Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0028/04/12/Gwennyth Street

In the Matter of 6 Gwennyth Street, Cathays, Cardiff, CF24 4PH

In the matter of an Application under Section 27a, 20c of the Landlord and Tenant Act 1985 dated 10th May 2012.

TRIBUNAL Chairman Mr Richard Payne LL B M Phil
Surveyor: Mr Roger Baynham FRICS
Lay Member: Mrs Juliet Playfair

APPLICANTS Miss Lisa Larner, Mrs Helen Moszoro, Mrs Hannah Isaacson

RESPONDENTS CG Three Limited c/o Mainstay Residential Limited

ORDER

On the 6th February 2013 this application was considered at full hearing at the Tribunal Offices, Southgate House, Wood Street, Cardiff. The Applicants all appeared in person. The Respondent was represented by Mr Whaid Hussain, Mrs Jean Brown and Mr Alex Siegle of Mainstay Residential Limited. The case was further heard on the 7th March 2013 when all but Mr Siegle attended.

1. Number 6 Gwennyth Street is a modern purpose-built student accommodation development on three storeys, comprising 13 flat units. The Applicants are long leaseholders respectively of Flat 2 (Miss Larner), Flat 6 (Mrs Moszoro) and Flat 8 (Mrs Isaacson.) The building is constructed of facing brick elevations with a slate roof, PVC double glazed windows and PVC troughings and rainwater goods. At the front there is a small narrow enclosed forecourt planted with shrubs and with bark chippings. At the rear there is a communal area with a bike shed, two bin sheds, a small patio area and a

side entrance which gives access to the front of property and is controlled by coded entrance lock.

2. Entrance to the development is via two separate secure communal hallways. These are carpeted, have wall mounted electric heaters and emergency fire panels, emergency lighting and smoke detectors. Each hallway has a disabled toilet on the ground floor, although the toilets were locked on the date of our inspection on 6 February 2013. Two separate stairways give access to the floors above. There had previously been an application to the Leasehold Valuation Tribunal (LVT) dated 6th of July 2009 by the current Applicants and others asking the Tribunal to determine the reasonableness of service charges for the years 2006 to 2009 inclusive, and following a hearing a written decision was given by the LVT dated 18 June 2010. (This was not subject to any further challenge or appeal). The Chairman and Lay Member of the current Tribunal had previously sat upon this matter in 2010.
3. The current application was dated 10th of May 2012 and sought a further determination in relation to certain matters from 2008 and 2009 as well as seeking a determination upon the reasonableness of all service charges for the years 2010, 2011 and 2012. The application particularly drew the Tribunal's attention to the charges for electricity and water. There was also an application under section 20 C of the Landlord and Tenant Act 1985, namely an application that the costs incurred by the Respondent in dealing with this case should not be added to the service charges payable by the Applicants.

Inspection and hearing on the 6th February and 7th March 2013

4. We inspected flat 2 and flat 8, the communal areas of the property and the grounds. We observed that the communal lights were on in one of the stairwells, and that the disabled toilets were locked and inaccessible. We noted the 2 bin stores in the grounds and the existence of two old bicycles. Flat 2 contains the plant room with the electricity meter and supply. This is locked and is not accessible to the occupants of flat 2. There is only one electricity meter that supplies the development
5. Flat 2 has four bedrooms and Flat 8 has five bedrooms. There is a communal lounge/kitchen area in each flat and the bedrooms each have a built-in wardrobe/cupboard, and an en-suite bathroom with an electric shower.
6. Following directions given at pre-trial review, we had been supplied with bundles of documentation by both the Applicants and the Respondents. Not all documentation was available, for example the management agreement between the freeholder and Mainstay, and it was indicated that this would be provided to the Tribunal and parties in due course.

The lease

7. It is necessary to consider the relevant parts of the lease. The application included a copy of the lease between G Walters (Leasing) Limited of the first part, Morris Property Developments Limited of the second part, and Lisa Larner and Steve Pulham of the third part (Larner being spelt Larna). This was not actually dated but was made in 2006. The Tribunal understands that the other Applicants leases are on the same terms. The relevant parts of the lease had been set out in the Tribunal's determination dated 18 June 2010 as follows;

> *"The Lease contained a number of definitions at Clause 1(1). The demise was for the term of 125 years from the date of the Lease and it contained under the heading 'Tenant's Covenants' at Clause 2 a number of covenants to be observed by the Tenant which included at 2.3 to pay to the Landlord the service charge in accordance with the Fourth Schedule. There were covenants upon the Landlords imposed by Clauses 4 and 5 and there were five Schedules to the Lease, the first one comprising the regulations which was a list of matters that the Lessee was to observe, the second Schedule related to the Lessee's rights, the third Schedule, the exceptions, detailed the Landlord's rights to enter upon the premises to undertake works and so forth, the fourth Schedule detailed the service charge and the fifth described the apartment and the price paid for it.*
>
> *18. At the Definitions at paragraph 1(1)(n) "The Service Charge" means the monies payable by the Tenant for the upkeep of the common parts and the provision of services in accordance with the fourth Schedule.*
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> *(o) "**The statutory supplies**" means drainage, electricity, gas, telephone, water and all other services of a similar nature.*
>
> *(q) "**Tenants Proportion**" means [*****]% Provided That the Landlord shall have the right acting in the interests of good estate management or recalculate the Tenants Proportion as appropriate to take account of the differences in the insurance costs of an/or the repairs services and facilities provided or supplied to any person within the building or on the Development or adopt such other method of calculation of the Tenant's Proportion as shall be fair and reasonable in the circumstances."*

19. *Paragraph 2.11 of the Tenant's Covenants deals with costs. 2.11.2 states*

> *"To pay on a full indemnity basis any costs, charges and expenses (including solicitors and surveyors fees) reasonably incurred by the Landlord and his agents in the collection of rent (if any) the service charge and other sums due to the Landlord under this Lease and the enforcement of the covenants and conditions contained in this Lease."*

With regard to the Landlord's covenants, at Clause 5 "Upkeep of Common Parts" it states "subject to the Tenant paying the service charge the Landlord covenants with the Tenant; …." and there follows a list of 11 covenants upon the part of the Landlord including rebuilding, renewing, repair, maintaining and decorating, painting and keeping tidy the common parts (5.1) and at 5.4 to insure and keep insured and at 5.4.2

> *"To produce to the Tenant on demand the insurance policy or policies effected pursuant to this sub clause and the receipt of the last premium paid therefore or (at the option of the Landlord) evidence from the insurers or underwriters of the full terms of the policy or policies and that the same are still in force."*

At 5.9 the Landlord is

> *"to keep all proper accounts required to record the Landlord's expenditure in respect of its obligations under this clause and to administer the Service Charge in accordance with the provisions of the Fourth Schedule."*

At 5.11 there is a covenant to provide and maintain a water supply to the premises.

20. *In terms of the Schedules, the First Schedule related to "the Regulations" and at paragraph 1 stated "Not to use or suffer to be used the premises for any purpose whatsoever other than as a private residence for occupation by a single household ….".*

21. *The Third Schedule dealt with the exceptions and the rights of the Landlord which included at paragraph 1 "the right to pass the statutory supplies through the pipes now or at any time during the Perpetuity period constructed on the premises".*

22. *The Third Schedule at 4.3 gave the right to authorise any public utility including British Telecom plc, Welsh Water plc, British Gas plc, Western Power Distribution, the authority to exercise and enjoy the rights mentioned in sub clause (2), and 4.2 gave the right to enter upon the premises or any part only insofar as the same may be necessary to lay or provide and thereafter repair, maintain and inspect … any other services with all necessary pipes, wires, cables, gutters and other conducting media …".*

23. *For the purposes of this application, the Fourth Schedule "the Service Charge" is the most important Schedule.*

24. *At 1.1 of the Fourth Schedule, the expenditure of the Landlord was defined to mean at 1.1.1 "all reasonable and proper expenses incurred by the Landlord in complying with the Landlord's obligations under Clause 5 of this Lease in and about the maintenance and proper and convenient management and running of the Development … "*

1.1.5 On expenditure stated that

> *"On a full indemnity basis any costs, charges and expenses (including solicitors and surveyors' fees) reasonably incurred by the Landlord and his agents in the collection of rents (if any), service charges and other sums due to the landlord under this Lease and the enforcement of the covenants and conditions and regulations contained in leases of apartments to the extent not recoverable from individual lessees."*

1.1.6 stated "any reasonable provision as a reserve fund for future expenditure to be or expected to be incurred at any time in connection with the Development."

