. The Parties also made request for the Application to be extended for a determination of the costs incurred for the year ending 31st March 2012 and to be incurred for the year ending 31st March 2013 to which the Tribunal agreed.

Preliminary Note

3. An Application was made for a determination of reasonableness of charges for the year ending 31st March 2010 by a Leasehold Valuation Tribunal on a transfer from the Milton Keynes County Court by District Judge Venables of Claims Numbered:
 - ♦ 1MK01223 between Northampton House RTM Company Limited (Applicant) and Comer Properties (1) (Respondent) on the 12th September 2011
 - ♦ 1MK01222 between Northampton House RTM Company Limited (Applicant) and Comer Properties (2) (Respondent) on the 7th November 2011

- 1MK01076 between the Northampton House RTM Company Limited (Applicant) and Mountfield Properties (1) (Respondent) on the 13th September 2011

On 17th February 2012 an Application for a determination of the reasonableness and liability to pay service charges for the year ending 31st March 2011 was received on behalf of Palacemews Properties Limited, in respect of "excluded units" under section 103 of the Commonhold and Leasehold Reform Act 2002 which was about the same time as the Tribunal Office received the court papers for the above matters. A Rider was given to the Application that it might be appropriate to deal with the Application at the same time as the Court Transfers to save costs and for ease of reference.

4. Although initially agreed to, following a pre-trial review on 12th April 2012 the Tribunal found that due to the need to provide a separate decision and reasons for the Court in respect of the transferred matters and the anticipated time in which it would take to hear the respective issues the cases were heard separately. The transferred Application made on 23rd September 2011 was heard on 3rd July 2012 under case number CAM/34UF/LSC/2011/0172 and determined the reasonableness of the costs for the year ending 31st March 2011.
5. This determination relates only to "excluded units" the Applicant being the "appropriate person" under the section 103 of the Commonhold and Leasehold Reform Act 2002 the text of which is set out below. A determination as to the reasonableness of the costs incurred for the year ending 31st March 2011 having already been made under case number CAM/34UF/LSC/2011/0172 this determination relates to the costs incurred for the year ending 31st March 2012 and to be incurred for the year ending 31st March 2013

Law

6. Section 103 Commonhold and Leasehold Reform Act 2002
Landlord contributions to service charges
 - (1) *This section applies where:*
 - (a) *the premises contain at least one flat or other unit not subject to a lease held by a qualifying tenant (an "excluded unit")*
 - (b) *the service charges payable under leases of flats contained in the premises which are so subject fall to be calculated as a proportion of the relevant costs, and*
 - (c) *the portions of the relevant costs so payable, when aggregated amount to less than the whole of the relevant costs.*
 - (2) *Where the premises contain only one excluded unit, the person who is the appropriate person in relation to the excluded unit must pay to the RTM company the difference between-*
 - (a) *the relevant costs, and*
 - (b) *the aggregate amount payable in respect of the relevant costs under the leases of flats contained in the premises which are held by qualifying tenants*
 - (3) *Where the premises contain more than one excluded unit, each person who is the appropriate person in relation to the excluded unit*

must pay to the RTM company the appropriate proportion of the difference

- (4) *And the appropriate proportion in the case of each such person is the proportion of the internal floor area of all of the excluded units or which is the internal floor area of the excluded unit in relation to which he is the appropriate person.*
- (5) *The appropriate person in relation to an excluded unit-*
 - (a) *if it is subject to a lease is the Landlord under the Lease,*
 - (b) *if it is subject to more than one lease, is the immediate landlord under whichever of the leases is inferior to all of the others, and*
 - (c) *if it is not subject to any lease, the freeholder*

7. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
Section 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, improvement 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 of 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 period*

8. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
Section 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 reasonably incurred; and*
 - (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

9. Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and
Commonhold and Leasehold Reform Act 2002
Section 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 it is payable.*

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

(3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*

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

10. Section 20 of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal. The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants in which an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord

must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

11. Section 20ZA of the Act allows a Leasehold Valuation Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

Description and Inspection of the Building

12. The Tribunal members had inspected the Building in which the Subject Properties are situated on the 2nd December 2009 in respect of a different case and inspected the Building again following the Pre-Trial Review on 12th April 2012. The Inspection on the 12th April 2012 was in the presence of Ms Hazel Harman and Mr Allan Calverley, the Applicant's Representatives, and Mr Peter Ward, Counsel for the Respondent, Mr Charles Goldthorpe, Solicitors for the Respondent, Mr Robert Sheppard, the Respondent's Portfolio Manager.
13. The Tribunal found that the Building comprised 187 apartments over 11 floors plus a roof space. The Building is a concrete structure faced with brick. Each floor is encircled by metal balconies, which are part of each tenant's demise.
14. Applicant retains the roof space, which is not part of the common parts, and no access is available to the Tenants. A metal gate prevents unauthorised access to the roof. Car parking is on the ground floor, upper ground floor and first floor levels (identification of floors is in accordance with the lift indicator). On the first floor there is a foyer with reception and a Leisure Centre. The Common parts comprise the foyer with mailroom and Leisure Centre, the stairwells, lifts and corridors giving access to the apartments and the pathways to the car parking spaces.
15. Pedestrian access to the Building is via a door entry system at first floor level. Vehicular access is via an electronic gate at Ground Floor level and access from the car park is by means of a fob to open the doors into the main part of the Building. The door entry is a system installed by the Landlord and is provided under a contract between the Landlord and Octopus Multi-Systems Ltd. The automated gates were operated under the same system although this has now been disconnected and the Applicant has installed a new system. Cctv surveillance had originally been installed and maintained by Octopus Multi-Systems Ltd but this was now no longer in operation. The Building is served by two new lifts to all floors installed by the Applicants. The Building is equipped with fire equipment and a sprinkler system. Tanks filled from the rising main provide water.
16. The Tribunal inspected the Gymnasium, which appeared to be well equipped. There is a swimming pool, which is not in use. The waste bins in the Gymnasium were overflowing on the day of the inspection. The desk in the foyer was not staffed. Each level of the Car Park was visited. The Ground Floor car park had an area that was flooded due to a blocked drain. The drainage pipes, which come down to the car parks were leaking on the previous inspection. This appears no longer to be the case. The Tribunal inspected the 11th floor (Pent House Floor) and found the cleaning to be fair. The Tribunal then visited some 5 or 6 floors between and including the 2nd

floor and found the standard of cleanliness fair to poor. The carpets on the lower floors were particularly dirty and worn with little or no nap. It was also noted that several ceiling tiles were missing and fire door was found to be defective. The balconies required cleaning and re-decoration. A window was damaged. It was apparent that tenants were storing furniture on the balconies and a balcony on the 9th floor had bags of rubbish.

