Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0026/04/12

In the Matter of 103, Glan Gors, Harlech, Gwynedd

In the matter of an Application under Section 27A Landlord and Tenant Act 1985

TRIBUNAL AVS Lobley Chair
C Williams FRICS
ER Williams FRICS

APPLICANT Glan Gors Management Limited (GGML)

RESPONDENT Mr. I R Morgan

ORDER

BACKGROUND

1. Mr. Morgan bought the lease of no 103, Glan Gors, Harlech in 2004. Glan Gors is an estate with 133 properties in a low rise residential development comprising four phases of flats and houses (104 in phases 1-3 and 29 in phase 4) set in about 8 acres and with grassed areas, a hedge to one side, in a rural location near Harlech castle. The original lease was made between Daimon (Holdings) Limited and Frank Little for a term of 999 years from July 1972. The lease provides for the lessee to contribute to the maintenance expenses set out in the fifth schedule: maintaining and repairing sewers drains and watercourses, footpaths, the gardens, lighting, effecting insurance in respect of roads, footpaths, parking areas, clothes drying areas and gardens, employing managing agents to manage and administer the estate and paying their fees and expenses and meeting such other expenses as may be reasonably incurred in the proper and convenient management and running of the estate and keeping proper records of all costs charges and expenses incurred and if necessary employing a qualified accountant to keep or audit the same. The lessee was also liable for 114th of the television expenses as set out in the sixth schedule. This obliged the lessor to maintain repair and renew the cables and installations for the receipt directly or by landline or television or wireless transmissions connected to the common television mast and maintain and keep in good working order and condition the common television aerial and employ managing agents or electrical contractors to manage and maintain the television mast aerial and cables and installations. Clause 12 of the second schedule prohibited the erection of external wireless or television aerials.

COURT PROCEEDINGS

2. On 18th April 2012, GGML commenced proceedings against Mr. Morgan in the Northampton County Court for unpaid service charges and insurance arrears for the years 2008 to 2011 in the amount of £8,943.50 plus interest of £1,252.39 and costs.

3. The amount of service charges and insurance for each year were as follows:

7th July 2008	£373.36
20th February 2009	£226.00
2nd July 2009	£436.65
3rd January 2010	£280.50
12th July 2010	£319.64
31st March 2011	£248.00
12th July 2011	£353.35

There were balancing charges of £4.70 for the invoice issued on 20th February 2009, £6.48 for the invoice dated 3rd January 2010 and £42.73 for the invoice dated 31st March 2011.

4. Whoever prepared the claim form wrongly added the totals claimed in the service charge demands together to total £8,943.50 though it is apparent from the invoices themselves that each of the invoices from 20th February 2009 onward included arrears bought forward so that the correct total was £2,183.59 (taking into account the balancing charge). GGML applied in August 2012 to amend its claim accordingly.

5. On 22nd August 2012, Mr. Morgan filed his defence. He claimed no summaries or invoices had been sent to his property. He wished to have the dispute heard by the LVT. He said the service charge demand had to be served within 18 months of being incurred so that the landlord could not recover from him. He complained that GGML had not explained their error in incorrectly calculating the claim and they claimed monies they were not entitled to and they intended to seek to make him bankrupt. He complained GGML had not provided any information about who they were or their legal authority to run the estate. He queried whether they had been given a management contract and he wished to have proof that Purpose Properties Limited (PPL, now the landlord) had given GGML permission to take him to court. He had received an invoice dated 1st April 2012 and the last invoice he had received was he believed sent in 2008. All other invoices had not been accompanied by the Summary of Rights and Obligations. No invoices had been provided in support of the sums claimed and no insurance documentation had been provided. GGML had not provided the level of service associated with a professional manager.

6. On 29th August 2012, the claim was transferred to the LVT pursuant to an order made by District Judge Williams. The order provided that "upon it appearing that the claim relates to a dispute in relation to a service charge which the defendant considers unreasonable the claim be transferred to the Leasehold Valuation Tribunal (Wales) and the proceedings be stayed pending the decision of the tribunal".

DIRECTIONS AND HEARING

7. On 12th November 2012, directions were made as to the production of documents and inspection, which was to take place on 4th February 2013. On 18th December 2012, GGML produced a bundle containing a statement of case, consultation documents for the years 2008 to 2011, the statutory demands and the accounts for those years. A further direction was made on 18th November 2012 ordering GGML to provide copies of all the invoices making up the demands for service charges from 2008 to 2011, together with a schedule. Mr. Morgan was directed to identify which items were disputed with reasons. Paginated

bundles were to be supplied by GGML. Eventually bundles were supplied but in insufficient time for the Tribunal and Mr. Morgan to consider them fully prior to the hearing set for 4th February 2013. Accordingly, the Tribunal made further directions as to the completion of a Scott Schedule. Mr. Morgan produced his copy of the schedule on 26th March 2013 but under comments he had simply written "unreasonable". GGML retyped the schedule and in its response received on 2nd April 2013, pointed out that Mr. Morgan had not identified why the charges were unreasonable. He had made some statements as to why some may be unreasonable but it was difficult to identify to which invoices he was referring. The hearing took place on 15th and 16th April 2013, when Mr. Varley, a director of GGML, appeared with Mr. Hancock for GGML and Mr. Morgan represented himself. Mr. Hancock initially asserted that the directions made on 18th December 2012 directed Mr. Morgan to state why he was disputing the amounts charged and he had simply typed unreasonable and this did not comply with the direction and asked for those items to be struck from the schedule. However, Mr. Hancock withdrew his contention at the suggestion of the Tribunal.

