Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0019/04/12

In the Matter of:
29 Britannia Apartments, Phoebe Road, Pentrechwyth, Copper Quarter, Swansea, SA1 7FG

In the matter of an Application under Section 27A of the Landlord and Tenant Act 1985
And in the matter of an Application under Section 20C of the Landlord and Tenant Act 1985

TRIBUNAL	David Evans LLB LLM Ruth Thomas MRICS
APPLICANT	Miss Michelle Sims
RESPONDENTS	BDW Trading Ltd Mainstay Residential Ltd

DECISION

1 INTRODUCTION

1.1 The Copper Quarter is a substantial redevelopment scheme comprising retail units, residential houses and flats as well as the Liberty Stadium on the site previously occupied by Swansea's famous copper industry. The houses and flats, developed by Barratt Homes Ltd (Barratt), are located on the eastern bank of the Afon Tawe. When the site is fully developed, there will be eight Blocks of flats (A – H) with smaller clusters of leasehold apartments and freehold houses (the Development). Alongside the river is a promenade with a shrub border running the length of the Development. There are car parking and amenity areas throughout the Development. Each of the Blocks has been given a name. Britannia Apartments is Block F. It comprises 5 floors with under-croft parking. There are 37 flats accessed via a common entrance hall with stairs and a lift to each of the floors. There are nine flats on each of the first three floors with eight two storey flats on the fourth and fifth floors and one single storey flat on each of those floors.

1.2 Miss Michelle Sims, the Applicant, is the leasehold owner of flat number 29, Britannia Apartments (the Property). This is one of the two storey flats. The Applicant's lease is dated the 12th October 2007. It is for the term of 125 years from the 1st April 2007 at an initial ground rent of £200 pa and was made between Barratt (1) and the Applicant (2). The Applicant has the right to use a single car parking space in the under-croft parking. The lease contains many of the covenants and conditions generally found in modern residential leases with the responsibility given to Barratt for the maintenance of the structure and exterior of the Block, the common areas, services, grounds, bin stores and other facilities within the Development.

1.3 The cost of providing these services is passed on to the lessees through the service charge which is defined in the Applicant's lease as "a fair and reasonable proportion attributable to the [Property] (as reasonably and properly determined by the Lessor or its managing agents having regard to the number and size of the Apartments or other residential units in the Development from

time to time". The Lessor or the managing agents have the right ("acting reasonably") to vary the Applicant's proportion attributable to the Property.

1.4 On the 30th April 2007, Barratt engaged Mainstay Group Ltd as the managing agent for the Development. It acts principally through its associated company, Mainstay Residential Ltd, and took over responsibility for each of the blocks when they were handed over as follows:

Block G	Victory	26th October 2007
Block F	Britannia	16th November 2007
Block E	Neptune	10th March 2008
Apartments		20th June 2008
Block H	Royal Sovereign	17th April 2009
Block D	Belle Isle	1st June 2010

We should add that the blocks are frequently referred to as I-Pads, the other apartments as Apartments whilst the Development is often called the Estate.

1.5 At some point, Barratt Homes Ltd must have changed its name to BDW Trading Ltd for, although the name changed, the company registration number did not. To avoid confusion, we shall refer to both Barratt Homes Ltd and BDW Trading Ltd as Barratt. We shall refer to Mainstay Group Ltd as Mainstay, and to its associated companies Mainstay Residential Ltd as Residential and Mainstay Facilities Management Ltd, which provides various services, as Facilities.

1.6 The Applicant has had a great number of concerns about the service charges which she has been required to pay and on the 21st June 2011 she issued an application under section 27A of the Landlord and Tenant Act 1985 (the Act) for a determination of her liability to pay service charges for the years 2007 to 2010 and at that time the future years of 2011 to 2016.

2 HEARING

2.1 The hearing took place initially at the Civic Centre, Swansea on the 30th April and the 1st May 2012. The adjourned hearing took place at the Tribunal Offices in Cardiff on the 3rd and 4thof July 2012. Prior to the first hearing, we inspected the Property and the Development accompanied by the Applicant and Mr Alex Seigle, the area property manager for Residential.

2.2 At the hearing the Applicant represented herself and was for the first two days accompanied by her partner Mr Andrew Russell. The Respondents were represented by Mr Seigle accompanied, again on the first two days by Mr Richard Jones, the Property Manager for one of Mainstay's properties in Cardiff and Mr Daniel Faizey, a senior service charge accountant based at Mainstay's offices in Worcester.