*1.3 stated that "**the Account Year**" means the annual period from time to time nominated by the Landlord for the purpose of this Schedule.*

Clause 2 of the Fourth Schedule is particularly important and states;

> *"The Landlord shall cause proper books of accounts to be kept in respect of the expenditure and as soon as convenient after the end of each Account Year shall prepare and submit to the Tenant a statement showing a summary*

of the expenditure for such Account Year the Tenant's proportion and the calculation thereof and if required by the Tenant such statement shall be prepared by an accountant falling with the definition of "a qualified accountant" for the purposes of the Housing Act 1980 (as amended) and shall be accompanied by a certificate that in the opinion of such accountant the statement is a fair summary of the expenditure set out in a way that shows how the Tenant's proportion is calculated and is sufficiently supported by accounts, receipts and other documents that have been produced to such accountant. (Emphasis is ours]

25. *Schedule 4 Clause 3 required the Tenant to pay provisional sums in respect of the Tenant's proportion for the relevant account year as the Landlord shall reasonably determine i.e. quarterly payments and dates to be specified by the Landlord and Clause 4 dealt with the final ascertainment of the Tenant's proportion for each account year holding that if the Tenant's proportion exceeded the sums paid by the Tenant, the excess forthwith be paid to the Landlord on demand. If the Tenant's proportion was less than the provisional sums paid by the Tenant for the relevant account year, the overpayment shall be credited to the Tenant's account for the current account year or if the term shall have come to an end the Landlord shall forthwith repay the overpayment to the Tenant.*

26. *Clause 5 of Schedule 4 and Clause 5.2 held that "if the Landlord shall decide to make provision for future spending in accordance with this Schedule the Landlord shall inform the Tenant of the items in respect of which provision has been made and on incurring expenditure in respect of any such item shall first apply the monies held in reserve in respect of that item".*

27. *Clause 6 stated that "every statement held by the Landlord in accordance with paragraph 2 of this Schedule shall be conclusive as to the information shown thereon". This refers to the statement showing the summary of the expenditure for each account year, the Tenant's proportion and the calculation thereof which if required by the Tenant shall be prepared by a qualified accountant and accompanied by a certificate prepared by that accountant.*

28. Schedule 4 Clause 8 related to the Tenant referring the matters in dispute for determination by persons appointed for this purpose by the President of the Royal Institution of Chartered Surveyors. The Clause said that any objection by the Tenant shall not affect the obligation of the Tenant to pay to the Landlord the Tenant's proportion in accordance with paragraphs 3 and 4 of the Schedule.

29. With regard to this paragraph 8, this does not oust the jurisdiction of the Leasehold Valuation Tribunal (LVT).

30. As indicated the Fifth Schedule described the price and the apartment and the Sixth Schedule described the rent which was to be £250 per annum for the first 20 years of the term and thereafter to be calculated in accordance with formulae set out in the Sixth Schedule.

31. It was common ground that there was no mention of the supply of electricity in the Lease."

8. It was agreed that since the Tribunal had last heard this case in 2010 when the property was being managed by Peverel OM, that there had been two changes of managing agent. In September 2010 Chamonix Estates were appointed by the Respondent and on 1st of October 2011 Mainstay took over management of 6 Gwennyth Street. It was the Respondent's case that Chamonix had failed to comply with the Respondent's instructions to recoup service charge arrears in relation to the services that had been provided by the previous managing agents and contractors, and had failed to apply the revised charges following the determination of the LVT in June 2010

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The law

9. The meaning of "Service Charges" and "relevant costs" is set out in section 18 of the Landlord and Tenant Act 1985.

> "18 (1) in the following provisions of this Act "Service Charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
>
> a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
> b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose-

1. "costs" includes overheads, and
2. costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period."

10. We are to determine the reasonableness of the service charges claimed and/or budgeted. The relevant law is section 19 of the Landlord and Tenant Act 1985 which limits service charges payable according to their reasonableness. Section 19 states:

"19 (1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

a) only to the extent **that they are reasonably incurred**, and
b) where they are incurred on the 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." (Our emphasis).

We are therefore to apply the law and to determine the reasonableness both of the amounts of any charges claimed and also to consider whether works and services done and provided are of a reasonable standard and have been reasonably incurred.

11. There are further relevant clauses namely Section 20B which sets out the limitation of service charges by reference to the time limit on making demands. Section 20B(1) reads;

"If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to

subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."

12. Section 20C deals with the limitation of service charges and the costs of proceedings and states;

"20C (1) a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the Landlord in connection with proceedings before a court, residential property Tribunal or leasehold valuation Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) the application shall be made …..

(b) in the case of proceedings before a leasehold valuation Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation Tribunal;

(3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

The substantive hearing

13. The Applicants complained that following the previous determination of the LVT that the previous managing agents Peverel were to re-adjust the figures and to apply an apportionment charge as per the determination. They submitted that this exercise was to apply to the service charges for 2008 and 2009 but when Mainstay took over the management of the development they applied opening balances from 2007 that were not collectable from the leaseholders and that the Applicants had been overcharged.

14. Mr Hussain explained that Mainstay had received a spread sheet from Chamonix but that Chamonix had not properly applied the ruling of the June 2010 LVT. The Tribunal heard from Mrs Brown and Mr Hussain on behalf of the Respondent as to the difficulties that they had encountered owing to the paperwork and accounts that they had inherited not being in an easily ascertainable order. Mr Hussain indicated that he had been obliged to go through the entire financial history of the matter, explaining that Mainstay had received a financial handover of the documentation from Peverel but that Chamonix had not applied this information to the records that Chamonix had kept and that he had received different trial balances from Chamonix. He indicated that he had transferred all the trial balances to the system and that the trial balances in the exercise that he had undertaken tallied with the bank reconciliation.
15. Mr Hussain produced a document that was received into evidence as bundle R2. This contained details of;
    a. The total service charges levied to the Applicants accounts from 2007 – 2009.
    b. The total service charge expenditure levied to an Applicant's account using the LVT determination only for the years 2008 and 2009.
    c. The credit due to an Applicant, a minus b.
16. This was an important document relied upon by the Respondent and showed the way in which Mr Hussain had arrived at his figures. He indicated that the figures on this document were from the historic statements on Peverel's system that he had only received recently. By reference to the figures for Flat 2 (Miss Larner's flat) he indicated that the figures there were from Peverel's system and were reflected in the statement of account that had been sent to the Applicants by Peverel dated 27th October 2011 and which also appeared in bundle R2. This statement started with a Service Charge levied on 1st October 2007 and also included, amongst other things, the service charges for 2008 and 2009 and an electrical meter installation levy of £262.20 on the 1st January 2010.
17. Staying with the example of Flat 2, Mr Hussain showed how the Service charges of £273.77 for 2007 were added to the figures for 2008 and 2009 to total £8352.50. (The figures for 2008 were service charges of £1435.12, reserve of £77.73, electricity of £598.72, electricity of £1940.22 and for 2009 were service charges of £1542.77, reserve of £77.73 and electricity of £2406.44). He then demonstrated how, applying the LVT's determination of 2010, the amounts levied to Miss Larner's account for 2008 and 2009 amounted to £3928.59. This was done by totalling the amounts for 2008 and 2009 as decided by the LVT (totalling £63,363 and applying the percentage apportionment for the schedule 1 and 2 costs). Mr Hussain then provided the credit due to the Applicant

Miss Larner by taking the total amounts billed to her of £8352.50 and subtracting the LVT decided figure of £3928.59, to leave a credit figure of £4,423.91. He indicated that in this fashion, the Applicants had not been charged for the 2007 figures and that the LVT determination of 2010 had been applied. He had undertaken a similar exercise in respect of all the Applicants and the Tribunal were provided with these figures too.