8. The LVT had inspected the estate and Mr. Morgan's property as arranged on 4th February 2013.

9. Pursuant to Section 19 of the Landlord and Tenant Act 1985, relevant costs shall be taken in to account in determining the amount of a service charge payable for a period (a) only to the extent 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. The Tribunal sets out its findings below in relation to the reasonableness of each item of service charge disputed under each of the headings in the Scott Schedule and the documents in support provided by GGML. The Tribunal considered the following documents in making its findings: the documents produced by GGML pursuant to the direction dated 12th November 2012 (referred to in paragraph 7 above), a folder containing GGML's statement of case received on 30th January 2013, Mr. Morgan's papers received on the same date, the bundle of documents produced by Mr. Morgan on 26th March 2013 and a bundle containing GGML's response to Mr. Morgan's Scott Schedule. Firstly, however, the other issues raised in the County Court proceedings are dealt with below.

SERVICE OF DEMANDS

10. Mr. Morgan claimed not to have received service charge demands since 2008. He said the only evidence submitted was a photocopy of a blank envelope and no reminders were issued. He pointed to minutes of GGRA's AGM on 25th April 2011 when a leaseholder raised the issue of non receipt of service charge demands and the Treasurer said invoices had been sent by recorded delivery and had been eventually returned. Mr. Morgan had raised at this meeting the issue of his father being sent invoices incorrectly when Mr. Morgan had been the leaseholder since 2004. The Chairman had said that Mr. Morgan had only been the leaseholder with the Land Registry since 2011. Mr. Morgan asserts in his statement of case (page 115, IM bundle) that the case against him was false and fraudulent. No invoices were sent as GGML claimed and even the fake ones sent to the court were illegal. He said that he paid the invoices up to 2007 when GGML stopped sending him invoices and refused to accept he was the leaseholder.

11. GGML say that service charge demands were sent each year by first class post to 103, Glan Gors (with the statutory Summary of Tenants Rights and Obligations required by the Regulations, in English), and none were returned by the post office. GGML also point out that the county court proceedings are stayed pending the determination of the

reasonableness of the service charges by the LVT and Mr. Morgan seeks to extend the case before the LVT to other matters not referred to in the order of the Caernarfon County Court. It asserts that the service charge demands comply with S47 of the Landlord and Tenant Act 1987 (written demands must contain the Landlord's name and address) and a summary of the tenant's rights and obligations in each case was appended. In a letter dated 21st January 2013, GGML stated that in attempting to recover arrears, GGML did send copies of the outstanding service charge invoices to Mr. Eric Morgan as he appeared to still be shown in the Land Registry records as the leaseholder. GGML asserted Mr. Morgan appeared to be concealing his whereabouts. GGML further pointed out that the specific requirements of the above regulations were not part of the defence in the county court proceedings nor of the order transferring the dispute so this issue should have no bearing in the hearing. There was no direction from the Judge requiring the LVT to consider compliance with section 47 of the Landlord and Tenant Act 1987 or the 2007 regulations. GGML also state in their response to Mr. Morgan's Scott Schedule (page 4) that while it was not disputed by GGML that no Welsh translation was provided, Mr. Morgan was at least as fluent in English as Welsh, he had never said in the 2008 case he needed a Welsh translation and there was no evidence that he had suffered material harm.

12. At the hearing, Mr. Hancock referred further to two cases. In paragraph 10 of the first, *Johnson and others v County Bideford Limited (2012) UKUT 457,* in referring to a failure to comply with the requirements of section 47(1) (of the Landlord and Tenant Act 1987) was one that could be corrected and corrected with retrospective effect and that was what Section 47(2) provided. Mr. Hancock submitted that though a demand may be deficient that did not make it invalid and the deficiency could be corrected retrospectively.

13. Mr. Hancock also referred to what President George Bartlett, QC, President said in the case of *Beitov Properties Limited v Elliston Bentley Martin (2012) UKUT 133* at paragraph 13:

> *"It is in my view generally inappropriate for a tribunal to take on behalf of one side in what is a party and party dispute a purely technical point, by which I mean a point that does not go to the merits or justice of the case. Here there is nothing to suggest that the tenant wished to know the address of the landlord or was concerned that the address given in the demands might not be the right one or that he was prejudiced in any way by not knowing the address. The LVT said that if the landlord were now to serve a demand that gave the address required by section 47 the service charges would be payable. No purpose will in the circumstances have been served in imposing on the landlord the need to deal with the issue raised, to serve a fresh demand and, quite possibly, to take further proceedings for recovery."*

14. In his bundle of documents submitted on 26th March 2013, Mr. Morgan said the invoices submitted with the amended particulars of claim (which he saw for the first time) did not comply with The Service Charges (Summary of Rights and Obligations, and Transitional provisions) (Wales) Regulations 2007 as they had no Welsh translation. He said other tenants were to send in their invoices to show the summary of tenant's rights was not attached. He said the omission had been pointed out at the AGM in 2011 and this had been omitted from the minutes. It was asserted GGML had provided false information to the Tribunal. He asserted GGML had not complied with S47 as there was a digit missing from the company number. He enclosed copies of invoices from another leaseholder (pages 72 and 73).