2.3 The Applicant had prepared a Scott Schedule setting out the issues which she wished us to deal with against which the Respondents had placed their comments We shall deal with the items in the order in which they appear in the Schedule and shall refer to the numbering within the Schedule. The items have been cross referenced against a list of invoices for each of the years considered contained within a bundle of documents prepared by the Applicant with the item number from the Schedule identifying the particular invoice or invoices challenged. Some of the issues raised led to a discussion concerning related topics and we have dealt with those under the same heading.

2.4 The parties had compiled a number of bundles. We shall refer to the Applicant's bundle as "A" with a description of the document as the contents are not numbered. The Respondents had prepared six bundles which we shall refer to as R1 – R6 followed by the relevant page number. Additional documents which were introduced at the hearing will be described as necessary.

2.5 As the items requiring determination are spread over a number of years, we shall refer to the year ending 24th March 2008 as Year 08, that ending on the 24th March 2009 as Year 09, that ending 24th March 2010 as Year 10 and that ending on the 24th March 2011 as Year 11.

3 ITEMS FOR DETERMINATION – Item 1

3.1 Welcome signage – Year 11 - £158.31 – R4 p335 (and other issues)

(a) The invoice from Astra Signs Ltd is for 26 signs which were to be fixed to the walls of buildings in the Development. 11 of the signs (6 for the Apartments and 5 for the I-Pads) read "Welcome to Copper Quarter" and display the name "Mainstay" prominently. The Applicant considered that as this was advertising the managing agents rather than providing the residents and visitors with information, it should not form part of the service charge, but should be paid for out of the management fee. The Applicant did not take issue with the other notices.

(b) The Respondents' view was that the notices were intended to inform visitors and suppliers as well as the emergency services as to who the managing agents were and how they could be contacted should access be required.

(c) Whilst the name "Mainstay" does feature rather prominently on the notices, we accept the Respondents' argument. Some notice is required to provide visitors, suppliers and particularly the emergency services with contact information. Some sort of signage would be required and Residential's or Mainstay's name would have had to appear on it somewhere. The design is a matter for Residential and as long as the sign performs its intended function and is not blatant advertising, we do not feel we can interfere. WE DETERMINE, therefore, that the charge was reasonably incurred.

3.2 Repair to padlock – Year 10 - £230.76 – R3 p304

(a) The invoice reads – Bin store Lock Repair at Britannia Apts...

Labour	£187.50
Materials	£13.16
	£200.66
VAT	£30.10
	£230.76

(b) The Applicant did not consider that £230.76 to supply and fit a new lock was reasonable taking into account that the lock itself only cost £13.16.

(c) Mr Seigle explained that staff were directed to use Facilities where the job was within its expertise. It was cost effective and the client (in this case Barratt) agreed. Facilities would be used where, for example, there was no-one locally with the necessary qualification. From September 2010, the caretaker would have dealt with this. Facilities charges £50 for the first hour and £25 per hour after that. The labour charge was for 6½ hours. He did not have a time sheet. It was possible that the workman travelled from Bristol. The cost includes the time spent travelling to the site, collecting materials from a local supplier as well as completing the job. The work was not in fact a repair but the fitting of a dial lock. Mr Seigle accepted that a reasonable handyman could have done the job. He could not say that there was any urgency about the job.

(d) There is nothing inherently wrong in a managing agent making use of employees from an associated company provided that the work is done to a satisfactory standard and the cost is competitive. We are satisfied that the work was not particularly complex and the fact that Mr Seigle accepted that a reasonable handyman could have done the job suggests to us that any number of local tradesmen could have carried it out competently and at a fraction of the cost. In such circumstances we do not consider it to be reasonable to pay for a tradesman to travel to and from Bristol, as appears to be the most likely explanation for the high level of charges. In our view a local tradesman would not have charged more than £50 plus VAT plus the cost of the lock. WE DETERMINE that the cost of £230.76 was not reasonably incurred

but that the cost of £57.50 plus £15.13 (inclusive of VAT) – total £72.63 - was reasonably incurred. The Applicant is therefore entitled to the appropriate credit.

3.3 Ice Break – Year 11 - £188.00 – R4 p399

(a) The invoice is for 5 tubs of Ice Break purchased in November 2010. The Applicant's point was that grit had already been supplied and she could not see any reason for the purchase of Ice Break.
(b) Mr Seigle explained that this was a grit type product for spreading on formed ice. He concluded that there may have been areas where it was needed. He did not regard it as a large quantity of Ice Break.
(c) It is the responsibility of the managing agent to ensure that the common parts are safe for the residents and visitors in cold weather. If the managing agent considers that this requires the purchase of Ice Break, then without more in the way of evidence, we cannot criticise it for doing so. The Applicant did not challenge the cost of the Ice Break. WE DETERMINE that the cost was reasonably incurred.