The Lease

17. A copy of the Lease was provided which was agreed to be the same as all the Leases in the Property except for the description of the specific demise. The Lease is for a term of 125 years from 24th June 2000.
18. Clause 1 of the Lease defines the demise in general terms and refers to the specific definition of the demise in Schedule 2 of the Lease together with the easements and rights set out in Schedule 3 except and reserving the rights in Schedule 4 and subject to the matters set out in Schedule 5. The apartments have designated parking spaces in the car parks.
19. Schedule 7 requires the Tenant to pay a Service Charge which is a fair proportion of the Service Costs which are the costs incurred by the Landlord in carrying out its obligations under the Lease including buildings insurance. The Tenant shall pay an Interim Charge in advance on the 29th September and 25th March each year. A negative balance is payable within 14 days of invoice whereas a positive balance is carried forward to the next year. The "fair proportion" for the years in issue has been calculated according to the area of each Apartment. There are four sizes of apartment as follows:

104	apartments with 2 bedrooms & 2 bathrooms	0.58%
31	apartments with 2 bedrooms & 1 bathroom	0.53%
51	apartments with 1 bedroom & 1 bathroom	0.45%
1	apartment with 1 bedroom & 1 bathroom	0.48%
20. The Landlord must keep a detailed account of the Service Costs and prepare a Service Charge statement for each accounting period ending 31st March. The statement must:
 - * State the Service Costs for each major category of expenditure
 - * State the amount of the Service Charge
 - * State the total of the Interim Charge paid by the tenant
 - * State the negative or positive balance and
 - * Be certified by a qualified accountant.
21. The Services to be provided and which shall be the subject of the Service Charge are set out in Part 2 of Schedule 7 and include:
 - * Repairing, replacing, renewing, maintaining, inspecting and cleaning the roof main structure outside and foundations of the Building
 - * Repairing, replacing, renewing, maintaining, inspecting and cleaning the shared conduits and facilities and other matters including the road and footpaths of the Estate.
 - * Decorating the outside of the Building.
 - * Repairing and decorating the common parts.
 - * Lighting and cleaning the common parts including the amenity areas and car park.
 - * Maintaining a fire protection system and providing security arrangements

- ◆ Maintaining, repairing, replacing, renewing, surveying, insuring, inspecting and cleaning any lifts.
- ◆ Obtaining insurance valuations.
- ◆ Maintaining, insuring, staffing, running, repairing and replacing the Leisure Centre
- ◆ Paying the reasonable salaries, fees and expenses of any employees.
- ◆ Maintaining and preparing Service Charge accounts.
- ◆ Repairing fences, walls, hedges and other boundary structures
- ◆ Maintaining a common facility for television reception and an entry phone system
- ◆ Paying the reasonable and proper fees and disbursements of any managing agent.
- ◆ Maintaining a reserve fund

Preliminary Issues

22. A Pre-trial review was held on the 12th April 2012 in order to:
- a) Decide whether as Freeholder and Leaseholder the Palacemews Properties Limited is liable to pay service charges in respect of unsold flats.
 - b) Decide whether the Tribunal can make a determination in respect of the payability by Palacemews Properties Limited of the £33,417.24 by way of set off against service charges due. The amount was paid by Palacemews Properties Limited as Landlord in order to prevent services being withdrawn particularly with regard to security equipment.
 - c) To identify the issues to be determined in respect of the costs incurred for the financial year ending 31st March 2011 (already determined under case number CAM/34UF/LSC/2011/0172) and incurred for the year ending 31st March 2012 and to be incurred for the year ending 31st March 2013.
 - d) To identify any matter already determined or to be determined by a Court and the effect of such determination, if any, on the Tribunal proceedings.

a) Liability to pay service charges in respect of unsold flats

23. With regard to the liability of Palacemews Properties Limited in respect of unsold flats the Respondent submitted that under the Commonhold and Leasehold Reform Act 2002 section 103, Palacemews Properties Ltd who is the Freeholder and also the immediate Landlord, was liable to pay service charges in respect of unsold flats. Whereas Leaseholders are required to pay an interim service charge 6 months in advance based upon an estimated cost of the service charge items the Landlord is only required to make the appropriate contribution in respect of the actual costs and therefore must be invoiced after the end of the accounting period.
24. The Tribunal made a preliminary finding that Palacemews Properties Limited was liable under section 103. It was stated that if this finding was to be challenged by Palacemews Properties Limited at this Hearing then a skeleton legal argument must be submitted in accordance with Directions that were given. No skeleton was provided and the Applicant agreed the liability at this hearing.

Determination of a)

25. The Tribunal referred to section 103 of the Commonhold and Leasehold Reform Act 2002 which states in subsection (1) that
- (a) *the premises {being the Subject Property} contain at least one flat or other unit not subject to a lease held by a qualifying tenant (an "excluded unit")*
 - (b) *the service charges payable under leases of flats contained in the premises which are so subject fall to be calculated as a proportion of the relevant costs, and*
 - (c) *the portions of the relevant costs so payable, when aggregated amount to less than the whole of the relevant costs.*
- It further states in subsection (2) that *the appropriate person in relation to the excluded unit must pay to the RTM company the difference between-*
- (a) *the relevant costs, and*
 - (b) *the aggregate amount payable in respect of the relevant costs under the leases of flats contained in the premises which are held by qualifying tenants*
- and in subsection (5) that *The appropriate person in relation to an excluded unit is (a) if it is subject to a lease is the Landlord under the Lease or (c) if it is not subject to any lease, the freeholder.*
26. The Tribunal confirmed its preliminary finding and determined that the Subject Property did contain "excluded units" and that the "appropriate person" was Palacemews Properties Limited and that it was liable to pay a contribution to the service charges in accordance with section 103 of the Commonhold and Leasehold Reform Act 2002

b) Payment under Security Contract

27. With regard to the payability by Palacemews Properties Limited of the £33,417.24 by way of set off against service charges due the Northampton House RTM Company Limited had submitted at the Pre-Trial Review that it should not be obliged to take over the contract between Palacemews Properties Limited and Octopus Multi-Systems Limited. It was stated that it had found that the equipment provided under the contract did not work and that a new system had been installed.
28. The Palacemews Properties Limited had submitted at the Pre-Trial Review that the sum of £33,417.24 was paid as Landlord in order to prevent services being withdrawn under the security contract between Palacemews Properties Limited and Octopus Multi-Systems Limited. The Palacemews Properties Limited said that it had sought a set off against the service charge although it submitted that the issue of liability under the contract was not a matter for a Leasehold Valuation Tribunal and was a contract issue for the County Court. If the Court found in its favour then it would seek a set off against the costs incurred and determined to be reasonable by the Tribunal. At the Pre-trial review the Tribunal had agreed that the respective liabilities of Northampton House RTM Company Limited and Palacemews Properties Limited under the Palacemews Properties Limited and Octopus Multi-Systems Limited contract were not within the Tribunal's jurisdiction. It was confirmed at the present Hearing that the matter was before the County Court.