15. At the hearing, Mr. Hancock asserted that the invoices had been submitted in a timely fashion, there had been some difficulty in obtaining the address, if Mr. Morgan had only been absent for 6 months he should have been able to pick up the letters as everyone else did. It was difficult to believe that, as there had been an out of court settlement in respect of service charges in 2008, Mr. Morgan would not have queried non receipt of several service charge demands. Mr. Varley said the invoices were sent out by first class post. They had been told by Jones Peckover that Mr. Morgan was the tenant but no response to the demands had been received so they tried to find who was responsible. The Land Registry showed Mr. Eric Morgan was the tenant and that was why they had begun corresponding with him.

16. Mr. Morgan said in response that he had never received any invoices and if he had he would have said so. Once Mr. Varley had found out there was a mistake, he should have written to Mr. Morgan and he had failed to do so. He queried why GGML had waited 4 years to take proceeding against him. GGML was aware he was at the property, they had taken his satellite dish down and he could have been given the invoices at AGMs.

17. GGML had in fact written to Santander UK PLC (who had a charge registered against the property in 2004) in February 2011 stating that Mr. Eric Morgan was in arrears of service charges for the years ending June 2010 and 2011 and GGML intended to take proceedings to recover those service charges.

18. Having considered the parties submissions, the Tribunal found that, on the balance of probabilities, the invoices had been sent as asserted by GGML. It was difficult to understand any reason why they should not have been sent and equally no reason why Mr. Morgan should not have queried their non receipt. The fact that the notices did not have the Welsh summary of the tenant's rights and obligations attached was not a matter raised in the county court proceedings and thus not a matter for the Tribunal to determine (see *Staunton v Kaye (2010) UKUT 270*). In any event, the defect could be remedied by service of the summaries in Welsh.

AUTHORITY OF GGML TO BRING PROCEEDINGS AGAINST MR MORGAN

19. As mentioned above, Mr. Morgan complained in his defence in the County Court proceedings that GGML had not provided any information about who they were or their legal authority to run the estate. He queried whether they had been given a management contract and he wished to have proof that PPL had given GGML permission to take him to court.

20. GGML confirmed in a letter to the Tribunal on 12th December 2012 that there was no further written agreement and the agreement was held over on an ongoing 3 monthly basis. This had been confirmed by the actions and behaviour of the parties, GGML, Glan Gors Residents Association (GGRA) and PPL. This was confirmed by the fact GGML had taken proceedings against another tenant, Mrs. O'Donnell, in the County Court for unpaid service charges, in 2011. In their statement of case dated 28th January 2013, GGML said that Mrs. O'Donnell had also cited in her defence that GGML had no right to manage or levy service charge and this defence was dismissed.

21. After the hearing on 4th February 2013, Mr. Morgan wrote to the Tribunal clerk and said that until Mr. Varley provided a legitimate contract then he could not see how the matter could proceed to a hearing and if a contract could not be provided then Mr, Morgan believed the

invoices were illegal and Mr. Varley had taken money without authority. He believed the case needed to be transferred back to the County Court and was now out of the RPT jurisdiction.

22. At the direction of the Tribunal, the clerk wrote to Mr. Morgan stating that as the issue of the authority of GGML to bring proceedings was raised as an issue in the proceedings then the Tribunal considered that it had jurisdiction over this issue. On 28th February 2013, Mr. Morgan wrote again stating that he did not believe he had been treated fairly and requested again that the case be transferred back to the county court for jurisdiction. He intended to apply to the county court if the Tribunal did not do so as he believed the claimant has acted criminally. He subsequently made an application to the County Court which was refused.

23. From the documents provided to the Tribunal, it appears the Freehold was sold at some point to Ferndale Properties Limited and in 1999, an application was made to the Leasehold Valuation Tribunal in connection, inter alia, with a tender for the management contract for the estate. Mr. Varley had put in a bid but Guy Woodcock and Company was appointed.

24. The freehold was then transferred to PPL who wrote to GGRA on 6th August 2001 with a proposal that GGRA take over the running of the estate with a provision for the appointment of managing agents if GGRA did not wish to manage the estate themselves. It was proposed that if GGRA set up a limited company then the officers of that company should be GGRA members. Mr. Underhill, on behalf of GGRA, wrote to PPL on 2nd September 2001 agreeing that the landlord should transfer control and responsibility for the estate to GGRA and GGRA intended to form a limited company to carry out the management functions on behalf of GGRA. The directors would be the committee of GGRA and the company would be owned by GGRA. By 2002, agreement had been reached and GGML had been formed, wholly owned by GGRA and with the committee members being directors of GGML. There were two separate agreements, one for phases 1-3 and a separate one for phase 4. Membership of the company was to be restricted to lessees. The agreement was to run for 5 years from July 2002. GGML proposed to appoint a managing agent and Jones Peckover had put in a proposal for £14,734 which GGML proposed accepting.