3.4 RMT Builders – Year 11 - £220.31- no invoice

(a) The Applicant queried the entry for £220.31 in the Estate entries relating to "Day to day maintenance" for 1st January 2011. The sum is payable to RMT Builders for a "matt (sic) well carpet". She considered this to be expensive for a small mat well carpet. She was under the impression that the entry appeared again on the 24th March 2011. However, as Mr Seigle pointed out, the second entry is a credit. The expense has in fact been paid out of the Estate sinking fund (p 9 in the 2011 Accounts). The entry there reads "Carpets – (£220)".
(b) Mr Seigle believed that the job may have involved several blocks. As an estate charge it was split between the apartments and the blocks. However, he could not produce the invoice.
(c) It is unfortunate that the invoice was not available as without it we cannot be certain precisely what work or supplies were involved. The entry in the schedule only relates to a "carpet" although the sinking fund entry refers to "carpets". If there were more than one, we do not know how many. If the invoice had related to an I-Pad or I-Pads as well as apartments, the invoice could have been split as has occurred elsewhere. Mr Seigle could provide no direct evidence. We cannot therefore be satisfied as to what exactly this cost involved and so WE DETERMINE that the cost was not reasonably incurred. The Applicant is therefore entitled to the appropriate credit.

3.5 Janitorial Cupboard – Year 11 - £312.14 (incl VAT) – R4 p357

(a) Mr Seigle explained that Facilities purchased a metal cupboard to be used for the safe storage of items. Barratt did not envisage the employment of a caretaker and so did not provide facilities for him. The caretaker is employed by Facilities but that company would expect the leaseholders to pay the cost of providing the cupboard. Mr Seigle accepted that if Mainstay ever lost the management contract, it would take the cupboard for use on another of its sites.
(b) The Applicant argued that Barratt should have planned for the provision of a caretaker. Further as Facilities is providing the caretaker, it should take care of his requirements including the cupboard.
(c) The significant point here is that Facilities regards the janitorial cupboard as its own property so that if it ceased to provide caretaker services, either because they were no longer needed or because Mainstay lost the management contract, it would remove the cupboard and use it elsewhere. It does not seem to us to be reasonable for the service charge payers to pay

for a facility which would be expected to last for several years only to have that facility removed when either the caretaker is no longer required or the managing agent is changed. In the latter case, the service charge payers may be required to purchase a replacement cupboard. If Mainstay proposes to remove the cupboard at some future date even though it is still able to be used, then it cannot be right to expect the lessees to pay for it. WE DETERMINE that the cost of the janitorial cupboard was not reasonably incurred. The Applicant is therefore entitled to the appropriate credit.

3.6 Electricity – Year 10 - £2,404.16 – R3 p54

The Applicant was concerned about an accrual of £60.20 which appears below this entry in the Schedule of costs. There appears a corresponding credit in the Schedule of costs for Year 11 and so there is no issue for us to determine.

3.7 Electricity – Year 10 - £5,644.36 – R3 p73

The Applicant referred us to this account which is for £5,644.36. There is an entry in the Schedule of costs for £4889.59. The difference is £754.77 which is the total amount of credits appearing on the invoice at R3 p74. Again there is no issue for us to determine.

3.8 Electricity – Year 10 - £2,459.26 – no invoice

(a) The Schedule of costs apportions the electricity charge between the I-Pad service charge and the car park service charge. Mainstay allots 15% of the I-Pad charge to the car park. The Applicant considered this to be too much and suggested that it should be 10% and this should be paid as an Estate charge.

(b) The Applicant did not provide us with any information which suggests to us that Mainstay's approach was wrong. In any event, as the Applicant's proportion of the I-Pad charge is higher than her proportion of the car park charge, she is surely better off with the higher car park charge and a lower I-Pad charge. We cannot see that Mainstay's approach is unreasonable and so WE DETERMINE that the car park contribution from the I-Pad charge was reasonably incurred.

3.9 Caretaker supplies – Year 11 - £380.92 – R4 p92
£208.70 – R4 p99 (also referred in item 2.15)
£1,286.84 – R4 p100

(a) On the 23rd September 2010, an employee of Facilities, Martin Read, was authorised to use his personal credit card to purchase supplies "to allow caretaker to carry out maintenance at site". The amount on the expense claim is £303.69. The entry in the Schedule of costs shows a figure of £380.92.