Determination of b)

29. In the absence of any representations to the contrary and in the knowledge that the issue was to be decided by the County Court the Tribunal confirmed the view expressed in the Pre-trial Review and determined that the respective liabilities of Northampton House RTM Company Limited and Palacemews Properties Limited under the Palacemews Properties Limited and Octopus Multi-Systems Limited contract were not within its jurisdiction.

c) Identification of costs in issue for the years ending 31st March 2011, 2012, 2013

30. A determination as to the reasonableness of the costs incurred for the financial year ending 31st March 2011 was made under case number CAM/34UF/LSC/2011/0172. This Hearing was therefore to determine the reasonableness of the costs incurred for the year ending 31st March 2012 and to be incurred for the year ending 31st March 2013.

d) Apportionment of Contribution

31. The Northampton House RTM Company Limited stated that they had invoiced Palacemews Properties Ltd on 4th July 2011 and provided a copy of their letter and invoice which noted that of the 21 flats that were unsold at the beginning of 1st April 2010 two were sold half way through the year. The invoice therefore set out the service charge for the year 1st April 2010 to 31st March 2011 as follows:
10 @ 0.58%
9 @ 0.53%
1 @ 0.58% 6 months only
1 @ 0.58% 6 months only
Total being 11.125% of total actual costs of £280,480
Total due to RTM Company £31,203.00
32. Mr Ward, Counsel for the Palacemews Properties Limited said that his client wished to be satisfied as to the co-relation between the percentages given and the internal floor area. In reply the Northampton House RTM Company Limited stated that they understood that the apportionments throughout the block were based on internal floor areas and therefore the percentages should correspond to the internal floor area.
33. The Tribunal made a finding that the present percentages correspond to the floor area. The Tribunal directed at the Hearing that if this is considered by the parties to be incorrect then they should agree an alternative floor area and percentage of the service charge as set out in the Directions that were given. In making the calculation the parties should be aware of *de minimis non curat lex* (i.e. where any variation resulted in the percentage difference being very small the existing figures should be left). Also if there was a difference between the previously recorded floor area and one now calculated but the percentage proportions are the same then the Tribunal would accept the existing percentages and there should be no difference to the payment to be made by Palacemews Properties Limited. Measurements should be made in accordance with RICS practice. The Tribunal found that the "internal area" in this case excluded the balconies.

34. In paragraph 35 of the Directions the Parties were required to provide a statement agreeing the internal areas in respect of the unsold flats held by the Landlord or identifying the points in issue. It was said that this statement may be in narrative or tabular form whichever is appropriate and must be included in the Bundle.
35. At the Hearing no agreed statement was provided. The Palacemews Properties Limited had submitted in a statement dated 20th August 2012 that the Applicant's share was 7.92%. The Respondent provided no contrary statement at the Hearing but stated that Mr Calverly, Chairman of Northampton House RTM Company Limited was to liaise with Mr Shephard of Palacemews Properties Limited. Mr Shephard said that he had sent the calculations to Mr Calverly but had received no response. Mr Calverly, had recently had an operation and therefore could not be present at the Hearing
36. The Tribunal required Palacemews Properties Limited to produce their calculations, which they did following the Hearing with a copy to Northampton House RTM Company Limited. The Northampton House RTM Company Limited Representatives said at the Hearing, confirmed in writing on receipt of the calculations after the Hearing, that so far as they were aware no calculations had been received before the Hearing. The calculations provided included plans of the apartments together with dimensions and a list of internal floor areas together with the percentage of the Block which each represented and a total percentage. Northampton House RTM Company Limited did not challenge the dimensions or the percentages other than to say that the Tribunal should rule in favour of the percentages laid down in the Lease.

Determination of d)

37. The Tribunal noted Section 103 (3) of the Commonhold and Leasehold Reform Act 2002 which states that *Where the premises contain more than one excluded unit, each person who is the appropriate person in relation to the excluded unit must pay to the RTM company the appropriate proportion* Section 103 (4) goes on to state that *the appropriate proportion ...is the proportion of the internal floor area of all of the excluded units.*
38. The Tribunal found that the Lease required the Leaseholders to pay a "fair proportion" of the costs incurred of the service charge. This had been calculated to take account of the four types of apartment and the differential between them was based upon their relative sizes as follows:
- | | | |
|-----|--|-------|
| 104 | apartments with 2 bedrooms & 2 bathrooms | 0.58% |
| 31 | apartments with 2 bedrooms & 1 bathroom | 0.53% |
| 51 | apartments with 1 bedroom & 1 bathroom | 0.45% |
| 1 | apartment with 1 bedroom & 1 bathroom | 0.48% |
39. There are several methods of calculating the apportionment of service charges between units. For example, in some blocks the apportionment may be the same for each unit (even though the units may be of different sizes) or made on the number of bedrooms or strictly on size. The method may be specified in the lease or, as here, the lease may specify a "fair proportion" or similar wording. Where no specific method is given whatever is selected must be reasonable. In a previous decision the Tribunal found the apportionment that had been applied for the Subject Property referred to above was a "fair proportion" in accordance with the Lease as the calculation

was based on size which correspondingly differentiated between apartments according to the number of bathrooms and bedrooms each had and therefore there was some co-relation with the services they would use.

40. At the Pre-trial review the Tribunal had stated that in the absence of evidence to the contrary it would use the same percentages that had been applied to calculate the apportionment under the Lease, as it understood that these had been calculated on the size of the apartments, which it presumed meant the floor areas.
41. At the Hearing it was submitted on behalf of Palacemews Properties Limited that although the apportionment under the Lease had been calculated on the relative size of the apartments the percentages used did not reflect the internal floor area as a percentage of the Subject Property. Plans detailing the size of the apartments and calculations showing the internal floor areas were produced. The Representatives for Northampton House RTM Company Limited did not challenge the measurements of the apartments or the internal floor areas but submitted that to depart from the percentage that had been used to apportion the Service Charge was unreasonable.
42. The Tribunal is required to apply the statutory provisions irrespective of either the terms of the Lease or what has been determined previously to be a reasonable apportionment. The Tribunal found as a matter of fact that the "appropriate proportion" under subsection (4) of section 103 is 7.92%.

Evidence relating to Costs for the Year Ending 31st March 2012

43. For the purposes of convenience in this section of the Reasons Palacemews Properties Limited is referred to as the Applicant and Northampton House RTM Company Limited is referred to as the Respondent.
44. The Applicant in a written statement dated 20th June 2012 by Mr Sheppard the Applicant's Representative, questioned firstly whether the Respondent RTM Company should have been authorised secondly whether it was being run appropriately and thirdly whether M & C Management Ltd should have been appointed as Agents. The Tribunal found that these matters were not within its jurisdiction. Its role in these proceedings was only in relation to whether the amount and standard of the service charges was reasonable and whether and to who they were payable.
45. The Respondent provided a copy of the accounts for the year ending 31st March 2011 and 2012 recording the costs incurred as follows:

Actual Costs recorded in the accounts for the year ending 31st March 2012	
<i>Items</i>	£
Electricity	19,380.00
Water & Sewerage	46,987.00
Refuse Collection	1,367.00
Cleaning	7,141.00
Security	18,382.00
Buildings Insurance	27,451.00
Other Insurance	77.00
Telephone Charges	1,071.00

Lift Repairs and Maintenance	16,872.00
Lift Releases	2,664.00
Lift Refurbishment	177,489.00
General Repairs & Maintenance	36,803.00
Access Control System	25,626.00
Inspections	900.00
Stationery & Postage	1,261.00
M&C Management Fees	32,300.00
Debt Collection Costs	24,353.00
Accountants' Fees	3,467.00
Sundry Expenses	952.00
Sinking Fund	10,000
Total	454,543.00