25. The agreement between PPL, GGML and GGRA was to last for 5 years from 1st July 2002 in respect of 104 dwellings in phases 1-3. Clause 15 provided that GGML were to ensure that membership of the company was at all times made up of lessees of the Estate only. The agreement was to continue for 5 years when it would terminate automatically unless renewed by prior agreement.

26. At the GGRA AGM in March 2008, it was reported that notice had been sent to PPL that "we" would continue with the management contract as originally entered into. There had been no response and it was therefore assumed that the notice was accepted. If the landlord wanted to alter the status quo, then it was intended to take action in the LVT.

27. At the hearing, and in GGML's response to Mr. Morgan's Scott Schedule (page 2), Mr. Hancock further said that in 2008, proceedings were commenced by GGML against four people for non payment of service charges and it was accepted by a number of county courts that GGML still had the right to manage. In 2013, GGML received a letter from solicitors acting for PPL confirming that GGML were the managing agents (page 3) and in awarding judgment in March 2013, the Judge stated that GGML had the right to bring the action as managing agent. MSB solicitors stated "We confirm our client had granted Glan Gors Management Limited the right to carry on an action in the name of Glan Gors Management Limited against the owners of number 23 Glan Gors. Glan Gors Management Limited deals with the management of Glan Gors Estate, Harlech".

28. Mr. Morgan said that the management agreement had ended in 2007 and there was no provision for it to continue. The final, executed page had not been produced. Mr. Varley was not a party to the agreement and he has not signed it and the agreement states that officers of the company must be leaseholders and Mr. Morgan believed that Mr. Varley was not a leaseholder. He assumed GGML would have a legitimate contract. Mr. Morgan did not dispute that Mr. Varley was a director of GGML but believed Mr. Varley had to be a leaseholder. He referred to emails in his statement of case (pages 5 and 6) in which the leaseholders appear to have been told that GGML had won the right to manage from the LVT, giving the impression it was a right to manage company sanctioned by the LVT and they were lying to the leaseholders.

29. In fact, the e mails (3rd May 2011) from V Donnelly to Graham Thomas state: "we won the right to manage in 2004 for 5 years. We have little or no contact with the freeholders and although we are out of time, their solicitors have indicated that we may continue collecting service charges. They are supposed to collect ground rent and do so sporadically and not all leaseholders receive invoices." Problems with tenants at nos 1, 11 and 44 were referred to then it was said "no 103 claims to have bought the house from his father in 2004 but as land registry only showed the transfer in March this year his father living away has been the one invoiced". In an email on 6th May 2011, V Donelly said she would have to go hunting to find the findings and decisions of the LVT.

30. Mr. Hancock said the management agreement was between PPL and GGML with GGRA as an interested 3rd party. Both had acted as if there was a contract.

31. In the light of the history set out above, the Tribunal accepted that, notwithstanding that the agreement between GGML and PPL had expired in 2007, the contract continued and GGML had authority to continue to collect the service charges. Mr. Varley was a director of GGML and was therefore entitled to represent GGML (GGRA being a separate entity).

QUALIFYING WORKS

32. In the directions made on 18th November 2012, Mr. Morgan had been asked to identify any works or agreements claimed to be qualifying works or qualifying long term agreements (thus requiring consultation under The Service Charges (Consultation Requirements)(Wales) Regulations 2004). Mr. Morgan referred to the case of *Phillips and Goddard v Francis*. GGML in response stated that no works which could meet the criteria for qualifying works had been commenced within the accounting years the subject of the proceedings and GGML did not seek a specific additional contribution to the service charge in the years in dispute and that the facts in the above case were specific to it. Further, GGML assert that neither the

management agreement, the insurance policy, grounds maintenance nor reserve fund for the year ended June 2009 are qualifying agreements.

33. This was not an issue raised in the county court proceedings and so for the reason stated in paragraph 18 above is not a matter for the Tribunal to determine. In any event, it did not appear from the documents that there were, in fact, any qualifying long terms agreements or works. The only works which might possibly come within the act was expenditure in relation to the TV system (see paragraph 57 below). However, no contribution was required by the tenants as the works were paid for from the reserve fund.

SERVICE CHARGES FOR YEAR ENDING JUNE 2009

MANAGEMENT CHARGES

34. For each of the years from 2007/08, the management charges had been kept at £10,400 (exhibit G, GGML documents) for phases 1-3. Perhaps misunderstanding the direction made by the Tribunal on 18th November 2012 to produce copies of all the invoices for the provision of goods and services making up the items for the service charges, Mr. Varley has produced, where available, copies of the underlying invoices justifying the management charges for each year. The total of each invoice has been proportioned between phases 1-3 and phase 4, a point which had not been clearly understood by Mr. Morgan in preparing his response to the Scott Schedule. Mr. Varley said he had been told by the Tribunal to split down the individual costs but there would not normally be a minute calculation of how a management fee had been arrived at. No commercial organisation would provide such a breakdown. The fee covered the administration of the estate for the whole year. All the invoices he produced for the year to June 2009 totalled £10,485.19. The cost for the management was agreed at the beginning of the year and it was up to management as to how it was spent. Mr. Morgan repeated that he did not accept that Mr. Varley or GGML had authority to make this charge and Mr. Varley was not a member of the RICS. In relation to the 2010 management charge, Mr. Morgan pointed out very few supporting invoices had been produced. Mr. Varley said he had been ill at the time these invoices were to be produced and regretted this but said the person paid was clearly identified in the schedule. He asserted that it was the totality of the expense which was important rather than the detail of how it was made up.