(b) On the 7th January 2011, someone from Facilities obtained supplies from B & Q for the caretaker at a cost of £208.70. The cost of "materials" was £123.92 plus VAT @ 20% (£148.70). Facilities has also included a "labour" charge of £50 plus VAT (£60) for collecting the items.

(c) On the 11th January 2011, copy keys, bulbs and a leaf blower/vacuum cleaner were purchased at a cost of £722.37 plus VAT (£866.84) plus a "labour" charge of £350 plus VAT (£420).

(d) Mr Seigle explained that the caretaker could not purchase supplies. They were part of the setting up of the caretaker and so chargeable. Mr Seigle also explained that Facilities charged a mark-up of, say, 10% on items purchased. The Applicant considered that the

setting-up costs were part of management and the costs should come out of the management fee. The labour cost of £350 was for 13 hours on the basis of £50 for the first hour and £25 per hour thereafter.

(e) We do not know what supplies were purchased in September 2010 or what they were used for other than unspecified "maintenance". We cannot assess if they constituted value for money. In any event we do not consider it reasonable for one of the managing agent's associated companies to charge a labour charge or a mark-up of £77.23 on top of the actual cost. We agree with the Applicant that the time taken in setting up the caretaker and his office as well as obtaining supplies is part of the management function and the cost of this is included in the management fee. We can also see no justification for a manager purchasing an item or items for use at the Development and levying a substantial charge for collection. WE DETERMINE that the sum of £380.92 was not reasonably incurred. The Applicant is entitled to a credit in respect of her contribution to this charge.

(f) With regard to the other two invoices, we do not know if the cost of the supplies in the other two invoices included a mark-up. The Applicant did not challenge the cost of the items. However, we were provided with no explanation as to why it took 13 hours to obtain the keys, bulbs and leaf blower or how a charge of £350 could be justified, or indeed why a charge of £50 could be justified for someone calling in at B & Q to buy a few items. WE DETERMINE that the labour costs of £60 and £420 were not reasonably incurred but that the cost of the materials and supplies of £148.70 and £866.84 was reasonably incurred. The Applicant is entitled therefore to a credit in respect of her proportion of £480.

3.10 Lighting issues – Year 11 - £2,350.00 – R4 p93
£1,598.64 – R4 p102
£117.50 – R4 p111

(a) The invoice at R4 p93 is from Spectrum Facilities Management Ltd for "carrying out works to lighting circuits as per quote". The order for this work is at R5 p228 and the works completion form is at R4 p94. The works carried out are described as "re-wire all lighting circuits and install timers." The purchase order states that it is "important work to lights in I-Pad".

(b) Mr Seigle explained that the installation of timers required some rewiring. He was not sure if three or four blocks were involved. The Applicant's case is that Mainstay should have gone to Barratt to pay for this work.

(c) In reply, Mr Seigle told us that on hand-over, representatives from Barratt and Mainstay go through the block and prepare a snagging list. Barratt then carries out remedial action. If the lighting system is working satisfactorily on hand-over, it is difficult to ask Barratt to fund the cost of altering that system. The object of the work was to reduce the overall cost to lessees.

(d) We agree with Mr Seigle. A lessee buys a flat with the benefit of the facilities as they exist at the time of purchase. If the managing agent considers that that system can be improved upon with the intention of providing a more efficient and/or cost effective system, it is unlikely that the developer will pay. This work was carried out in August 2010. Neptune had been handed over in March 2008 with Victory and Britannia in 2007.

(e) In our view, it was a reasonable decision to take on the part of Mainstay. The change in the lighting system was intended to save money in the long term. We cannot see that Barratt would have been willing to pay for or even contribute to the cost of doing so. In the circumstances WE DETERMINE that these costs were reasonably incurred.

(f) The invoice for £1,598.64 involves 4 visits with work being carried out to all I-Pads. The original order (R5 p296) is dated the 23rd February 2011. It is only for a call out, but

evidently a considerable amount of work was required. The labour costs were £737.50 plus VAT. Although the Applicant considered that these visits were to sort out lighting faults, it is unlikely that these faults were present at the handover which in the case of Victory and Britannia was over three years previously. Any faults present at that time would surely have come to light before 2011. We accept that some work was required in respect of Royal Sovereign which was handed over in April 2009, but that is nearly two years previously. In any event, the work had to be done. The Applicant has not challenged the cost. Again, after such a period of time Barratt was never going to accept responsibility and in the absence of evidence that there was some defect arising from the original installation, WE DETERMINE that this cost was reasonably incurred.