18. Mr Hussain pointed out that the document sent to the Applicants from Mainstay dated 22nd December 2011 and headed "Payment request" showed the credits as calculated above and so, he submitted, this demonstrated that the Applicants had not in fact been charged for 2007 payments. The Applicants did not agree. They submitted that in fact that although the LVT decision for 2008 and 2009 had been applied, that the payments that the Applicants had made in 2006/2007 were not in fact collectable and they argued that these should have been re-credited.
19. Miss Larner argued that it would have been clearer if the Respondent had taken the 2010 LVT's figures, taken off the payments that had been made, make the apportionment and then indicate to the Applicants the amounts that they still owed. However Mr Hussain said that it was simply not possible to do things in this way because of the handover information that Mainstay had received from Peverel, and because Chamonix had not applied the LVT decision to the figures and he had different trial balances from Peverel and Chamonix.
20. Miss Larner also referred to paragraph 104 of the previous LVT decision that stated "*We therefore determine that in respect of the service charge for the year 2008, there was not evidence before us to demonstrate that Clause 2 of Schedule 4 had been complied with and accordingly, the service charges would not be recoverable until such time as the Clause was fully complied with.*"

21. This raised two particular issues for the Tribunal to determine, firstly, had the Applicants been credited for the 2007 amounts or were they being asked to pay for non-recoverable charges from 2007, and secondly had the machinery under the lease in clause 2 of schedule four, been complied with in respect of previous and current demands for service charges?

22. With regard to the first of these issues, Miss Larner submitted that the Applicants were still being charged for amounts for 2007 and that they were not confident that the figures that Mainstay had started with were correct. She indicated that Peverel's balances had assumed that the service charge amounts had been properly demanded but she pointed out that, for example Mrs Moszoro had a larger apartment than Miss Larner and yet from some of the figures it looked as if she had been charged more. Therefore if originally a

larger figure had been demanded from Mrs Moszoro than she had later received a credit for following application of the LVT decision then the figures would be incorrect. Mr Hussain did however concede that not all of his figures worked out for example he said that the debt said to be owing for flat 6 of £6193.73 (as per the statement of account from Peverel dated 27th of October 2011) was a lesser figure than he believed had been owing from his calculations. There clearly were some discrepancies therefore upon the figures.

23. With regard to the 2nd issue, the Applicants argued that the finding of the previous LVT was that the service charges have not been demanded in accordance with the lease. Miss Larner argued that this remains the case and indeed that recent demands failed to comply with the lease. The Applicants argued that the accounts that have been sent out to them do not show the apportionment of their individual service charges. We have already referred to the appropriate clause in the lease upon this matter under paragraph 7 above where paragraph 24 of the previous LVT decision details the appropriate clause.

24. As a matter of law, this Tribunal is not bound by the findings and determination of the LVT that sat in 2010. However we make it clear that we do accept and endorse the previous Tribunal's application of the law and decision on the legal effect of the lease terms. This included

> *99. The wording of Clause 2 is clear and unambiguous. The statement is to contain three elements, firstly the summary of the expenditure for the account year, secondly, the tenant's proportion and thirdly, details of how that has been calculated. If the tenant requires the statement to be prepared by an accountant then it shall be and there are then further mandatory requirements namely that the statement shall be accompanied by a certificate containing the accountant's opinion and set out in a way showing how the tenant's proportion was calculated. This needs to be supported sufficiently by receipts and other documents that had been produced to such an accountant so that the tenant can clearly see how the figures are arrived at.*
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> *100. The Clause clearly envisages an accountant being able to demonstrate with clarity and backed up by documentary evidence in the form of receipts and so forth, the precise figures and how they have been arrived at. Compliance with this clause will give the tenant clarity over the charges the tenant is to pay.*

101. Clause 2 is also related to clauses 3 and 4 which refer to payment of provisional sums for the next accounts year. Clause 4 refers to the final ascertainment of the tenant's proportion for each account year and the balancing payments that are to be made either way. It is noteworthy that this refers to the final ascertainment of the tenant's proportion as opposed to the certification of annual accounts for a particular development. That is, the emphasis is upon the individual tenant's calculation not the accounts and costs of the development as a whole (although in practice one will flow from then other).

102. We find that Schedule 4(2) does create clear contractual obligations that will need to be complied with before service charges are recoverable from the leaseholder. To this extent it constitutes a condition precedent.

25. **Decision.** Applying the findings above and the information from the previous LVT decision, **there was no evidence before this Tribunal that the service charges for 2008 and 2009 had been properly demanded in accordance with the machinery under the lease at clause 2 of schedule 4. Accordingly they do not remain recoverable until such time as the clause is properly complied with.** We consider that compliance by the Respondent should be possible particularly since the steps necessary to comply were spelt out clearly in the LVT decision in 2010.

26. In view of this finding, **have the service charges for the years ending 31st of December 2010 and 31st of December 2011 been properly demanded in accordance with the requirements of clause 2, Schedule Four of the lease?** The Respondents in their bundle of documents marked R1, included the accounts and invoices for the years ending on 31 December 2010 and 2011. These included a document described as an "Accountants Certificate" in which Ormerod Rutter Limited, Chartered Accountants certified that they had examined the service charge financial statements with the invoices and other documents provided to them by the managing agents and that "In our opinion the service charge financial statements are a fair summary of expenditure incurred on behalf of the leaseholders for the year ended 31st of December 2010, being sufficiently supported by invoices and other documents that have been produced to us." There was a similar certification for the accounts the year ended 31st of December 2011.

27. Miss Larner for the Applicants argued that in respect of the service charge accounts that have been included in the bundles then they do not show the individual apportionment to the tenant as required by the lease. Mr Hussain submitted that the accountant's certificate that we have referred to above complies with the requirements under the lease for the accountants to certify the service charge accounts and that the accounts prepared by Ormerod Rutter summarise the expenditure and also show the total expenditure period, the balance sheet and include notes upon the service charge accounts to further explain them. Mr Hussain indicated that there is an additional document which was sent out to leaseholders which shows the total expenditure in the accounts and shows the apportionment method and the percentage used and demonstrates what the leaseholders have paid and any shortfall owing from them. The Tribunal were informed that such documentation was uploaded to Mainstay's website and it is then sent out after the year-end work has been done. Mr Hussain said that this was done for the year ending 31st of December 2010 and 2011. Indeed we noted that the accountants certificate for the service charge accounts for the year ended 31st of December 2010 was signed by Ormerod Rutter limited on 6 July 2012 and it was clear that Mainstay's predecessors had not prepared the service charge accounts. Mr Hussain told the Tribunal that Mainstay assumed that the same process had taken place for the 2009 accounts.
28. The document referred to by Mr Hussain was subsequently provided to the Tribunal and labelled as bundle R3. This comprised copies of letters sent to the Applicants by Mrs Brown of Mainstay by letter dated 31st of August 2012. The letter stated "please find enclosed your service charge surplus and deficit apportionments for the year ends 31st December 2010 and 31st December 2011. If I can be of any further assistance, please do not hesitate to contact me." In respect of the service charge period ending 31st of December 2010, the total estate service charges of £40,817 were subject to the appropriate percentage of 6.0606% (in the case of Miss Larner for example) to give a figure of £2473.76. The amount that had been invoiced on account of £739.24 was deducted from this leaving a balance of £1734.52 which was a shortfall that had been picked up by the developer. Similar calculations were provided with the appropriate percentage apportionment for Mrs Moszoro and Mrs Isaacson.
29. For the year ending 31st of December 2011 a similar service charge statement was provided for each of the Applicants which included both the estate service charge schedule and block service charge schedule and appropriate percentages that had been applied to each of the Applicants, properties. It was clear therefore that the service charge statements attached to the letter of 31 August 2012 did contain details of the

individual leaseholder's apportionment and the Applicants could see how the individual charges have been arrived at.