35. Mr. Morgan was asked whether he considered that, overall, the management charge was expensive. He said that he had no issue with the actual figure but when he bought the property, Jones Peckover had been the managing agents until Mr. Varley had taken over and there had been no correspondence about it. He had issues about Mr. Varley and he expected to pay for a professional managing agent to run the estate and had he known about Mr. Varley's background, then his father would have sold the lease and not transferred it to him.

36. Mr. Varley explained that GGRA had negotiated the management agreement directly with PPL and there was provision for GGML to outsource the management if it wished and this was done initially to Jones Peckover and then it was brought in house. The vast majority of the estate preferred the current management to what was experienced previously. They measured it by the standard of work they could see on the estate.

37. The issue for the Tribunal was as set out in paragraph 9 above. The management fee being charged was £100 per flat per annum. The fee accepted as being reasonable by the LVT in

2001 was £14,000, for Jones Peckover, professional agents. Mr. Morgan was clearly not happy with Mr. Varley and GGML's management of the estate but he was the only tenant who claimed them to be unreasonable and the tenants were all consulted each year about the level of management fee. The Tribunal found the management fee for each of the years to be reasonable

LEGAL AND PROFESSIONAL

38. Mr. Morgan pointed out that of expenses claimed under this head of £2, 944. 53, £1,292 was not supported by invoices. He did not consider Mr. Varley or others should be charging mileage to visit the estate or to court, especially when one, V Donnelly, had a property on the estate. Mr. Varley pointed out these claims were only for mileage in attending at Glan Gors to deal with issues as to breaches of leases or to attend at the county court. He had also charged for some time in attending at the police station and carrying out research following an incident. The charge for a County Court handbook was justified as it assisted in legal proceedings, saving the cost of employing a solicitor.

39. The Tribunal considered that GGML were likely to have incurred land registry fees in connection with the running of the estate even though the invoices themselves had not been produced and accepted these fees as reasonable. As regards the other invoices, had these been included under the management charge, then the Tribunal would have found them to be reasonable. In the circumstances, the Tribunal accepted these expenses as reasonable.

GROUNDS MAINTENANCE

40. Mr. Morgan pointed out the in respect of the year to June 2009, of the total claimed of £8,937.68, £687 was unsupported by invoices. Mr. Varley told the Tribunal that some items of cost related to the salary of employees of GGML. Mr. Morgan's response was that there should be wage slips to provide evidence of work done and at no point had GGRA been told that there were employees of GGML. No contracts have been provided, or hourly rates or evidence of insurance or what work was being done or covered. There was no evidence there had been tenders for the work. He challenged the expenditure on a ladder. He said some of the invoices from Mr. Oakley were not signed and he challenged Mr. Oakley's qualifications to put down weed killer. He queried the cost of a new door to the grounds man's shed. He understood the shed belonged to PPL. If trips were being made to the recycling centre by Mr. Oakley then he should have a waste transfer licence. He did not believe the work had been done and he took issue with the figure. He did not consider there was anything in the lease which allowed GGML to charge for tools. He expected to see invoices for each item charged.

41. Mr. Varley responded that though the fine detail was not set out in the management agreement there were extensive grounds and trees which had to be maintained. The grounds were mowed every 2 weeks and some of it had to be done by hand and took a week. Levert had had the contract at a fixed fee per month and when their contract expired it was the feeling at the GGRA annual meeting that Levert's services were not very good and GGML took over the work. They used Mr. Oakley and Mr. Griffiths, who had been in a short lived partnership. Mark Griffiths is employed by GGML and David Oakley is self employed with public liability insurance. There was no contract between him and GGML, Mr. Varley used him on a casual basis. He asserted after the contract with Levert ended, the charge had decreased and more work was done and maintenance of the estate improved.

42. As the Tribunal told Mr. Morgan, it was not proportionate to expect production of every single invoice for every item of expenditure in connection with the running of the estate and the Tribunal could accept, on the balance of probabilities, whether the sums had been incurred and were reasonable. It was to be expected that there would be quite an expense in maintaining the grounds. For the year ending June 2009, £3531.20 had been charged by Levert for grounds maintenance (£882.80 a month for July to October 2008) then by Mr. Oakley £3,000 from March to June 2009. The Tribunal considered all these charges to be high and reduced them by 25% (a reduction of £1,632.80). The Tribunal found the remainder of the sums claimed to be reasonable. Mr. Oakley's employment by GGML was on a casual basis with no written contract so there was no need for any consultation.