Lift Refurbishment & Section 20 Consultation Procedure

46. The Applicant submitted that the Respondents had not undertaken the Consultation Procedure under Section 20 Landlord and Tenant Act 1985 in respect of the refurbishment of the lifts in accordance with the legislation.
47. Firstly, the Applicant's Representative stated that the e-mailed Notices of Intention (the First Notice) were not sent correctly in that they were generic and were addressed to "All Leaseholders" (a copy was provided). There were no details or addresses and they were unsigned by any officer of the Respondent and did not have any of the Respondent Company's details or letterhead. In addition they were dated 15th March but were actually sent out on the 15th February and required a response by 17th March 2011. It was said that a critical component of any notice is the date and it was submitted that the inaccuracy made this notice invalid
48. Secondly, The Applicant's Representative said that there was a lack of detail, which was commented on by the Applicant's Representative in e-mails dated 16th February 2011 and 14th March 2011 (copies were provided) and the Tribunal was referred to the case of *Daejan Investments Limited v Benson* [2011] EWCA Civ 38; [2011] 1 WLR 2330. In addition the First Notice should have expressly invited observations and tenders and it did not.
49. Thirdly the Applicant's Representative had submitted the name of a contractor, DAB Lifts Limited, in an email dated 14th March (a copy was provided). It was submitted that this contractor was not invited to tender. A copy of an email dated 14th March 2011 was provided from the Respondent's Agents, which stated that DAB Lifts Limited had been invited to survey the lifts with a view to submitting a quote to refurbish them. A copy of an email dated 14th June 2012 from DAB Lifts Limited to the Applicant's Representative stating that no one had contacted them about the installation works was provided.
50. Fourthly it was alleged that an estimate was obtained from Mid Western Lifts with whom there was a link between the Respondent and/or its Agent. It was said that at least one of the Directors of the Agent and the contractor were the same person. The Applicant produced company searches, which listed individuals for the Agent and the Lift Company who had the same surname. It was said that these people were either the same person or from the same family.

51. Fifthly, Counsel for the Applicant referred to the Notice of the Landlord's Proposals dated 9th May 2011 (the Second Notice). It stated that 5 companies had been asked to tender and 4 quotations had been received. It also stated that the Respondent had engaged an independent lift consultant, LCG Lift Consultancy Ltd, to review these quotations and a copy of the consultant's report together with details of two of the quotations was included with the Notice. The Notice then invited the Leaseholders to make observations by the 9th June 2011. The Notice then went on to address the observations that had been received in relation to the consultation from the Notice of Intention (the First Notice), which had ended on 17th March 2011. Counsel submitted that the Second Notice was defective in that it referred to 4 quotations but it appeared from the consultant's report dated 29th April 2011 and the attached quotations (Otis dated 29th March 2011 and Mid-Western Lifts dated 11th December 2010) that the consultant had only been asked to consider 2 quotations and an opportunity had not been given to view all the estimates for the works to be carried out.
52. Sixthly, the Counsel for the Applicant submitted that the procedure had not been followed correctly in that it appeared the Applicant had already selected Mid-Western Lifts as the contractor. The evidence for this was that:
- The contractor had been asked to provide a quotation in advance of the First Notice and this quotation, out of four obtained, was one of only two that were given to the consultant to choose between.
 - The Respondent had accepted the quotation on the 20th April 2011, three weeks before service of the Second Notice on the 9th May 2011 and 9 days before the consultant's report and two months before the third Notice dated 22nd June 2011 informing Leaseholders of the awarding of the contract. This was said to be evidenced by the document headed Order Confirmation, which was signed on behalf of John Horgan of Mid-Western Lifts and dated 20th April 2011 and was provided at the end of the quotation from Mid Western Lifts, which was sent to all Leaseholders.
- Counsel therefore submitted that the Section 20 Consultation procedure was meaningless as the result of the tendering process was pre-determined.
53. The Respondent's Representatives replied that firstly, it was clear from whom the Notice of Intention came and the date was clearly a typographical error, as could be seen from the date of the email to which it was attached. The most important date was that by which observations had to be made and this date was clear and correct.
54. Secondly, the Respondent's Representatives said that the First notice made it clear that the lifts required renewal or refurbishment and were given with an explanation and breakdown of the procedure.
55. Thirdly, the Applicant's contractor had been contacted and had replied stating that a quotation would be provided but in fact no quotation was received. The Respondent's Agent provided copies of an email exchange between David Brown of DAB Lifts and the Agent as follows:
- 14th March 2011 at 16.45, e-mail from Agent to DAB Lifts with offer to tender for refurbishment of lifts and request to arrange site visit and survey if wished to provide quotation
 - 14th March 2011 at 17.31, e-mail from DAB Lifts to Agent following a conversation between the two thanking the Agent for the opportunity

to provide a suitable quotation and stating that the relevant costs and report would be sent as soon as possible.

- ✦ 23rd March 2011 at 10.52, e-mail from Agent to DAB Lifts requesting quotation before AGM
 - ✦ 23rd March 2011 at 11.46, e-mail from DAB Lifts to Agent stating that they were awaiting final costs from suppliers and informing Agent that an engineer would need to attend the site on Friday to clarify dimensions and requesting whether delivery of costs by Monday evening would be in time for AGM
 - ✦ 23rd March 2011 at 10.00, email from Agent to DAB requesting quotation on Monday Morning
56. Fourthly the Agent stated unequivocally that there was no link with the persons named as directors on the respective company searches and that the name is a common one in the area where both companies are situated.
57. Fifthly Respondent's Representatives stated that the Second Notice had provided two quotations as required by the legislation. Other quotations had been obtained from Landmark Lifts, Ennis Lifts and Chevron Lifts, however these were not available at the hearing. It was said in the Third notice dated 22nd June 2011, where the Respondent answered the observations following the Second Notice, that the two most appropriate quotes were selected. Mr Madigan stated that the majority of the leaseholders felt that the Mid Western lifts quotation fulfilled the brief. Counsel for the Applicant challenged the assertion that 'The majority of leaseholders' felt that the Mid Western Lifts quotation fulfilled the brief. Mr Madigan stated that the word 'majority' related to those attending the consultation meeting and not the majority of leaseholders.
58. Sixthly the contractor had been asked to provide a quotation in advance of the First Notice in order that the Respondent could assess the likely cost. The quotation was accepted as soon as it was known to be the cheapest and the one which would be recommended by the consultant due to the long lead in time for obtaining parts and hence carrying out the work as it was likely that both lifts would break down leaving an unacceptable situation of no working lifts in an 11 storey building.
59. The Tribunal then took evidence relating to the items in the accounts referring to the invoices provided. The Applicant's Representative made a written statement with regard to the items in the accounts confirmed at the hearing through Counsel for the Applicant. The Respondent's Representatives replied in each instance on behalf of the Respondent.

Electricity

60. The Applicant stated that cost of the electricity was not disputed but the actual payments as detailed by the invoices were £14,761.53. Therefore it was submitted that under the legislation this was the amount payable as it was the amount expended and payable in arrears under section 103 Commonhold and Leasehold Reform Act 2002.
61. The Respondent made no particular representations, as the total amount invoiced was accepted.