30. **Decision.** The letter **does comply** with the first part of clause 2 of the 4th schedule relating to the landlords obligation to prepare and submit to the tenant a summary of the expenditure for such account year, the tenant's proportion and the calculation thereof, but **does not comply** with the mandatory requirements of schedule 4 clause 2 in relation to the accountant's certification and ascertainment of the tenants proportion where requested to provide such calculation details by the tenant. (Please see further the paragraphs from the previous Tribunal determination cited at paragraph 24 above). The Applicants evidence to the Tribunal was that they had asked Mainstay to provide details of the accounts and the tenant's proportion in accordance with the lease (see for example the Applicants written representations in response to the Respondents points dated 27th of June 2012, and the oral evidence that they had requested the same only to be directed towards Mainstay's website. **Therefore, since clause 2 of the 4th schedule to the lease has not been complied with then accordingly the service charges for years ending 31st of December 2010 and 2011 would not be recoverable under the lease until such time as the clause was fully complied with.** The Tribunal observes that compliance with the clause should not be difficult and it is perhaps surprising, given that the LVT decision of 2010 spelt out in clear terms what was necessary to comply with this clause, that we are again asked to make a determination upon this point.
31. In addition to the requirements of the lease relating to the proper demand of the service charges, there are also statutory provisions that need to be complied with. Mrs Brown in her statement of case on behalf of the Respondent dated 11 December 2012 asserted that the service charge demands complied with section 47 of the Landlord and Tenant Act 1987 (which she set out).. Examples of the service charge demands headed "Payment Request" were provided by the Respondent (for example the letter to Miss Larner from Mainstay dated 20th of March 2012 at page 229 of bundle R1) which contained notices given pursuant to sections 47 and 48 of the Landlord and Tenant Act 1987. This was not challenged by the Applicants.
32. However the Applicants did submit both orally and in writing (see the statement of Mrs Moszoro dated 20th of November 2012) that **section 21B of the Landlord and Tenant Act 1985** had not been properly complied with. Again we refer to the previous judgement of the LVT in this case from 2010 where the law on this point was summarised as follows;

    "37.In addition, any demand for payments of service or administration charges must, under the Landlord and Tenant Act 1985 Section 21B, be accompanied by a summary of the rights and obligations of the tenants of dwellings in relation to them. This applies to

any demand for service charges served on or after the 30th November 2007 in Wales and to any administration charges payment on or after the 31st March 2004 in Wales. Furthermore, the form of that summary is prescribed. In this case, the applicable statutory instrument is Welsh Statutory Instrument 2007 No. 3160 (W.271) Landlord and Tenant, Wales the "Service Charges (summary of rights and obligations, and transitional provisions) (Wales) Regulations 2007" (hereinafter referred to as the "2007 Regulations").

38.These Regulations are important because they prescribe at paragraph 3 the form and content of the summary of rights and obligations to be given to a tenant in the following format;

> *"**3.** Where these Regulations apply the summary of rights and obligations which must accompany a demand for a payment of a service charge must be legible in a type written or printed form ….. and must contain – "…. (our emphasis)*

39. The wording of the 2007 Regulations is clear and unambiguous and prescribes mandatory wording for the form and content of the summary of rights and obligations. It is clear that the effect of the Regulations is that the title and the statement must be reproduced exactly as set out in the 2007 Regulations in which all of the summary of rights and obligations are first written in Welsh running to some 13 numbered paragraphs and thereafter written in English.

40.Section 21B of the Landlord and Tenant Act 1985 does not allow the LVT to excuse the service of this summary of rights and obligations with a demand. It is also the case that if the summary of rights and obligations does not precisely reflect the wording in the statutory instrument then it will not be valid. There is no mechanism within the Act or within the Regulations that would enable the LVT to consider a notice that is substantially to the same effect, but that does not contain the precise wording, to be treated as valid. Therefore if the summary of tenants' rights and obligations is not included at all then the service charges are not payable until it is so included since section 21B (3) states that a tenant may withhold payment of a service charge if the demand for the same is not accompanied by the summary of the rights and obligations. However, the summary of the tenants' rights and obligations must precisely mirror the requirements of the statutory instrument to be valid."

33. We adopt and endorse the foregoing paragraphs upon this point. Mrs Moszoro submitted that, by reference to the summary of tenants' rights and obligations that appeared at page 267 of bundle R1 that this did not reflect the form of the regulations and that there were 12 English paragraphs and 13 Welsh paragraphs. She stated that in paragraph 3 of the Welsh summary of tenants' rights and obligations it was further broken down into four sub-paragraphs and paragraph 8 of the Welsh regulations was likewise broken down into two further subparagraphs. She submitted that the summary of tenants' rights and obligations in English did not have the equivalent breakdown of subparagraphs in paragraphs 4 and 8. Miss Larner drew the Tribunal's attention to the difference between the English summary of tenants' rights and obligations at page 295, with that at page 299 which did now have the 13 paragraphs with for example paragraphs 4 and 8 (amongst others) containing sub paragraphs. Mr Siegle for the Respondent submitted that the summary of rights and obligations in Welsh was not required to be a direct translation of the English and there would be differences between the two documents. Mr Hussain indicated that Mainstay had changed the English summary of tenants' rights and obligations after this matter was raised by the Applicants at the pre-trial review.

34. The Applicants submitted that the previous notice in English that appeared at page 267 and page 295 of bundle R1 did not strictly comply with the requirements of the regulations, but they accepted that the new summary of tenants' rights and obligations that appeared at page 299 did now comply**. Decision: For the reasons given at paragraph 32 above, the Tribunal agree with the Applicants' submissions on this point and we determine that the notices in English at pages 267 and 295 do not precisely mirror the mandatory wording in the regulations and therefore are defective. There was no challenge to the notice at page 299 and the Tribunal accepts that this is valid.** We repeat as set out under paragraph 32 above, that there is no power under the regulations for the Tribunal to accept a notice that is substantially to the same effect as the regulations (and for the avoidance of doubt the notices at page 267 and page 295 are clearly substantially to the same effect as the regulations).

35. Having determined the above points in relation to the requirements under the lease and in relation to section 21B with regard to recoverability, we now consider the reasonableness of the service charges for the years in question.

Service Charges for 2010.

36. The Tribunal heard evidence from Miss Larner as to her concern that there were discrepancies within the figures for 2010 and that the Applicants were not satisfied that the accounts for 2010 had been prepared based upon the invoices that had been supplied and/or included within the Respondent's bundles. The Tribunal also heard further from Mr Hussain upon how he had approached the calculation of the service charge accounts for 2010 however it is not necessary to rehearse those arguments at this juncture because as the documentation and service charge statements at bundle R3 made clear, a considerable shortfall for 2010 was picked up by the freeholder. **The net result was that the service charges rendered to Miss Larner in respect of Flat 2 for 2010 were £739.24, the service charges for Mrs Moszoro for Flat 6 for 2010 were £1087.14, and the service charges for Mrs Isaacson for Flat 8 for 2010 were £965.41. The Applicants agreed that these amounts were reasonable and there was therefore no need for the Tribunal to rule upon the same.**

Service charges for 2011.

37. The service charge accounts for the year ended 31st of December 2011 appeared at page 44 of bundle R1 and page 29 of the Applicants' bundle. Miss Larner stated that a reasonable figure for electricity in 2009 was stated to be £15,000, and yet two years later it was £19,086. Likewise she indicated that the reasonable figure for the management fee for 2009 was determined to be £1875 and in the 2011 accounts £3636 was being claimed. She indicated that the Applicants did not consider that the service charges for this year were reasonable and the two largest costs namely the water costs of £10,819 and the electricity charges of £19,086 were not accurate. Miss Larner submitted that these figures did not add up upon the invoices and believed that they included accruals from previous years.
38. **Water.** Mr Hussain again explained the difficulties that he had with reconstructing the accounts. He said that when they took over from Chamonix they had to work from the papers and the trial balances and they had figures for the accruals but not the invoices to support them. He accepted that there could well be elements of the 2009 figures and charges for water appearing in the figure for 2011. Miss Larner submitted that the appropriate invoices for the water bills in 2011 could be found in section 2 of bundle R1 at pages 49 to 54. She invited the Tribunal to cross-reference these bills with the document at page 31 of the Applicants' bundle which was a spread sheet for the year

ended 31st of December 2011 containing the water charges and the summary of the invoices relating to water, prepared by Miss Larner.