(g) The invoice for £117.50 is for dealing with "faulty lights, lighting alterations" in the four I-Pad blocks. The order, given on the 18th June 2010, is at R5 p222. As before, if there is a problem, it has to be put right. Again there was no challenge as to the amount of the bill. By June 2010, the four I-Pad blocks had been occupied for over 12 months and in such circumstances we again cannot see that Barratt would entertain the idea that this was caused by an inherent defect. Accordingly WE DETERMINE that this cost was reasonably incurred.

3.11 Replace sensors – Year 11 - £840.13 – R4 p110

This invoice, which is dated the 27th May 2010, related to the replacing of sensors on the fifth floors of Victory and Royal Sovereign. The order is at R5 p206. The issue is again not about the actual cost but whether Barratt should have paid for it. We were given to understand that the work related to the vents. The work had to be done. We cannot see that these items would still have been under warranty. Barratt would not have been under any obligation to replace these items free of charge. WE DETERMINE the cost was reasonably incurred.

4 ITEMS FOR DETERMINATION – Items 1.1 to 1.7

4.1 Sinking Fund – Item 1.1

This was a general query concerning the Sinking Fund. Mr Seigle explained to the Applicant the Respondents' approach and the Applicant accepted his explanation. There is therefore nothing for us to determine.

4.2 Cleaning car park – Item 1.2 – Year 10 - £1,430.00 – R3 pp326 – 332
Year 11 - £1,321.63 – R4 pp376 – 387

(a) The Applicant considers this to be an Estate charge. She said that house owners use the car park. Dogs owned by the Apartment owners foul the area. Other owners use the bins.

(b)Mr Seigle told us that the cleaning of the car park was first charged for in Year 10. It was shown separately for the sake of transparency. There was no caretaker that year. The car parking areas were cleaned monthly. He could not be sure but considered that it would take one cleaner 1½ days to clean all the car parking spaces, litter picking, sweeping, cleaning down the lights (for cobwebs). The cleaner would have designated hours. The difference between charging the cost as an Estate charge and as a car park charge would be negligible. The caretaker started in September 2010 and was charged for from October 2010. He worked initially 20 hours a week (R4 pp263 – 264) and from April 2011 that increased to 40 hours a week. In September 2011, the caretaker's hours were reduced to 30 hours a

week following a representation from Barratt which had received complaints from lessees about the amount of the service charges.

(c) It is difficult to understand the charging and this may well contribute to the Applicant's concerns. The charges from May 2009 to March 2010, during which the car parks beneath the four I-Pads were cleaned, were £130 per month. For April and May 2010 when there were still only four car parks being cleaned, the charges reduced to £108.33 per month. In June 2010 Block D was handed over but the charges remained the same until February 2011 even though there were now 5 car parks. In March 2011, the charge reverted to £130 per month. However, the Applicant did not complain about the amounts involved. Her argument was that it should be an Estate charge. In our view in seems reasonable to separate the car parking costs from I-Pad costs and Estate costs where possible and to divide the charges between the number of car parking spaces. If a resident happened to have two spaces, then he/she would pay for each space. On the basis of Mr Seigle's evidence, it makes little difference to the amount payable if, as in the case of the Applicant, the lessee has only the one parking space. In any event, we do not consider the charges (both the £130 and the £108.33) to be outside the broad band of reasonableness and so WE DETERMINE that these costs were reasonably incurred.

4.3 Car park electricity costs – Item 1.3 – Year 10 - £3,101.48 – R3 p325
Item 1.4 – Year 11 - £3,353.08 – R3 p374

(a) The amounts are the 15% proportion allotted to the car park charges from the I-Pad charges plus a 15% proportion of the Apartment electricity charges. The Applicant did not challenge the meter readings but felt she was not receiving value for money. She also complained that when she first purchased her property the lights in the car park were activated using sensors, but this meant that the lights came on during the day. Now there is a combination of timer and sensor, but there must be something wrong because the lights are still on at 2am. Mr Seigle thought that there had been an earlier alteration to the system in November 2007 which he did not think that the lessees had paid for. The Applicant also raised an issue about the inaccurate budgeting. The Year 08 figure had been £4884. In Year 09, the I-Pad electricity budget had been £3,090 but the actual charge had been £10,841. The Year 10 budget had been £3,937 against an actual figure of £13,936. The budget for Year 11 had been £21,550.

(b) Mr Seigle acknowledged that the budgets for Years 09 and 10 had been set too low. The Year 08 actual figure had been for only 2 I-Pad blocks for part of a year. The Year 09 figure had been for a full year for three blocks, whilst that for Year 10 had been for four blocks and the Year 11 for "4¾ blocks". There was one instance where a bill for a whole year's electricity charges was received after the end of the financial year. Mainstay started using a broker in Year 10. It had inherited E-ON as supplier from Barratt.