Water

62. The Applicant stated that water charge invoices were "a mess" but it was accepted that £24,874.83 had been paid of the total £46,986.54 owed to the water company. Therefore it was submitted that under the legislation this was the amount payable, as it was the amount expended and payable in arrears under section 103 Commonhold and Leasehold Reform Act 2002.
63. The Respondent made no particular representations, as the total amount invoiced was accepted.

Refuse Collection

64. The Applicant accepted the Northampton Borough Council charge of £1,226.50 for refuse collection but disputed the "Man with a Van" charge of £140.00 as no invoice was provided.
65. The Respondent stated that this was an accrual from the previous year.

Cleaning

66. The cost of cleaning was not in dispute. It was noted in the Respondent's written representations that invoices for £2,641.90 had been charged to Repairs in error.

Security

67. The Applicant stated that there was no dispute in relation to the SAS invoices for £13,275.00 but the Fastclean invoices for security seemed to be for the same date.
68. The Respondent stated that the Fastclean personnel were at the desk in the foyer while SAS were undertaking mobile patrols. It was noted in written representations that an invoice for £487.76 had been charged to Repairs in error.

Insurance

69. The Applicant submitted that although there was no quantum dispute it should not have to pay the insurance premium because the Respondent refused to deal with the Applicant or its companies. It was therefore not possible to make a claim under the insurance. It was said that the Applicant was prepared to make an *ex gratia* payment of 50% as it was in the interests of the Applicant to have the building insured.
70. It was stated that the invoice for £788.37 for engineering was for the year ending 31st March 2013 and therefore should be charged to that year. It was submitted that the RTM Directors and Officers Insurance was not an item for the Service Charge under the Lease.
71. The Respondent refuted the claim that the Applicant had been denied access to the insurance policy.

Telephone

72. The Applicant had noted that there were 4 telephone numbers but as the only telephone charge related to the lift telephones there should only be two numbers as there were only two lifts.
73. The Respondent said that when the new lifts were installed they were allocated new numbers. Therefore two numbers relate to the old lifts and two to the new ones.

Lift Repairs

74. The Applicant noted that the two companies involved in the lift maintenance were Mid-Western and northern Lifts, which were effectively the same company. This is a company that is based Ireland which it was said was connected to the Agent and therefore it questioned whether it was a contract at 'arms length'. The Applicant presumed that it must cost more, as the company would have to sub contract to a company based the UK.
75. The Respondent said that the company although based in Ireland is part of a large group and has its own offices and contractors through out the UK and so does not incur any additional cost.

Lift Releases

76. The Applicant stated that the cost of the 4 lift releases was out of period in that they accrued in the year ending 31st March 2011 as they are invoiced for February 2011.
77. The Respondent stated that although invoiced in February 2011 they were paid in the year ending 31st March 2012.

General Repairs and Maintenance

78. The Applicant stated there was no dispute about the invoices relating to maintenance of the sprinkler and riser system. However several series of invoices were identified which were questioned as follows:
 - ✦ *Repairs to the Gate:* These were submitted to be illegal because it was said that the gate was the property of Megadene Ltd and should not be interfered with without their permission.
 - ✦ *Electrical Repairs:* It was questioned as to whether these works were carried out by a qualified person and the work should have been certificated.
 - ✦ *Works to Flats:* it was submitted that these were not chargeable to the Service Charge, as they did not relate to the Common Parts
 - ✦ *Fire Extinguishers:* The Applicant said that fire extinguishers were discouraged by the Fire Service and questioned why they had been installed.
 - ✦ *Inspections of the Building:* The Applicant said that there were several invoices from GJ Hyde, which related to an inspection of the property.

It was said that this was a management function, which was being subcontracted to GJ Hyde because the Managing Agent was based in Ireland and therefore was absent.

- ◆ *Specific Items:* Applicant noted that there were invoices for repairs to front door locks, which appeared to be for specific flats and for laying concrete at a cost of £640.00 which was said to be excessive.

79. The Respondent replied as follows:

- ◆ *Repairs to the Gate:* It was disputed that Megadene Ltd owned the gates. It was said that the system installed by Megadene Ltd had not worked and a new system had been installed. It was said that Megadene's equipment was still in place.
- ◆ *Electrical Repairs:* It was said that so far as the Respondent's Representatives were aware the work was carried out by a qualified electrician and had been certificated.
- ◆ *Works to Flats:* It was stated that the repairs to the flats were required due to leaks from the car park and from the leaking common stacks.
- ◆ *Fire Extinguishers:* The Respondent's Representatives were aware the fire extinguishers were installed in accordance with advice following inspections, which are no longer carried out by the Fire Service.
- ◆ *Inspections of the Building:* The Respondent's Representatives said that these were maintenance inspections and Mr Hyde carried out work such as replacement of bulbs etc.
- ◆ *Specific Items:* Respondent's Representatives said that it was believed the repairs to front door locks were required due to vandalism.

80. The Tribunal expressed the view that the inspections by Mr Hyde appeared to be a management function but it would examine each of the invoices before making its assessment.

Access Control

81. The Access Control costs were not disputed

Fire Inspection

81. The Applicant questioned whether the Fire Inspection charge was reasonable at £900.00 and submitted that £540.00 was more appropriate

82. The Respondent said £900.00 was the charge for a property of the size of the block.

Postage and Stationery

83. The Applicant submitted that the costs of postage and stationery should be included in the Management Fee when assessing their reasonableness. The

Respondent did not dispute the point and the Tribunal stated that this had been how the item had been considered in previous cases.

Management Fees

84. The Applicant submitted that the Management Fees were excessive being higher than those charged by the previous manager. It was also stated that there had been communication difficulties between the freeholder and the Managing Agent as the Agent was not based in the UK. In addition the entry phone system was not working and this was likely to cause vandalism problems making management more difficult.
85. Mr Madigan for the Respondent's Managing Agent disputed that there were difficulties in communication. He said that he visited Northampton House regularly and issues were dealt with promptly. He said that they provided a full management service.

Debt Collection Costs

86. The Applicant said that it did not accept that all the legal costs were leasehold arrears related. It was said that Mr Madigan had said that the Managing agent issued reminder and letters before action and therefore the costs claimed would be totally disproportionate to the two or three cases referred to in the solicitor's invoices. In addition it was said that it would be expected that legal charges that relate to specific leaseholders would be charged to the leaseholder concerned. It was said that all legal matters were being claimed against the Service Charge whereas only those permitted by the Lease should be charged.
87. The Respondent's Representatives stated that the Legal Costs claimed all related to the collection of arrears as shown by the solicitor's invoices and the list of court fees.

Accountant's Fees

88. The Applicant submitted that these were excessive and higher than those of previous years.
89. The Respondent's Representatives said that the fee was £2,655.00 with an additional charge of £412.00 for making arrangements for Leaseholders to inspect the accounts. The other Fees were accruals.

Sundry Expenses

90. The Applicant said that the Sundry Expenses related to the LVT proceedings and the Lease did not cover these and should not be allowed to be consistent with the decision in other cases where a 20C Application was not allowed. The Respondent said that these were for preparing the case and included photocopying the documents.