39. Whilst Mr Hussain indicated that the figure for water for 2011 was £10,819, Miss Larner's figures, apportioning the water upon a daily basis came to £8819.06.(£8382.89 plus £436.17). Miss Larner pointed out that the previous LVT had determined a reasonable charge for water in 2008 to be £5100 and in 2009 to be £6500. Miss Larner submitted that a reasonable figure for water would be £8819.06 and that this would constitute a significant increase in cost over a two-year period for the water. She also submitted that it would be unreasonable for anybody who had bought or exchanged a property within the 2011 period to in effect be paying for water bills that had been accrued prior to 2011. Mr Hussain indicated that he agreed in principle that it would be unreasonable to charge somebody in 2011 for costs that had actually been incurred two years before and he accepted that Miss Larner's calculations were correct**. We therefore determine that upon the agreement of the parties and upon the evidence before us and Miss Larner's calculations, that the figure of £8819.06 is the reasonable service charge for water and sewerage 2011.**
40. **Garden/Grounds maintenance.** The sum of £949 was claimed for grounds maintenance. Mr Hussain referred us to documents that he had prepared commencing at page 6 of bundle R4 which was a very helpful breakdown of the various invoices under the different subject headings for the service charges for the year ending 31st of December 2011. The Applicants made it clear that they did not dispute the charges for garden maintenance whilst Chamonix were managing the property, (**which total £624**) but they did dispute the one-off charges totalling **£325** to Griffiths Property Maintenance (page 69 of bundle R1). Mrs Brown indicated that this was a one-off visit on the 10th November 2011 to bring the site up to standard and that it included the cutting of shrubs at the front and general grounds maintenance. She suggested that they would have had to have a skip to take things away. Mrs Brown indicated that if an individual leaseholder rang the local council then the council would be likely to take items away, but that if Mainstay ring the council, for example about the bicycles that remain upon the property, then the council would not remove these. Mrs Brown stated that they had contacted the leaseholders to try and ascertain ownership or otherwise of the bicycles and were still waiting for two leaseholders to return to them. Mrs Brown also suggested that you cannot compare the monthly cleaning charges with a one off maintenance payment.
41. In bundle R1 were further invoices from Griffiths Property Maintenance; dated 3rd of November 2011 at page 72, for attending site to remove all large items from both bin stores, for £125; at page 73 for attending site to tidy up both bin stores on

16 December 2011 for £105; and at page 79 for attending site on 9 November 2011 to clean both bin stores ready for the dustmen for £55. It therefore appears that Griffiths Property Maintenance had undertaken work in the grounds and specifically upon the bin stores on both 3 November and 9 November 2011, the latter date being the day before the one-off charges of £325 are incurred. Mrs Isaacson told us that when Chamonix were managing the property the grounds were the best maintained they had ever been and she had visited on three occasions in roughly May, August and November.

42. **Decision;** we accept the evidence of the Applicants that the grounds had been well maintained by Chamonix. Given that there are separate invoices covering the bin stores cleaning, and given that the site is relatively small, we consider that the one-off charge of £325 is unreasonable and is not sufficiently supported by the evidence. There was no reference to a skip upon the invoice. Whilst we accept that it is reasonable for Mainstay to arrange for work to be undertaken upon the grounds shortly after they took over responsibility for managing the development, in view of the other work evidenced by Griffiths Property Maintenance**, we consider that a reasonable fee for the one-off visit would be £100.**
43. **Electricity.** Miss Larner pointed out that the figure determined as reasonable for electricity in 2008 was £14,000 and for 2009 was agreed at £15,000. She pointed out that the figure for 2011 of £19,086 was made up of a number of credits and a number of invoices as illustrated by the figures compiled by Mr Hussain at pages 6 and 7 of bundle R4. She noted that there were two payments by the freeholder for electricity of £6324.94 on 12 April 2011 and £8644.10 on 11 October 2011. Miss Larner submitted that with invoice accounting she would not expect to have seen payments included in the nominal activity that makes up the expense account for electricity. She also stated that the invoices for electricity which are included at bundle R1 from page 55, (invoice from 7 January 2011) through to an invoice of 5 January 2012 at page 67, cover a period in excess of 12 months and not apportioned for 2011 totalled £17,018.
44. Miss Larner indicated that if this was apportioned to reflect the calendar year then it would be around £16,850 but she again submitted that the electricity was extremely high and she believed that this would be disproportionate if one compared it to typical household expenditure. She pointed out that the leaseholders have no control over the electricity being used in the communal areas and also felt that the charges were higher because they were not upon a domestic tariff which would have been cheaper. She asserted that the leaseholders have been asking for their own individual meters for the last 7 years. Mrs Isaacson pointed out that the freeholders say that they do not have the money to pay for individual meters but she felt that the freeholders did not pursue those

leaseholders who failed to pay the service charges. Mrs Moszoro pointed out that at page 42 of R4 there was an invoice to LCB Construction for £312 for a job completed on 26 September 2011 to "repair and reinstate communal lights on all floors." She indicated her belief that the communal lights had been on since that date.

45. Mrs Brown stated that with regard to the invoice to LCB Construction, that this was from the time when Chamonix were managing the property but she confirmed that she had spoken to the electricians and that the communal lights were operated from the same timer switch. Mrs Brown indicated that the electricians had told her that when the lights are on all of the time this may not actually result in a higher cost since it is when the lights are being turned on and off that it could end up being more expensive. She indicated her belief that the electricity usage was largely from the apartments not the common areas. With regard to the higher tariff that was being paid (the non-domestic tariff) Mrs Brown said that Mainstay had moved the electricity to Haven Power which was the cheapest tariff available and that they had tried to make the electricity costs as reasonable as they could. She indicated that they would consider the question of individual meters but that their electricians would have to undertake a feasibility study on this and the extent of rewiring necessary and that they would need the confirmation of all the leaseholders that they would accept the cost of the charges. Mrs Brown said that once the feasibility study had been undertaken then they would consider asking Haven if they would install the meters free of charge and then look to move the leaseholders onto a domestic tariff. The Applicants were pleased to hear of these potential investigations into separate metering in the future.
46. Mr Hussain said that the 2 items paid by the freeholder were because of insufficient funds in the service charge account. Mr Hussain said that the brought forward and accrual items were all dated 15 June 2011 as a result of the information from Chamonix. He conceded that from the debits and credits in relation to electricity that "it is a bit of a mess". With regard to the payments made by the freeholder he said that the corresponding entries are in the landlord loan account, which can be found referred to at page 47 of bundle R1. He did say that the several invoices were all put on at the same time and he did not know what they paid and what they did not. Again Mr Hussain very fairly conceded that with the accruals there might be an element included for the previous year but he explained that from an accountant's perspective that was the figure that he ended up with. He also indicated that some of the invoices were estimates but towards the end of the year the invoices reflected actual meter readings and consumption.

47. **Decision on electricity for 2011.** We determine that a reasonable figure for electricity for 2011 is **£16,850** as contended for by the Applicants. Mr Hussain conceded that the figures that he had compiled may have contained elements from the previous year, and Miss Larner demonstrated the way in which she had arrived at her figures by taking the actual bills and apportioning the costs charged upon them. It is appropriate to record at this point that the Tribunal had sympathy for the task with which Mr Hussain was faced when taking over the accounts from Chamonix. We have no doubt that he worked diligently and in good faith to arrive at the totals that appear in the Respondent's bundle. However, we also note his recognition that, despite his best efforts, the figures for 2011 electricity may be inaccurate and contain costs that had been incurred in previous years.
48. **Day-to-day maintenance.** The figure claimed by the freeholder was **£4152**. The Applicants suggested that a reasonable figure for day-to-day maintenance would be £2500 for a development of this size. The Applicants accepted certain figures in this category for example the invoice for Wales and West Fire and Security Limited at page 84 of bundle R1 for **£110.40**, and the invoice for Maintenance Force UK Ltd at page 85 of bundle R1 in the sum of **£1077.** The invoice for Griffiths Property Maintenance for **£155** at page 71 on 5 November 2011 was accepted with regard to filling and prepping damage to internal walls. However the Applicants stated that they did not have all of the invoices to be able to agree that they were true and reasonable charges and they believed that the invoices that they had when cross-referenced to the list of charges at page 7 of bundle R4 did not match precisely.
49. In view of our decision upon the one-off visit by Griffiths Property Maintenance at paragraph 42 above, we consider that the invoice on page 72 for Griffiths Property Maintenance on the 3rd November 2011 for **£125** to remove all large items from both bin stores and the invoice for **£105** at page 73 for tidying up both bin stores on 16 December 2011 **are reasonably incurred and reasonable in amount**. The bin store areas are both large and will frequently have considerable amounts of refuse and recyclables within them and will require cleaning and attention in addition to simply being emptied of their contents when refuse is collected.
50. With regard to the invoice for £255 at page 74 for supplying and fitting two new cigarette boxes on 5 December 2011, the Applicants considered that this was too expensive and also noted that on 18 May 2011 Chamonix Property Care had drilled and fixed two smoke bins and fitted new bulbs for £114.67. They queried whether there was duplication? The Applicants noted the invoice for £48 page 17 in relation to an out of hours call in October 2011 and challenged this indicating that if it was in relation to an individual apartment then it ought to be charged to that individual. Mrs Brown stated that the out of hours services provided by a company called Orbis is an additional service

provided by Mainstay nationwide in respect of properties they manage. She indicated that Orbis would normally take the call and deal with it as far as they can and she stated that if this had been for an individual then it would have been charged to that individual. Mrs Brown therefore stated that this was in relation to a communal issue. With regard to the cigarette bins Mrs Brown pointed out that there were cigarette bins both at the front of the property and at the rear and this invoice was in relation to the bins at the rear of the property (which we had noted on our inspection).