(c) The Applicant acknowledged that the system had improved since Mr Seigle had taken over as Area Manager, but it was necessary to check that it was working properly.

(d) We can well understand that suspicions are aroused when actual figures are substantially adrift from reality. In Year 09, the difference was nearly £8,000 whilst in Year 10 it was £10,000. However, it does appear that the person dealing with the Year 09 budget used a figure for part of a year as a basis and failed to make any adjustments for a full year and for the fact that another I-Pad was to be included. The Year 10 budget seems to have been prepared using the previous year's inaccurate budget as the basis without any reference to actual accounts or current management accounts. However, we are dealing with the actual figures and although it can be both irritating and on occasions cause difficulty if inaccurate budgets are set, it does not alter the amounts ultimately payable, nor does it generally affect the question of reasonableness.

(e) We do not know the rationale behind the selection of the original supplier by Barratt. Certainly since Year 10, Mainstay has employed a broker which is an indication that the charges are competitive from then on. Bearing in mind the regular increase in the number of residents month by month and the fact that new blocks were coming on stream each year, we have no way of analysing the figures even if we were minded to do so. However, the Applicant's main argument is that the system of lighting lent itself to excessive usage in the car parking areas.

(f) There is no such thing as the perfect system. Whichever one is installed, there will always be times when it appears that something better could be employed. Systems break down from time to time even when they are changed. A managing agent always has to keep an eye on the cost and it may be that it becomes necessary to weigh up the cost of installing something different against the savings that could be made. That is a question of judgment and whilst we accept the Applicant's evidence that there are times when the system is not working properly, we do not think that we have sufficient in the way of evidence from which we could conclude that Mainstay's approach is unreasonable. We have already dealt with the apportionment (see paragraph 3.8 above). WE DETERMINE that the costs were reasonably incurred.

4.4 Pipe repairs – Year 10 - Item 1.5 - £1,514.55 – R5 p90

(a) The Applicant referred to an order at R5 p90 for a new internal sparge pipe. Mr Seigle conceded that the order had been included in error and that the lessees had not been charged for this.

(b) We accept Mr Seigle's evidence on this point but for the sake of completeness WE DETERMINE that this charge was not reasonably incurred as an item of expenditure payable by the I-pad lessees. It is unlikely that Mr Seigle has been misinformed concerning this but if the cost has been or is included in any service charge accounts payable by the Applicant, she is to be given a credit for her proportion of this cost.

4.5 Other Concessions – Year 10 – Street lighting – £428.88 – R3 p111
Water tank inspection - £333.50 – R3 p317
Company secretary fee - £860.00 – R3 p324

Mr Seigle conceded that these items should not have been charged and the Applicant would be credited in respect of her proportion of the cost. WE DETERMINE that these costs were not reasonably incurred.

4.6 Other car park charges – Year 11 – Item 1.5 - Leaking pipe- £65.80 - R4 p388
OOH call – general building works - £47.00 – R4 p375
OOH call – plumbing faults - £47.00 – R4 p375
OOH call – access control - £48.00 – R4 p375

The Applicant accepted Mr Seigle's explanation for these charges. WE DETERMINE that they were reasonably incurred.

4.7 Out of hours calls – Year 11 – Item 1.6 - Water pump tripped - £966.26 - R4 pp349 – 354

Again the Applicant accepted Mr Seigle's explanation and so WE DETERMINE that these costs were reasonably incurred.

4.8 Gardening – Year 10 – item 1.7 – Gardening - £1,242.00 – Sinking fund

£1,080.00 – Sinking fund
£1,242.00 – R3 p271
£493.50 – R3 p272
£493.50 – R3 p275
£493.50 – R3 p277

Year 11 – item 2.19 – Gardening - £12,349.44 – R4 pp265 - 286

(a) As the issues referred to in the two items listed above are essentially the same, we shall deal with them together. The Applicant's case is that the garden areas were left for months without being cared for and that at the time of her preparing the schedule there were sections which were not being attended to. Further, each I-Pad had planters at the front and side of the block which were not being planted and cared for.

(b) Mr Seigle acknowledged that the gardening was an issue. He stated that where no maintenance had taken place there had been no charge. The planters belonged to Barrett. They are expensive and are screwed to the brickwork to prevent theft. When planted, they require a lot of on-going maintenance. Barratt had asked Mainstay not to budget for the cost of maintaining them. Barratt has been asked to remove the planters. The Applicant accepted the position on this point.