TREES AND WEEDKILLER

43. The Tribunal accepted the sums claimed to be reasonable on the balance of probabilities

WEEKLY TASKS

44. Mr. Varley explained these were wage costs for two employees of GGML for tidying the bin areas and removing items which had been dumped. Mr. Jones walked round the estate on a regular basis, litter picking and removing dog mess. They would carry out other items of grounds maintenance from time to time as directed by Mr. Varley for the benefit of the estate. They are properly employed on PAYE and put in weekly time sheets and the gross costs of those wages are allocated on the basis of the time sheets.

45. Mr. Morgan pointed out there was no evidence of wages slips, contracts hours worked or risk assessments. These were just figures written down with no evidence to support them.

46. The Tribunal accepted Mr. Varley's evidence as to this expenditure and found the sums claimed to be reasonable.

INSURANCE

47. Mr. Varley explained that the figure claimed of £192.85 was public liability insurance and for the bin stores. Mr. Morgan said there was no invoice provided and it was not his responsibility to insure the bin store.

48. The Tribunal considered this matter covered under the maintenance expenses and found the sums claimed reasonable.

TV AERIAL

49. Mr. Morgan's case in relation to sums expended on the TV aerial was that his flat had never been connected up and he did not see why he should have to pay for it. He complained Mr. Varley had taken down his satellite dish. There would be no problem if a Sky dish was installed. He considered there had been massive expense incurred and the whole matter had been mismanaged by Mr. Varley. He had been in touch with the freeholders and had been told PPL were quite happy for the lessees to have a satellite dish. Mr. Cook was not qualified to do any work and the lease provides any work should be done by an electrical contractor. The Tribunal noted that the lease provides for the landlord to employ managing agents or electrical contractors to manage and maintain the television mast and aerial etc.

50. Mr. Varley told the Tribunal that when the Tribunal had visited in February 2013, he had taken readings from the wires and this showed a good picture should be generated within the property. It was true that Mr. Morgan had complained about his picture but there was no television within the property so the engineer was unable to discover what the problem was. They were able to test the signal going into the property and it was possible there was a problem with internal wiring. Mr. Varley gave details of Mr. Cook's background.

51. The Tribunal noted most of the sums claimed under this head were for work done by an employee of GGML and noted the other sums claimed were in respect of parts and two invoices from Harlech Technivision in connection with minor repairs. The Tribunal found the sums claimed to be reasonable. The Tribunal noted that under the lease, Mr. Morgan's share in respect of costs of repairs to the TV was a 114th, not 104th as in the other expenses. An adjustment would be needed to the service charges to allow for this.

GGRA SUBSCRIPTION

52. Mr. Varley explained that many years ago it had been agreed a subscription would be paid by each leaseholder to GGRA and that it would be collected by way of the service charge rather than sending out separate invoices to the lessees every year. It was intended to provide funds to GGRA for any matters which might come up, for example a fighting fund in the case of litigation with the landlord. The LVT had recognised the GGRA. GGML was the agent for collection. The amounts were set out in the consultation documents every year (exhibit G in GGML's bundle) and were approved by the lessees. Mr. Morgan had attended some meetings of the GGRA, Mr. Morgan's father had been a committee member and he should have been aware of this through preliminary enquiries when he bought his lease.

53. Mr. Morgan said there was no provision in the lease for these sums to be taken, he had never agreed to it and there had been no consultation. He had received no consultation documents.

54. The Tribunal found that this subscription was a contractual matter between GGML and GGRA. It was not a matter with which the Tribunal could interfere.

SLABBING AND PATHS, CAR PARKS, SIGNS AND DRAINS

55. Mr. Morgan made similar points in relation to these invoices. There was a maintenance contract which had not gone out to tender, Mr. Oakley had been on the estate for 2½ years and the leaseholders had a right to a choice and he queried why GGML were employing landscape gardeners to carry out TV repairs. Mr. Varley was not able to recall what repair this related to but said that it may have been in connection with a repair which was done when Prince and Son had been on site anyway. Mr. Morgan again repeated that there were no invoices.

56. Two invoices have been proved from Mr. Oakley for laying slabs to numbers 19, 22 and 23 (£456) and numbers 56 and 90 (£422). The Tribunal considered the labour charges to be very high in the second invoice when compared to the first and reduced the labour charge of £330 to £150, a reduction of £180. In relation to the other sums claimed, in relation to an aging estate, the Tribunal considered there would be matters of ongoing maintenance and accepted the sums claimed to be reasonable.

REPAIRS RESERVE FUND

57. The notes to the accounts for 30th June 2009 shows that for each of the years 2008 and 2009, a sum of £15,600 was transferred from the service charge accounts to the repairs reserve fund. In the year ended June 2009, expenditure of £48,820.69 was paid out from this fund for new drainage and resurfacing (£13,953.50), replacing school boundary footpath and length of footpath next to northern car park (£10,539.75) and upgrade of Masthead aerial equipment and partial installation of new 5 core cabling system (£24,327.44).

58. The first item had been carried out by a Mr. Jones in October 2008 and February 2009 and invoices are provided. The invoice from him in respect of the second item was also provided (January 2009). Prince and Son had done most of the work in respect of the third item between October 2008 and July 2009 with some assistance from Mr. Oakley and Mr. Griffiths.