51. We accept Mrs Brown's evidence upon the out of hours invoice and **allow the £48** as being a reasonable communal charge and **we accept the £255** in relation to the supply and fitting of the cigarette bins. There was no evidence before us upon which we could find that this was an unreasonably incurred charge.
52. With regard to the invoice on page 75, this related to supplying and fitting one new lock to the WC door in block 6A on 11 November 2011 as well as work supplying and fitting 3 new lamps for £144.50. On the same date at page 76 is an invoice for supplying and fitting one new lock to the WC door for block 6B for £124.50. The invoice at page 77 is for 9 November 2011 for supplying and fitting one key safe to the WC on the ground floor of block 6A and this is in the sum of £155. Miss Larner pointed out that these toilet doors are screwed shut and that the residents of the blocks cannot access them. (This was confirmed upon our inspection). Mrs Brown however said that they have to make sure that they can get in there to access the emergency light within them and other information. She said that the key safe within the toilet on block 6A contains the spare keys. She said there is also a key for the red logbook and a key for the fire officer and fire assessors. She said that they have kept these keys separate from the keys in an outside key safe to ensure that they do not need to replace everything in the event of the keys being stolen.
53. These 3 invoices comprise a total of **£424.** Given that the invoice on page 77 was for attending on 9 November 2011 to fit the key safe to the WC in block 6A, we do not consider that it is reasonable to charge for a separate visit to fit the new lock to that same toilet just 2 days later. We also consider that overall the charges are high for what should be routine tasks for a skilled maintenance worker. However, we do consider that ultimately the arrangements made by Mainstay for keeping spare keys within the key safes are overall for the benefit of the residents of the block and the leaseholders and it is therefore reasonable to charge these amounts to the service charge. We find that a reasonable charge for the work covered by these 3 invoices is **£325.**
54. We consider the invoice at page 78 for **£175** for work undertaken by Griffiths Property Maintenance on 4 November 2011 to be reasonably incurred and reasonable in amount. With regard to the invoice at page 79 for £55 incurred on 9 November 2011 for cleaning

both bin stores ready for the dustmen, Mrs Brown indicated that whilst the council will come on site to collect items from the bins, they will not go to the bottom bin store and so items have to be in the top bin store. The bin store areas and the bins within them are of a considerable size me therefore consider that this **£55 cost was reasonable in amount and reasonably incurred**.

55. With regard to the invoice at page 83 for Maintenance Free in the sum of £514.90, this was in relation to stripping out front and rear doors and removing the transom closers and locks and replacing them with medium duty transom closers and additional 6 keys. Miss Larner said that all the locks were originally on a master key which opened the communal front door and she questioned whether they needed the duplicate keys. However there was no evidence before us to suggest that this work had not been undertaken nor that it was unreasonable. **We therefore allow as a reasonable service charge the £514.90.** The Applicants had not disputed the grounds maintenance and cleaning/window cleaning work undertaken by Chamonix Property Care and the general maintenance elements of the Chamonix invoices was evidenced at pages 86 to 93 of bundle R1. For the sake of clarity, these totalled £123.60 on page 86, £114.67 on page 88, £73.02 on page 89 and £53.87 on page 90. These sums are all inclusive of VAT. These amounts totalled **£356.16.**
56. In all therefore the general maintenance items conceded by the Applicants as reasonable and found reasonable by the Tribunal totalled **£3301.46.** Other items that had been listed by the Respondent were not supported by evidence with invoices and for this reason the Tribunal could not be satisfied that those costs had been incurred or incurred reasonably.
57. **Buildings and terrorism insurance.** The Applicants contended that the charge of £6426 was unreasonable and argued that they did not consider that this had been re-brokered and that this amount comprised £494 per property if divided by 13. Miss Larner compared this to a development called Maritime Quay in Runcorn which has 92 units and the insurance is £13,991 or approximately £152 for each of those units. Miss Larner also pointed out that the same premium had been charged by Lockton for insurance for 2010 as could be seen by the invoice at page 36 of bundle R1. Mrs Brown submitted that the freeholder has the right to place the insurance with whom they wished and Mrs Brown indicated that insurance premiums consciously depend upon previous claims made, locality and so forth. Mr Hussain pointed out that this policy with Lockton evidenced on page 94 was in fact set up by Chamonix and Mainstay paid the last instalment. There is a handwritten annotation to page 94 to indicate that the premium was paid by 10 instalments of £642.63 and the interest of £247.12 was added to the total premium of £6179.18 as this was paid by instalments rather than in one lump sum.

Mr Hussain indicated that Mainstay generally broker deals nationwide and obtain good deals.

58. The Tribunal noted that in fact the terrorism premium for 2011 was £875.47 which was cheaper than that charged for 2010 when it was £954.19 and that the total premium for 2011 inclusive of insurance premium tax but excluding interest for payment by instalments, was £6179.18 which was slightly cheaper than the sum of £6261.84 for 2010**. The Tribunal determine that the sum of £6426 is reasonable**. We are satisfied that the insurance premium was paid by instalments and that it was reasonable to pay it in this fashion given the evidence that we had heard from Mr Hussain and Mrs Brown about the shortfall in the service charge income accounts. The premium is evidenced by the invoice at page 94 of bundle R1 and it is not incumbent upon a landlord to find the cheapest possible insurance policy. It cannot be said that an insurance premium is unreasonable simply because there may well be cheaper policies available elsewhere. In any event, save for the anecdotal oral evidence from Miss Larner, there was no comparable documentary evidence upon which the Tribunal could rely to support a finding that the insurance premium in this case was unreasonable.
59. **Management fees.** The Applicants contended that the management fees of £3636 were excessive and that an increase of £1000 in a year was not justified. Mrs Isaacson said that the management fees jumped up £120 per quarter from the previous agent when Mainstay became involved from October 2011 and the Applicants suggested that a reasonable fee would be £2500. The invoices in support of the management fees were at pages 97 to 100 of bundle R1 comprising (including VAT) 3 quarterly invoices for Chamonix estates for £879.75 and then for 2 invoices of £879.76, and one invoice from Mainstay for £996.25. With regard to Mainstay's quarterly management fees at page 100, Mrs Brown indicated that this fee was in line with the budget generally for 2011The annual management fees had Chamonix continued would have been £3519.04 inclusive of VAT at £879.76/quarter.
60. To the extent that Mainstay's fees for the final quarter were more expensive, then, if further time was needed to be spent by Mainstay as they suggested owing to the failings of their predecessors, then it is not reasonable for the service charge payers to meet that additional cost. No evidence was put to the Tribunal of any other or particular management issues that would have justified the increase for the final quarter. Although the Applicant's professed themselves to be content with Chamonix's management of the property, in fact Chamonix used their own Property Care company to deal with cleaning, grounds and some of the general maintenance. This is not a large development with 13 units and we consider upon the evidence before us **that reasonable management fees for the year would be £3,000 including vat which would be £750 per quarter.**