(c) The Applicant highlighted the confusion which had occurred at a meeting held at the Guildhall, Swansea, on the 18th May 2010. She had included in Bundle A at reference 2.19, minutes of the meeting which read that "HS [Helen Solsberg, the Area Manager at that time] apologies (sic) for the standard of the gardens. The gardeners were on a trial that will not be renewed". Yet at R5 p191, Garden Builders Wales had just been given a contract for 12 months (6th April 2010).

(d) Mr Seigle told us that Barratt had maintained the grounds until handover. He said that the first outside contractor, Grounds Maintenance Wales Ltd, had not done very well. Garden Builders had started in January 2010. Once the annual contract became operational, they were paid 1/12th of the annual contract price even though they attended twice per month between November and February and four times a year for the other "growing" months. The rate increased in January 2011 because of the increase in VAT. Block D came into management in June 2010 and that is when the new payment arrangements appear to have started. Mr Seigle believed that each visit would involve 2 men for half a day. The gardeners brought their own equipment. The walkway alongside the river contains 500 to 600 metres of planting. Both the Applicant and Mr Seigle acknowledged that the meeting attended by Ms Solsberg had been rather hostile and she had clearly been confused. Both accepted that Ms Solsberg would have agreed to anything. She had talked about Grounds Maintenance not being paid for the poor quality of the work with only one invoice being allowed. This is not correct. One invoice appears in the Estate accounts for Year 10, but two further invoices are in the Statement of Special Funds at page 9 of the Year 10 Accounts. Mr Seigle suggested that the minutes (Bundle A ref 2.19) were not correct and should have read that Grounds Maintenance <u>had been</u> on trial and their contract <u>had not been</u> renewed. The Applicant complained that Ms Solsberg never honoured any arrangement to meet on site. Mr Seigle commented that he rarely saw anyone on his site visits.

(e) An examination of the orders at R5 pp107, 115 and 158 explains much of the problem. Grounds Maintenance was given three orders: 20th May 2009 (initial gardening visit), 19th June 2009 (second gardening visit) and 20th October 2009 (one ground maintenance visit). Nothing was done between June and October during the height of the growing season. It is not surprising that the lessees complained. It is also noticeable that 8 days after the meeting in May 2010, Ms Solsberg authorised a further "1 off visit for all areas" for which the invoice is at R4 p270.

(f) It appears to us that Grounds Maintenance was paid for what it did. There is nothing in the evidence which suggests that the amounts paid were unreasonable given the size and make-up of the Development. The Applicant did not in fact argue that the amounts were excessive. Her complaint really went to the quality of the work. From our inspection, the standard appeared to be satisfactory, although we accept that a different regime is now in place. However, without more detailed evidence we are unable to make a finding that the work itself was not of a satisfactory standard. As far as Garden Builders is concerned, we accept Mr Seigle's explanation as to the payment schedule. The amounts paid are, in our experience, within the bounds of reasonableness and so WE DETERMINE that both the Grounds Maintenance costs and the Garden Builders costs were reasonably incurred.

5 ITEMS FOR DETERMINATION – Items 2.1 – 2.6

5.1 Site Cleaning - Item 2.1– Year 08 - Moben Cleaning - £2,291.30 - R1 pp144 – 153
Year 09 – Moben Cleaning - £916.52 - R2 pp15 – 18
Year 09 – Moben Cleaning - £1,833.00- no invoice

(a) This issue concerned the cleaning of the I-Pads. The Applicant complained that Mainstay was not monitoring the cleaning contractor, Moben. She explained that usually, there were two cleaners and a supervisor. The cleaners would be there a couple of hours once a week, vacuuming and dusting. However, there were occasions when the cleaning supervisor would attend but that there would be no cleaners. The carpet became very dirty.

(b) Mr Seigle told us that Moben had only cleaned Blocks F and G. Facilities took over in June 2009 and cleaned Blocks E, F and G for the same price as Moben had cleaned F and G (£195 pm) with the addition of the Mobile caretaker (£19.17 pm) to deal with more problematic issues.

(c) A specific item was raised with Mr Seigle. At R5 p30, there is an order to Moben for "monthly cleaning Blocks F and G" on the 25th April 2008 at a cost of £1,833. There is no invoice and yet the amount appears in the account summary at R2 p1 as "extra cleaning May 2008" (our underlining). Mr Seigle suggested that this might have been for additional work.

(d) We accept the Applicant's evidence as a general point that there were occasions when the cleaners did not appear, but without more specific instances, it is impossible for Mainstay to check its records and to demand an explanation from Moben. It is, after all over 4 years ago. Without such evidence it is difficult for us to consider making any reduction in the charges on the basis that the Applicant has not received a reasonable service.