Determination

Lift Refurbishment & Section 20 Consultation Procedure

91. The Tribunal looked at the three Notices that were served with regard to the section 20 Consultations Procedure in detail and applied the provisions of the legislation
92. With regard to the first issue concerning the e-mailed Notice of Intention (the First Notice) the Tribunal found that Paragraph 1 of Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) states under the Notice of Intention that:
- (1) The landlord shall give notice in writing of his intention to carry out qualifying works -*
- (a) to each tenant; and*
 - (b) where a recognised tenants' association represents some or all of the tenants, to the association.*
93. The Tribunal found that the obligation is to give to each tenant a copy of the notice but there is no obligation to address the notice to the tenant or for the landlord to sign the notice or for the notice to include the landlord's address on the notice. There is also no obligation for the notice to be dated. There is an obligation to give 30 days in which tenant can make observations and to specify the date on which the 30 day period ends. It was not in dispute that these latter obligations were complied with. The tribunal found that the address to which observations were to be sent should have been placed at the appropriate point in the body of the letter but it was evident that Leaseholders identified the address at the head of the letter as being sufficient for this purpose.
94. With regard to the second issue that there was a lack of detail, which was commented on by the Applicant's Representative in e-mails dated 16th February 2011 and 14th March 2011. The Tribunal found that Paragraphs 1(2) and 2 of Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) states:
- (2) The notice shall -*
- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;*
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;*
 - (c) invite the making, in writing, of observations in relation to the proposed works; and*
 - (d) specify -*
 - (i) the address to which such observations may be sent;*
 - (ii) that they must be delivered within the relevant period;*

and
(iii) *the date on which the relevant period ends.*

(3) *The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.*

2. (1) *Where a notice under paragraph 1 specifies a place and hours for inspection -*

(a) *the place and hours so specified must be reasonable; and*

(b) *a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.*

(2) *If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.*

95. The Notice stated that it was intended "to undertake comprehensive refurbishment of both lifts and associated engineering". The Tribunal considered whether the description provided was sufficient. The Tribunal took into account the provision in the legislation that a landlord could make arrangements for tenants to view a detailed description at a specified venue and time rather than sending all the details to each tenant. The Tribunal took the view that this was intended for situations where a series of complex works were to be undertaken and there might be an extensive Schedule of Condition and Works. The Tribunal accepted that a fuller description could have been given here in so far that the Respondent had, as at the date of the First Notice, received a quotation from a contractor. Nevertheless, the Tribunal found that the general description of the proposed work in the First Notice met the statutory requirement.
96. The Tribunal found that the Respondent had not expressly invited observations in either notice as required, although observations were made.
97. With regard to the third issue the Tribunal found as a matter of fact that the Respondent's agent had received the Applicant's nomination of a contractor, had contacted the contractor and made a reasonable attempt to obtain a quotation. It further found that in the absence of evidence to the contrary on the balance of probabilities the nominated contractor did not submit a quotation.
98. The Tribunal addressed the fourth issue, which was that there was a connection between the Respondent and its Agent and Mid Western Lifts, one of the contractors, who submitted the successful quotation. The Tribunal found the evidence regarding the link between the Respondent's Agent and the Mid Western Lifts to be inconclusive and accepted the evidence of the Agent that the name was a common one in the area where the companies were situated. In any event even if there had been a link between the Respondent and the contractor the legislation would still have been complied with because paragraph (6) of Schedule 4 Part 2 of the 2003 Regulations states:

At least one of the estimates must be that of a person wholly unconnected with the landlord.

99. It was agreed that at least one estimate was from an unconnected contractor. The Tribunal therefore found that the Respondent had complied with Paragraphs 4(1) – (4) and (7) – (8) of Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) Therefore, having considered issues 1, 2 3 and 4 the Tribunal determined that the First Notice did not comply with the requirements as observations were not expressly invited although it was correct in all other aspects and the obtaining of estimates had been properly undertaken.
100. The Tribunal then considered the provision of Paragraphs 3 and 4(5) and (9) (10 and (11) of Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) with regard to the fifth and sixth issues raised by the Applicant, which called into question the validity of the Second and Third Notices.
3. *Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.*
4. ...[Other provisions not relevant to this point]
- (5) *The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9) -*
- (a) *obtain estimates for the carrying out of the proposed works;*
- (b) *supply, free of charge, a statement ("the paragraph (b) statement") setting out -*
- (i) *as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and*
- (ii) *where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and*
- (c) *make all of the estimates available for inspection.*
- (9) *The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by -*
- (a) *each tenant; and*
- (b) *the secretary of the recognised tenants' association (if any).*
- (10) *The landlord shall, by notice in writing to each tenant and the association (if any) -*
- (a) *specify the place and hours at which the estimates may be inspected;*
- (b) *invite the making, in writing, of observations in relation to those estimates;*
- (c) *specify -*
- (i) *the address to which such observations may be sent;*

- (ii) *that they must be delivered within the relevant period; and*
- (iii) *the date on which the relevant period ends.*

101. The Tribunal found that the Respondent had in the Second Notice dated 9th May 2011 had regard for the observations following the First Notice pursuant to paragraph 3 of Schedule 4 Part 2 of the 2003 Regulations. The Respondent had also obtained estimates for the carrying out of the proposed works and had supplied to each Leaseholder free of charge, a statement setting out as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works by providing copies of the two estimates together with a summary of the observations and responses to them pursuant to paragraphs 3 and 4 (5) (a) and (b) and (9) of Schedule 4 Part 2 the 2003 Regulations.
102. However, the Second Notice did not comply with paragraphs 4(5) (c) and (10) of Schedule 4 Part 2 the 2003 Regulations in that all the estimates were not made available for inspection.
103. A Third Notice was served on 22nd June 2011 with responses required by 24th July. In the Notice the Respondent sought to explain why Mid-Western Lifts (which since the placing of the order had been taken over by Orona UK Limited) was awarded the contract. Reference was made to the two quotations other than from Otis and Mid-Western Lifts/Orona UK Limited although these had not been made available.
104. The Tribunal determined that the consultation procedure pursuant to section 20 Landlord and Tenant Act and Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) had not been complied with because there had been no express invitation for observations and all the estimates had not been made available to the Leaseholders as required by paragraphs 4(5) (c) and (10).
105. The Tribunal informed the parties that if the Tribunal found that the section 20 procedure had not been followed an application could be made under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from the requirements. The Tribunal was of the opinion that the issue of whether the document headed Order Confirmation, which was signed on behalf of John Horgan of Mid-Western Lifts and dated 20th April 2011 pre-empted the procedure would be a matter that could be considered in relation to any 20ZA Application if made.
106. The Tribunal then considered all the evidence submitted in relation to the other items of expenditure in the accounts for the year ending 31st March 2012.

Electricity

107. The Tribunal noted that the electricity charge was not disputed and found the actual payments as detailed by the invoices were £14,762.00 and that therefore the appropriate proportion of this amount was payable under section 103 Commonhold and Leasehold Reform Act 2002. The difference of £4,618.00 could be charged when paid.

Water

108. The Tribunal noted that the water charge was not disputed and found the actual payments as detailed by the invoices were £24,875.00 and that therefore the appropriate proportion of this amount was payable under section 103 Commonhold and Leasehold Reform Act 2002. The difference of £22,112.00 could be charged when paid.