61. **Accountancy fees.** Fees of £1045 were contended for in the Scott Schedule and these were evidenced by invoices for Ormerod Rutter accountants dated 31st July 2012 and an invoice from Mainstay themselves for £500 (both inclusive of VAT) at pages 95 and 96 of bundle R1 respectively. Miss Larner referred the Tribunal to page 110 of bundle R4, which was an extract from the management agreement with Mainstay and the terms of appointment in relation to "'The Service' to be provided by the Agent". At paragraph 1.15 it stated "as soon as practicable after the expiry of an Accounting Period to procure the final accounts be audited in accordance with the terms of the Leases and to forthwith produce the same to the client for approval and upon the approval of such accounts by the Client (which shall not be unreasonably withheld or delayed) to furnish final copies of such accounts audited as aforesaid to the Lessees within 6 months after the end of each Accounting Period." Miss Larner was making the point that these service standards had not been complied with.
62. Mr Hussain stated that his standard fees would be around £100 per hour plus, and this was an exceptional fee for getting the site up to scratch. He described it as a one-off fee. Mrs Moszoro referred to the accounting figures determined by the LVT for 2008 and 2009, and submitted that any additional accountancy charges to get the paperwork and accounts in a reasonable state should not be charged to the service charge account. Very fairly, Mr Hussain did indicate that he appreciated that. Miss Larner said that the sums paid to Ormerod Rutter were better than before and were more reasonable.
63. In the light of the evidence that we heard, it is clear that the accounts and paperwork had not been kept in good order by both Peverel and Chamonix, Mainstay's predecessors as managing agents. We accept the evidence that Mr Hussain gave to the Tribunal that the paperwork he inherited was not in good order and he was obliged to spend a considerable period of time reconstructing the accounts. We have no doubt that Mr Hussain spent time upon this task and did so in good faith. Nevertheless if the previous managing agents had undertaken their tasks diligently, there would have been no need for this extra time to have been spent by Mr Hussain. In the circumstances, **it is not reasonable for the service charge payers to meet the £500 accountancy fee of Mainstay for the year ending 31st of December 2011, as it was not reasonably incurred by the service charge account. It was no fault of the lessees that the accountancy work had not been undertaken efficiently in the first place and it would not be reasonable for them to pay to remedy the default of the previous management companies. We allow the charges of Ormerod Rutter of £545 as being reasonable in amount and reasonably incurred.**

64. **The following charges were accepted as reasonable by the Applicants; the bank charges of £41, the cleaning of £367, the window cleaning of £260**. The Tribunal therefore does not need to further consider these matters.
65. With regard to the statutory inspection fee of £400, Mrs Brown explained that Mainstay undertake the statutory inspections every year and try and keep the costs down in the interests of the service charge payers. We noted the reference to the health and safety audit and the fire regulations assessment undertaken on 23 November 2011 and invoiced on 29 November 2011 for **£399.60**. The Tribunal consider that it is reasonable for these assessments to be undertaken annually, particularly in a development of this kind with numerous student residents, and that **the costs of the assessment (although not evidenced by an invoice) are reasonable.**

Service charges for 2012

66. At the date of the hearing the finalised and certified accounts for 2012 were not available. We therefore had a situation whereby we had been provided with the budget for 2012 and the estimated costs and budget appeared at page 217 of bundle R1. However we also had calculations prepared by Mr Hussain which were supported by invoices. In bundle R4 at pages 15 – 17 was a spreadsheet that had been prepared by Mr Hussain based upon the actual expenditure and invoices, detailing the costs incurred during 2012. Mr Hussain described this as provisional and said that there was one accrual but the body of the expenditure should be accurate and was supported by invoices.
67. Miss Larner observed with regard to these invoices, that the figures for cleaning were high at £1719 but said that there were 3 invoices in particular that they wished to dispute. She said that the work upon the **fire safety systems by EAP Solutions Ltd** related to flat number 5 and therefore should not be charged to everyone. This was in the sum of £251.40 inclusive of VAT and the invoice could be found at page 76 of bundle R4. Mrs Brown however said that work upon the smoke detectors would be recharged to individual flats but if the wiring involved was regarding the communal system then it will be charged to all of them. If the wiring involved was individual then it would be recharged to that individual flat. Miss Larner was also concerned at the invoice from EAP Solutions Ltd at page 80 for £198 which related to checking and resetting the fire alarm at flat number 7 after a fire and then checking and resetting the system.
68. **We determine that upon the evidence, it is not reasonable** for the invoices from EAP Solutions Ltd in relation to individual flats, to be included in the service charge account as a whole and that these should be charged to the individual leaseholders**. We therefore disallow the sums of £251.40 and £198 (£449.40) from being charged to the general service charge account as being unreasonable.**

69. The 3rd invoice was that appearing at page 81 of bundle R4, namely a Mainstay invoice for £139.80 in relation to the installation of a fire box on 2 July 2012 and the fire risk assessments that are kept there. Miss Larner suggested that it would have been cheaper to have done this work in one go noting that there was also work relating to the fire boxes charged in the previous year as mentioned above in our determination for 2011. However Mrs Brown said that it may have been funding issues that lay behind the work not all being done at the same time or it may be that when the site was set up their new management department decided to set up the fire boxes in one place. Miss Larner questioned whether it was reasonable to charge the leaseholders if there was a change of management company and a change of decision upon this matter but Mrs Brown again said that the key is needed to be on-site so that they have access to the site for fire officers and so forth. We note that this is a one-off cost **and we determine that it is reasonable for Mainstay to wish to manage the fire risk assessment in this fashion and we therefore allow the £139.80 as being reasonably incurred and reasonable in amount.**
70. In some instances there were considerable differences between the budgeted figure and the actual figure supported by invoices contained within Mainstay's figures. For example the grounds maintenance was budgeted (page 217 of bundle R1) at £2000 for the year ending 31st of December 2012, and yet on the spreadsheet at page 15 of bundle R4 there were only 2 invoices totalling £720. Mrs Brown explained that she had had to suspend services because she was unable to pay for them. She also described how they did not have regular payments from everyone and the freeholders had to deal with a £50,000 deficit.
71. At the top of Page 16 of bundle R4 Mr Hussain explained that there had been 3 invoices regarding the bin stores which had been accrued and taken off (this showed as a deduction of £745.92). There was discussion of the bin stores and Mrs Brown accepted that there was a printing error at pages 122 and 123 of bundle R1 because they were the same invoice in relation to cleaning out the bin stores on 3 January 2012. Mrs Moszoro pointed out that at page 124 there was another invoice for £155 dated 12 January 2012 for attending on site and cleaning out the bin stores again. Mrs Brown stated that the bin stores need looking at weekly and they are often in a very poor state. She said that the Eurobins are £320 each and said that they could consider supplying more of these or moving the bins up from the lower bin store to the one nearest the access gate**. We do not consider that the invoice at page 124 for £155 is reasonable, given that the bin stores had only been cleaned out 9 days before. Despite Mrs Brown's contention, there wasn't evidence before us that the bin stores required weekly cleaning out.**

We therefore disallow the £155 at page 124 as being unreasonably incurred and unreasonable in amount.

72. With regard to the gutter clearances by EJ and Co Building and Grounds Maintenance for £437.88 on the 10th of May 2012, Mrs Brown explained that there had previously been gutter replacements undertaken and paid for by insurance but the annual gutter clean is normally undertaken between March and May and this was a different matter. **We accept Mrs Brown's evidence upon this point and therefore determine that this is a reasonably incurred service charge that is reasonable in amount.**
73. There was an entry at page 16 of bundle R4 under the day-to-day maintenance (Main service charge schedule) for the landlord loan interest from 17 November 2011 to the 18 September 2012 for £933.42. Miss Larner submitted that the amount of interest should be taken out and the leaseholders should not have to pay for it nor should they have to pay for the keys that were cut for Cardiff student letting. **Mrs Brown accepted that the cutting of the copies of communal keys in the sum of £107.76 would be charged back to the freeholder and would not be part of the service charge account.**
74. **With regard to the loan interest, we were not provided with evidence to persuade us that this loan interest comes within the definition of service charges under section 18 (1) (a) and we therefore determine that this is not properly chargeable to the service charge account upon the evidence before us,** and we note that in any event the sum recorded included an amount incurred in the previous service charge year.
75. With regard to the **water,** the sum budgeted for 2012 was £10,000 which Miss Larner considered to be too high. However Mr Hussain indicated that from the figures on his spreadsheet at page 16, there was another bill to come in, and since the water bill of 14 June 2012 was adjusted to remove the accruals from 29 November 2011 to 31 December 2011 totalled £5202.64, **we determine that the budgeted figure of £10,000 is reasonable**.
76. With regard to the electricity, Mr Hussain said that his figure of **£21,831.96** was the actual usage figure for the site. Miss Larner indicated that they were not happy with the electricity levels and stated that they were a residential block but were being charged commercial rates. Mrs Brown stated that they could only operate as they were instructed by the freeholder and that this property was not within Mainstay's student division. **Since the figures provided by Mr Hussain were supported by invoices, we note that the freeholder is not obliged to obtain the cheapest tariff available, that these charges are reasonable in amount and are reasonably incurred and that the budgeted figure was also reasonable.**