59. Mr. Morgan asserted there should have been consultation in relation to these sums and these exceeded £250 for each leaseholder, on the basis that the three sums were added together. He referred to *Phillips & Goddard v Francis* and he asserted this was a similar situation. He accepted this issue had not been mentioned in the county court defence but at that stage, he did not have the accounts to work from.

60. Mr. Hancock said in response said that case had to be looked at in some detail to see how it had been decided. However, the Judge referred to contributions being required from each lessee. GGML had paid these figures out of the reserve fund and no contributions were sought from the lessees. Consultation was therefore not required.

61. At the beginning of the hearing, Mr. Morgan had sought to put in expert evidence in relation to the TV system. Mr. Hancock objected on the basis that Criccieth TV were not independent. The Tribunal agreed Mr. Morgan could refer to this evidence and he accepted this.

62. Mr. Varley explained there had been a contract with Criccieth TV some time ago but they were not found to be satisfactory, leaseholders complained and the contract had been terminated. They were supposed to upgrade the system so all leaseholders had a reasonable picture going into the property but there had been many problems and complaints. There were separate problems with vandalism.

63. Mr. Morgan said that Criccieth TV were not there to defend themselves but they had done work in other areas and it appeared there was only a problem at Glan Gors. He also considered the sums claimed to be expensive.

64. In the Tribunal's view, the only issue for its determination was whether the sums expended were reasonable. The minutes of GGRA's AGM in April 2011 set out the problems which had been encountered in relation to the TV system. The invoices have been produced and the sums claimed appeared to the Tribunal to be reasonable.

INSURANCE

65. This is itemised separately in the service charge demand. The Tribunal considered the sums claimed to be reasonable.

SERVICE CHARGES FOR YEAR ENDING JUNE 2010

LEGAL AND PROFESSIONAL

66. In relation to the year ended June 2010, the Tribunal found the land registry fees to be reasonable. Two invoices were provided in respect of disbursement paid to Mr. Varley. He explained the sum of £330 was the taxed fee allowed to him by the District Judge in relation to proceedings for a charge on property. The Tribunal accepted this explanation and allowed this sum.

67. In relation to the second invoice, this was said to be a sum paid to Mr. Varley in connection with the supply of information to A One property insurance to enable confirmation of a quotation for insurance on the estate. Mr. Morgan queried how Mr. Varley could pay himself this amount. He said Mr. Varley had asserted that the work he did was voluntary. Mr. Varley explained that the company wished to know the occupier of each property for the purposes of the insurance. Even if GGML had details of all the leaseholders, that was not the same as the occupants as there were holiday lets and short term lets. GGML wanted to change the brokers so as to reduce the premiums and he had spent 50 hours on this.

68. The Tribunal agreed this charge seemed excessive when it was likely Mr. Varley knew most of the tenants. The Tribunal considered £150 was a reasonable amount (a reduction of £84.59).

BANK CHARGES

69. Mr. Morgan asserted these were unreasonable and there was no evidence of what they related to. Mr. Varley explained the bank charged a fixed amount per month and an additional amount for each cheque issued or paid in. The Tribunal found the sums claimed reasonable.

GROUNDS MAINTENANCE

70. Much of the total claimed (£9,725.47) was in respect of sums paid to Mr. Oakley and Mr. Griffiths. Mr. Morgan asserted (see page 56, Scott Schedule) that unprofessional services were provided by an inexperienced, unqualified grounds man and not a single wage slip had been supplied. GGML disputed this. However, having considered the invoices, the Tribunal did not consider the charges to be reasonable. £3880 (£3033 for phases 1-3) had been charged in respect of grassing cutting and £1,975 (£1,544 for phases 1-3) had been charged in respect of edging (no edging had been done in 2009). As in the charges for the year ending June 2009, the Tribunal considered the charges for grass cutting should be reduced by 25%. It considered the edging costs should be reduced by 50%. The reductions were £758.25 and £386 respectively.

71. Mr. Varley conceded the invoice included and numbered 9 dated 24th September 2009 should have been included under the head of TV repairs (though the Tribunal accepted the charge as being reasonable). A number of charges were included for photographs.

Mr. Varley explained that he was not on site that often, 2/3 times a year and he needed evidence of various matters to do with management of the site. He had no e-mail, computer or mobile phone so Mr. Oakley took photos had them printed and posted to him. The Tribunal did not consider this charge of £44.96 to be reasonable. Other charges in this section were accepted as reasonable.

TREES AND SHRUBS, WEEKLY TASKS,INSURANCE, TV AERIAL,GGRA SUBSCRIPTIONS, BIN COMPOUNDS, MINOR REPAIRS, DRAINS, WEEKLY REPAIRS AND PROPERTY INSURANCE

72. For the reasons set out above in respect of the earlier year, the Tribunal accepted these charges were reasonable, save in respect of the charges for photographs under the heading TV Aerial amounting to £237.5 which the Tribunal did not find to be reasonable.