Refuse Collection

109. The Tribunal noted that the Northampton Borough Council charge of £1,227.00 for refuse collection was agreed. There was no invoice or other evidence to support the charge the "Man with a Van" charge of £140.00. The Tribunal found an invoice for £140.00 submitted by "Man with a Van" for the removal of waste among the Repairs and Maintenance invoices. The Tribunal found considerable uncertainty and likelihood of duplication of the charge under the item of Refuse Collection in the absence of supporting evidence. It therefore determined the amount to be unreasonable.

Cleaning

110. The Tribunal noted that the cost of cleaning was not in dispute. Account was taken of the invoices erroneously charged under the Repairs and Maintenance head.

Security

111. The Tribunal accepted the Respondent's Representatives explanation of the Fastclean invoices and determined the cost of security to be reasonable. Account was taken of the invoices erroneously charged under the Repairs and Maintenance head.

Insurance

112. The Tribunal noted that the quantum of the insurance was not in dispute. No evidence was submitted to show that the Applicant had not actually been able to make a claim through not having received details of the insurance. The Tribunal therefore determined that the Respondent's share of the insurance was payable.
113. The Tribunal found that the definition of "Insured Risks" in paragraph 1 of Schedule 1 of the Lease included the words "and such other risks as the Landlord may from time to time reasonably insure against to the extent that such risks (or any of them) are generally available in the insurance market" was wide enough to include the Director's Insurance and the Tribunal determined that it was reasonable for the Respondent to insure its Directors in this instance.

Telephone

114. The Tribunal accepted the Respondent's Representatives explanation of the 4 telephone numbers and determined the cost to be reasonable.

Lift Repairs

115. The Tribunal, based upon the knowledge and experience of its members, accepted the Respondent's Representatives' statement that the Mid-Western and Northern Lifts as part of Orona Limited were well represented in the UK and were no more or less expensive than any other lift maintenance company. The Tribunal therefore determined the cost of Lift Maintenance to be reasonable.

Lift Releases

116. The Tribunal accepted that the invoices for the cost of the 4 lift releases were paid in the year ending 31st March 2012. In the knowledge and experience of its members the Tribunal found that it was not unreasonable to call out the Fire and Rescue Service and that the charge was the standard price for a lift release by the Service. The Tribunal therefore determined the cost of Lift Releases to be reasonable.

General Repairs and Maintenance

117. The Tribunal examined each of the invoices for Repairs and Maintenance. It noted that there was no dispute about the invoices relating to maintenance of the sprinkler and riser system. With regard to the items identified by the Applicant the Tribunal found follows:
118. *Repairs to the Gate:* The legal ownership of the gates was not a matter within the jurisdiction of the Tribunal. No evidence was adduced to suggest that the work had not been carried out or that it was not necessary or had not been undertaken to a reasonable standard. The Tribunal therefore determined the cost to be reasonable.
119. *Electrical Repairs:* No evidence was adduced to suggest that a qualified person did not carry out the electrical repairs or that they had not been certificated. As it is illegal to carry out such work unless it is in accordance with Part P of the Building Regulations on the balance of probabilities the work had been carried out correctly. The Tribunal therefore determined the cost to be reasonable.
120. *Works to Flats:* The Tribunal noted from the invoices that work had been carried out to:
- ◆ flats 211, 514, 612 and 616 to remedy water damage as a result of a leak from another flat
 - ◆ flat 101 as a result of a leak from the car park
 - ◆ flats 304, 609 and 607 to remedy water damage as a result of a leak from another flat
- The Tribunal accepted the Respondent's Representatives' explanation that the leaks were from a common part which was either the car park or stacks carrying waste water or sewage and therefore a service charge cost.
121. *Fire Extinguishers:* In the absence of evidence to the contrary the Tribunal accepted Respondent's Representatives' explanation the extinguishers had been installed on professional advice.
122. *Inspections of the Building:* The Tribunal agreed with the Applicant that several of the invoices from GJ Hyde related to an inspection of the property

which was a management function and that GJ Hyde was being subcontracted to carry out work that it would be expected to be undertaken by a managing agent. The Tribunal identified these invoices as follows:

Document number in Bundle as listed	Amount of Invoice £	Task
00169	400.00	Weekly Inspections 4 weeks @ £100 per week
00173	1,200.00	Weekly Inspections 8 weeks at £150 per week
00174	500.00	Weekly Inspections 5 weeks @ £100 per week
00181	150.00	Meeting Contractors (lifts)
00185	500.00	Weekly Inspections 5 weeks @ £100 per week
0197	900.00	Weekly Inspections 9 weeks @ £100 per week
00204	375.00	Meeting with Contractors (lifts fire brigade, water company)
00209	900.00	Weekly Inspections 9 weeks @ £100 per week
00212	160.00	Meeting Contractors (lifts)
00213	75.00	Meeting Contractors (risk assessor)
00229	800.00	Weekly Inspections 8 weeks @ £100 per week
Total	5,960.00	

123. The invoices identified only record that an inspection or meeting took place and there is no mention of any related work having been done. However there are other invoices, which are specifically for the changing of light bulbs, and for the carrying out of work etc., which are presumably reactive to the inspection separately invoiced. The Applicant referred to some invoices, which it said were management however the Tribunal disagree as work was itemised as having been done.
124. The Tribunal took into account the sum of £5,960.00 when assessing whether the Management Fee was reasonable.
125. *Specific Items:* In the absence of evidence to the contrary the Tribunal accepted the Respondent's Representatives' explanation of the invoices relating to the door locks and determined the cost to be reasonable. No evidence was adduced to show that the laying of the concrete at a cost of £640.00 was not necessary or had not been undertaken to a reasonable standard or that the cost was unreasonable. The Tribunal therefore determined the cost to be reasonable.

Access Control

126. The Tribunal noted that the Access Control costs were not disputed

Fire Inspection

127. No evidence was adduced to show that the Fire Inspection charge at a cost of £900.00 was unreasonable. The Tribunal determined that in the knowledge and experience of its members, taking into account the size of the building and the fire safety measures required the cost was reasonable.

Postage and Stationery

128. The Tribunal agreed with the Applicant that the costs of postage and stationery should be added to the Management Fee when assessing its reasonableness as it had done in previous cases.