77. With regard to the **management fees,** Miss Larner again submitted that £3990 was unreasonable and that the appropriate and reasonable figure would be £2500. Mrs Brown stated that their fees were set according to what was agreed with the client and not set according to the budget of the development. She said that Gwennyth Street takes a lot of time and effort. Miss Larner submitted that the site was over managed for the size of it. **The Tribunal determine that, given that this is a relatively small development with very limited grounds and communal areas, and noting that services such as cleaning were brought in-house, that a management charge of £3200 is reasonable.**
78. **Accountancy fees.** The Applicants accepted the budgeted fees for external Accountancy services but not for the internal accountancy fees. **The Tribunal determine that the budgeted internal accountancy fee of £200 is not reasonably incurred and that preparation and presentation of the appropriate Accountancy paperwork to the external accountants is work that should be included within the general management charges.**
79. With regard to the **insurance,** similar arguments were presented on both sides as for the 2011 figure. Whilst the budgeted figure was for £6580, the figure included at page 17 on the spreadsheet in bundle R4 was for £**5763.59.** This was a slightly less expensive figure than for 2011 and **for the reasons given in relation to the 2011 figure, we determine that this is reasonably incurred and reasonable in amount.**
80. **Consultation.** With regard to the management agreement, the Applicants asserted that it was a Qualifying Long Term Agreement (QLTA) within the meaning of section 20ZA (2) of the Landlord and Tenant Act 1985, namely that it was an agreement made by or on behalf of a landlord for a period of more than 12 months and that the tenant would have to contribute more than £100 to the cost of the QLTA in any accounting period. In fact, the management agreement for the year ending 31st of December 2012 was dated 20th of December 2011 to commence on 1 January 2012 and was expressed to be for a period of "1 year less 1 day." **Therefore the Tribunal determine that this was not an agreement for more than 12 months, was therefore not a QLTA and was not subject to the consultation requirements under the Landlord and Tenant Act 1985. Furthermore the original agreement between Mainstay and freeholder was to cover the quarterly period between October and December 2011 and was for a fixed fee inclusive of VAT £996.25. This clearly was not a QLTA.**

81. **The cost of these proceedings – the section 20 C application.** We refer to paragraph 12 above which outlines this provision of the Landlord and Tenant act 1985. Mrs Brown indicated that she is a senior property manager and Mr Hussain as a senior service

charge accountant have an hourly rate of £135 plus VAT each. She indicated that although Mainstay is based in Worcester she actually lives in Monmouth. Mrs Brown stated that Mainstay's costs would be £5500 inclusive of VAT. This would equate to costs of £4583.34 (excluding VAT) which is just under 34 hours. Mrs Brown said that for the 2 days of the substantive hearing both she and Mr Hussain would claim 7 and 8 hours, namely 15 hours each. For the 1st PTR they would claim up to 2 hours each which equated to the 34 hours. She indicated that they would not be charging for any of their preparation time or seeking costs in respect of that.

82. Mrs Brown drew the Tribunal's attention to the annexe of the management agreement for additional services which appeared at pages 113 and 114 of bundle R4. This was the management agreement to commence on 1 January 2013 although the agreement was dated 23 January 2013. This annexe clarified matters for which an additional fee could be charged and included at i) "attending at Court and Leasehold Valuation Tribunal's".
83. Mr Hussain said that Mainstay had acted on behalf of the landlord and had spent a lot of time and effort sending out documentation to meet with the previous LVT ruling. He said that they hope that the figures for 2010 would demonstrate that everything had been complied with and both he and Mrs Brown pointed out that the freeholder had put in large sums in 2010. He also said that they had tried to set up meetings with the Applicants in order to discuss issues and to save costs.
84. Mrs Isaacson considered that the proposed hourly rate was extortionate and the Applicants disputed as to when the meetings to discuss matters had been offered or setup with Mainstay. Mrs Moszoro indicated that she considered that the main stumbling block with the charges that had been brought over from when Peverel managed the development and felt that Mainstay had not taken off any credits that she and others had paid. She indicated that she had paid every service charge demand but that her statements had shown her as being one quarter in arrears. She described how the LVT had previously set a sum but she felt that she was still being chased for some of Peverel's figures rather than for the adjusted LVT sum. She considered that the appropriate fees to be charged by Mainstay would be £80 an hour for the accountant and £60 an hour for the property manager.
85. Miss Larner explainined how they had approached the freeholder upon a number of occasions with their concerns but felt that the freeholder was unable to provide full explanations. She felt that the freeholder rather than their managing agents should have been in attendance at the LVT hearings and noted that the freeholder had not attended at any hearings. She again made it clear that the Applicants were not saying that they did not want to pay the service charge but they did only want to pay a reasonable service

charge and to ensure that the site was being appropriately managed and not "over managed" as she put it.

86. Mrs Moszoro expressed her concerns about the sum that the freeholder had paid in 2010. She said that she wanted confirmation that this sum had not gone into a loan account that the freeholder was going to seek repayment of from the service charge payers. Mrs Brown said that the loans were in the 2009 accounts and that the landlord had made a genuine contribution to the outstanding service charge costs. She said that the landlord had paid amounts that have not been charged by Peverel for 9 months. She considered that the landlord/freeholder had been extremely generous.
87. **Decision on the section 20 C application.** To firstly deal with the proposed hourly rate charged by Mr Hussain and Mrs Brown. We do not consider that the hourly rate of £135 plus VAT is excessive. Mainstay have not sought to rely upon lawyers to present their case. We have little doubt that had they done so the costs of any legal representation would have exceeded these costs upon an hourly rate. Therefore we determine that the rate is reasonable and the time claimed by Mrs Brown and Mr Hussain is clearly reasonable as we have no doubt that considerably more time was incurred by Mainstay in for example preparing the bundles and the documentation within them, and preparing for the hearings than has been claimed.
88. Section 20 C (3) gives the Tribunal the discretion to "make such order on the application as it considers just and equitable in the circumstances." The Applicants seek an order that none of the costs incurred by the Respondent in connection with these proceedings should be regarded as relevant costs to be taken into account in determining the amount of the service charge payable. It is clear from our determination that some matters have been determined in the Applicants favour and other matters in favour of the Respondent. It is also clear from the evidence given by Mr Hussain and referred to above, that he was critical of Peverel and Chamonix and he had to spend considerable periods of time reconstructing the accounts. The Applicants informed us that they had repeatedly emailed Mainstay seeking a breakdown of Peverel's charges that had been applied to the balance/forward figures and accounts following the LVT's determination in June 2010 and that their requests to show how the tenant's proportion had been calculated and supported by the accounts had not been met. Mr Hussain was clearly not in a position to provide that information as he was obliged to reconstruct the service charge accounts himself.
89. **We determine that it would not be just and equitable for Mainstay's costs incurred in connection with these proceedings to be applied to the service charge account.** It is clear that parts of the Tribunal's earlier determination had not been properly implemented. The earlier decision set out clearly what needed to be done in order for the

service charges to be properly demanded in accordance with the lease as well as with the statutory requirements. The Applicants argued that this had not been done and we have determined that the Applicants were correct in this submission. The Applicants themselves have continued to pay their service charges and in seeking information and clarity about the calculation of the same they had only been exercising their lawful rights. We consider that the points taken by the Applicants have been reasonable and they have not at any stage behaved in a vexatious or unreasonable fashion.

90. The application sent in by Miss Larner on the 10th of May 2012 was accompanied by a fee of £350. The Leasehold Valuation Tribunal's (fees) (Wales) Regulations 2004, at regulation 9 provide the Tribunal with the discretion to require any party to the proceedings to reimburse any other party to the proceedings the whole or part of any fees paid by him in respect of the proceedings. In the light of our findings we direct that the respondents are to reimburse Miss Larner with the £350.50 within 14 days of the date of receipt of this decision.

DATED this 30th day of May 2013

Richard Payne
Chairman