SERVICE CHARGES FOR YEAR ENDING JUNE 2011

73. For the reasons previously stated, the Tribunal accepted the charges as being reasonable except as set out below.

74. Under the heading legal and professional, £300 (£234.59 in respect of phase 1-3) has been charged for payment to Mr. Varley for the supply of information to A One Property Insurance for preparing a schedule of insurance premiums. The Tribunal did not accept this was a reasonable sum and allowed £150 (£117.29 in respect of phases 1-3, a reduction of £117.30). Again charges had been made in respect of photographs (invoice no 5, £270, £211.13 in respect of phase 1-3) which the Tribunal did not find reasonable. Nor could the Tribunal see any justification for the charge made at invoice 11 (£351.88 in respect of phases 1-3).

75. Under the heading grounds maintenance, as in the previous service charge year, the Tribunal considered the figure charged in respect of grass cutting (£7500, £5864.66 in respect of phases 1-3) to be unreasonable and reduced this by 25% to £4398.50 (a reduction of £1,466.16). In respect of the invoice at page 10 (for Mr. Oakley to attend a course on handheld pesticide application), Mr. Morgan objected to being charged for Mr. Oakley's training. Mr. Varley explained that with this training, Mr. Oakley would have a licence which would allow him to buy more appropriate herbicides and they had come to a deal for Mr. Oakley to attend that course. The Tribunal might have accepted that argument in relation to an employee and in the circumstances reduced the amount by 25% (a reduction of £54.73).

76. At page 21, £90 has been charged in respect of removing carpets from flat 74 and drying out the floor. Mr. Varley accepted this item should have been included under insurance matters. A flat had been flooded due to a problem with the flat above. GGML were assisting the tenant. Similarly, in respect of page 22 (industrial heaters, £114.56) Mr. Varley explained that these were used to assist drying out properties which had suffered water damage. It happened a lot that year due to the low temperatures. The water pipes entering the properties were connected to the mains. There were a number of leaks that year. GGML assisted as each claim had the potential to increase the cost of the insurance premiums, the broker was indicating each claim could increase the block policy by 15% for each claim. If the owners were not in the property themselves, GGML assisted by drying the property out. The Tribunal considered these were matters for the individual leaseholders and disallowed these two amounts (£90 and £89.58). Similarly, the Tribunal did not find reasonable the invoices under insurance pages 1, 2, 4 and 5 totalling £918.55.

SUMMARY

77. The Tribunal reduced the service charges by the amounts set out below:

2009	£1,812.80
2010	£1,511.30
2011	£3,299.33

COSTS

78. Section 20C of the Landlord and Tenant Act 1985 provides that a tenant may make an application for an order that all or any of the costs incurred by the Landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

79. In the direction dated 4th February 2013, GGML were asked to give an estimate of their costs in connection with these proceedings and these were provided. They included the costs of the application to the Tribunal, Mr. Varley's time in producing the documents ordered to be produced and the cost of Mr. Varley and Mr. Hancock attending at the PTR on 4th February and the hearing on 15th and 16th April 2013. In the same direction, Mr. Morgan was asked whether he intended to make any application under Section 20C. In his bundle of documents submitted on 22nd March 2013, Mr. Morgan did ask for such an order. He said that Mr. Varley had asked for £30 an hour to supply accounts which had been ordered to be produced by the Tribunal. He considered a professional managing agent would have had these accounts prepared already and audited and Mr. Varley was not entitled to charge £30 an hour for this. He asserted Mr. Hancock was not entitled to charge £50 per hour to represent Mr. Varley as he had no relevant qualifications and could not represent GGRA as he had not been authorised to do so and he had no contract. Hotel costs were also claimed by Mr. Varley and Mr. Morgan asserted that Mr. Varley's wife had a property on the estate and also owned a property 15 miles from the venue. Mr. Varley was not entitled to charge for travelling to the hearing.

80. At the hearing, Mr. Hancock referred to the case of *Johnson v County Bideford Ltd 2012 (UKUT) 457.* Subsection 3 of Section 20c provides that the tribunal may make such order as it considers just and reasonable in the circumstances. The President referred to earlier cases in which it was said that :

> *"In service charge cases, the outcome cannot be measured merely by whether the applicant has succeeded in obtaining a reduction. Weight should be given rather to the degree of success, that is the proportionality between the complaints and the Determination, and to the proportionality of the complaint, that is between any reduction achieved and the total of service charges on the one hand and the costs of the dispute on the other"*

81. In that case, it was held that the Tribunal had come to a conclusion that was plainly within its discretion.

82. It was clear that Mr. Morgan was very dissatisfied with the way the estate was being run by GGML and in particular by Mr. Varley. Mr. Morgan had accordingly challenged every single invoice produced by GGML with extremely limited success. The other points raised in his

defence to the county court proceedings were not upheld by the Tribunal. Clearly, Mr. Varley needed to spend a substantial amount of time in preparing its response to Mr. Morgan's challenge. The Tribunal considered Mr. Varley was entitled to seek assistance in preparing GGML's case and that GGML's costs in connection with the proceedings were covered under the fifth schedule of the lease, under clause (8). In the light of the limited amount of the reduction in the amount of the service charges for the years in question the Tribunal was not persuaded to make any order under S20C.

DATED this 4th day of June 2013

CHAIRMAN