Management Fee

129. The Tribunal considered the general standard of management. It found that the section 20 procedure had not been followed to the extent that all the estimates had not been made available, however, the Landlord and Tenant Act 1985 provides a penalty for this management failure in favour of tenants by capping the amount payable under the service charge for the qualifying works. The Managing Agent had arranged for the payment of utility bills, arranged for repairs and maintenance work and for the payment of work. It had billed and collected the service charge and instructed enforcement proceedings. The Tribunal found that the condition of the Block had deteriorated since its previous inspection. There was maintenance work required e.g. there seemed to be a problem with water drainage in the upper car parks and a programme to renew the carpets in the Block was needed which would improve the standard of cleanliness. However, this is dependant on funds and although a reserve/sinking fund was being set aside there was a significant amount in service charges outstanding. Notwithstanding the Applicant's comments about the management the Tribunal found it to be of an adequate standard and therefore reasonable. In assessing a reasonable fee the Tribunal was aware that a relatively low management fee had been set in previous years, however, this was because there had been a charge for a concierge who had undertaken some of the management responsibilities. With regard to the year in issue it was found that Mr Hyde had undertaken a management role and that this had been accounted for under the Repairs and Maintenance head in the accounts and the costs had been identified by the Tribunal as being £5,960.00. Mr Hyde's role was not as extensive as that undertaken by the concierge but did amount to regular inspections which might have been expected of the property manager employed by the Managing Agent. The Tribunal also considered that the stationery and postage would normally be included in the Management Fee. Therefore both these costs were taken into account when the Tribunal assessed a reasonable Management Fee.
130. The Tribunal added together the three items of £32,300.00 Management Fee, £1,261.00 Stationery and Postage and £5,960.00 Mr Hyde's Inspections, which came to £39,521.00. This averaged a unit charge between the 187 apartments of £211.00. In the knowledge and experience of the members of the Tribunal this is a charge that would represent a full management service of a very high standard. The Tribunal found that the service was not of that level. It accepted that there were additional demands of a gym but it was not a full leisure centre with a swimming pool at the present time. There are on-

going problems with vandalism due to uninvited visitors as reported by both parties and the Tribunal found from its inspection that some tenants or sub tenants do not remove their refuse as carefully as they should. It would be anticipated that for a unit charge of over £200.00 these management challenges would be addressed more effectively than they appear to be.

131. The Tribunal found that by reducing the Management Fee by £5,960.00 for Mr Hyde's Inspections (as it would be expected that the inspections would be part of the management service) and the Fee including £1,261.00 for Stationery and Postage would be £27,601.00. This would give an average unit charge between the 187 apartments of £147.50. In the Tribunal's opinion this was a fair reflection of the service provided. Therefore the Management Fee of £32,300 is reduced by £5,960.00 for Mr Hyde's Inspections, which remain as part of the cost for Repairs and Maintenance, giving a Management Fee of £26,340.00.

Debt Collection Costs

132. The Tribunal accepted the Respondent's Representatives' statement that the Legal Costs claimed all related to the collection of arrears. The Tribunal examined the solicitor's invoices and the list of court fees and found that on their face they related to the collection of service charge arrears, which the Respondent can under the terms of the Lease charge to the Service Charge but must also re-pay where they are reclaimed.

Accountant's Fees

133. The Accountancy Fees of £2,655.00 were considered on the high side in that previously the fees had been around the £2,000 mark. Nevertheless the Tribunal determined that they were not so high as to be unreasonable taking into account the number of invoices and transactions that had to be perused to give a certification. The additional charge of £412.00 for making arrangements for Leaseholders to inspect the accounts was also determined to be reasonable, as the tribunal had done in relation to a previous year where the Applicant claimed a similar cost. There were no invoices in respect of the fees for the cost of £400.00 and it was not clear how this sum had arisen. In the absence of explanation this amount was not determined to be reasonable, as it appeared to relate to 2013 and should be included in the accounts for that year.

Sundry Expenses

134. The costs relating to the previous Leasehold Valuation Tribunal proceedings were not determined to be reasonable because they related to legal costs. Under the Lease legal costs are not recoverable through the Service Charge except those incurred in relation to enforcing the Service Charge if not recovered from the defaulting leaseholder. In the present circumstances no details were provided of the costs. It was not clear whether they were a charge by the Managing Agent or for legal advice. Therefore in the absence of invoices or evidence as to their breakdown they were determined not to be reasonable.

Summary

135. The Tribunal determined what costs were reasonable for the year ending 31st March 2012 and the amount payable by the Applicant under section 103 of the Commonhold and Leasehold Reform Act 2002. The Tribunal calculated the proportion of the total service charge based upon the internal floor area payable by the Applicant for the excluded units and took into account that under the Lease Leaseholders are only liable for the costs actually expended.

Determination for the year ending 31 st March 2012			
	Actual costs	Determined Costs	Comment
Items	£	£	
Electricity	19,380.00	14,762.00	Amount not in dispute but Applicant only required to pay amount expended under Lease
Water & Sewerage	46,987.00	24,875.00	Amount not in dispute but Applicant only required to pay amount expended under Lease
Refuse Collection	1,367.00	1,227.00	£1,227.00 determined to be reasonable £140.00 determined not to be reasonable without invoice as likelihood of duplication
Cleaning	7,141.00	7,141.00	Determined to be reasonable
Security	18,382.00	18,382.00	Determined to be reasonable
Buildings Insurance	27,451.00	27,451.00	Determined to be reasonable
Other Insurance	77.00	77.00	Determined to be reasonable
Telephone Charges	1,071.00	1,071.00	Determined to be reasonable
Lift Repairs and Maintenance	16,872.00	16,872.00	Determined to be reasonable
Lift Releases	2,664.00	2,664.00	Determined to be reasonable
Lift Refurbishment	177,489.00	46,750.00	Amount not in dispute – but section 20 procedure not followed therefore amount payable capped at £250.00 per unit unless dispensation applied for and granted - £250.00 x 187 = 46,750.00
General Repairs & Maintenance	36,803.00	36,803.00	Determined to be reasonable. Management Fee reduced to take account of £5,960.00 for Mr Hyde's Inspections
Access Control System	25,626.00	25,626.00	Not in issue

Inspections	900.00	900.00	Determined to be reasonable
Stationery & Postage	1,261.00	1,261.00	Determined to be reasonable when taken with the Management Fee
M&C Management Fees	32,300.00	26,340.00	32,300.00 reduced by £5,960.00 for Mr Hyde's Inspections, which remain as part of the cost for Repairs and Maintenance. Average unit charge with £1,261 for Stationery & Postage = £147.60 determined to be reasonable.
Debt Collection Costs	24,353.00	24,353.00	Determined to be reasonable
Accountants' Fees	3,467.00	3,067.00	£3,467.00 determined to be reasonable. £400.00 relating to 2013 determined not to be reasonable.
Sundry Expenses	952.00	0	Determined not to be reasonable
Sinking Fund	10,000.00	10,000.00	Not in issue
Total	454,543.00	289,622.00	
Amount payable		22,938.00	7.92% of £289,622.00

136. The Tribunal found as a matter of fact that the "appropriate proportion" under subsection (4) of section 103 of the Commonhold and Leasehold Reform Act 2002 is 7.92%.
137. The Tribunal determined that the consultation procedure pursuant to section 20 Landlord and Tenant Act and Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) had not been complied with because there had been no express invitation for observations and all the estimates had not been made available to the Leaseholders as required by paragraphs 4(5) (c) and (10). Therefore the costs for that item were capped at £250.00 per unit.
138. The Tribunal determined that the total amount of the relevant costs of the service charge for the year ending 31st March 2012 to be reasonable were £289,622.00. The Tribunal determined that the proportion of the total service charge based upon the internal floor area of the excluded units payable by the Applicant is £22,938.00.
139. No evidence was adduced as to the reasonableness of the estimated service charge for the year ending 31st March 2013, as the Applicant is not liable to pay an Interim Charge. The Tribunal therefore made no determination.

JR/Morris (Chair)

26th October 2012