(e) The figure of £1,833 is not supported by any invoice. This is surprising as the other Moben invoices are in the bundles. What also concerns us is that the order (R5 p30)is for "monthly cleaning" and we have the invoices from Facilities for cleaning from June 2008 onwards. We do not accept Mr Seigle's explanation that this might have been for additional work. The order would have stated this. We have no evidence as to how or why the words "extra cleaning May 2008" came to be included in the summary. Mr Seigle was not, of course, in charge at the time and so his explanation is surmise on his part. We also note that the Moben contract terminated in May 2008. If Moben carried out extra work, it would have sent an invoice. After all, deep carpet cleans were billed in 2008 (see R1 pp154 – 155)in addition to the monthly charge. We are not satisfied with the explanation given and accordingly WE DETERMINE that the costs of £1,833 were not reasonably incurred.

(f) The Applicant did not raise any issue with regard to the general monthly cost of cleaning. In our view, the amounts charged (apart from the items referred to in (e) above and the issues raised in paragraph 7.1 below) are within the bounds of reasonableness and therefore WE DETERMINE that these costs were reasonably incurred.

5.2 Window cleaning – Item 2.2 – Year 9 – RSSUK - £1,198.50 - R2 p31
Progleam - £1,200.00 – R2 p32
Progleam - £800.00 – R2 p33
Year 10 – Water Performance - £1,598.88 - R3 pp33-36
Year 11 – Water Performance - £4,044.69 - R4 – pp21-27

(a) The Applicant complains that although Barratt cleaned the windows in the pitched roof, Mainstay has not done this. These windows are inaccessible as they are 4 metres from the floor level. Originally, the windows were cleaned monthly, now it is approximately every 6 months. The Applicant referred us to a letter from Helen Solsberg dated 25th July 2008 at bundle A ref 2.2 which states that "at this time, Mainstay do not manage the estate. This includes the windows and the bin stores. However, we have organised a one off communal clean of the windows to be scheduled as soon as possible as this is an issue within the building".

(b) The Applicant raised, as a specific issue, the invoice dated 29th July 2008 from RSSUK for £1,198.50 (R2 31). She told us that although the contractors were on site, they did not clean the windows in Block F. She contacted Helen Solsberg about this. She complained that if Helen Solsberg or Lisa Rowlands had been on site, they would have seen the problem. She considered that the contractors should have been told to do the job.

(c) Mr Seigle's response is that the lessor's responsibility for cleaning windows is limited to the communal windows only. Paragraph 5 of the 5th Schedule to the Lease (A1 p49) requires the lessor "so far as practicable to keep clean and reasonably lighted and carpeted the halls, passages landings staircases and other parts of the Building...so enjoyed or used by the [Applicant] in common as aforesaid". This would include the interiors of the windows in the common parts in the Block. Paragraph 8 of the same Schedule requires the lessor "so far as practicable and so often as it shall think necessary to clean the exterior of the communal windows of the Development". There is no obligation on the part of the lessor to clean the glass of the windows of any of the apartments. In the First Schedule Part I (A1 p21) the Property is defined as including "...the glass in the windows and the window fastenings..." whilst Part II of that schedule includes in the definition of the Reserved Property "...the window frames..." In other words, the glass and fittings are the Applicant's responsibility whilst the frames are Barratt's responsibility.

(d) The Respondents have no obligation to clean the Velux windows in the roof. That is the responsibility of the individual lessees. Physically, it is impossible to clean these windows with a pole wash. When conditions required it, there was monthly cleaning. Now with budget constraints and as conditions have changed, this is no longer required. Windows are cleaned quarterly.

(e) We are satisfied that RSSUK did not clean Block F when contracted to do so. The issue would have been fresh in the Applicant's mind. She has kept the letter of the 25th July from Helen Solsberg. We accept her word that she contacted Ms Solsberg about the failure to clean Block F's windows. The invoice (R2 p31) does not refer to specific blocks, but the subsequent Progleam invoice (A2 p332) only refers to Blocks E, F and G. There was no suggestion from either party that the RSSUK invoice included any other part of the Development and so we conclude that it related to the same blocks. We do not

consider it reasonable that the Respondent should have been charged for cleaning the communal windows in Block F when it was not done. WE DETERMINE that the amount of £1198.50 was not reasonably incurred. The amount of £799 was reasonably incurred (two thirds) and the Applicant is entitled to a credit of her proportion of £399.50 (one third).

(f) There is no suggestion on the part of the Applicant that the other cleans were not carried out. Nor was there any issue as to the amounts of the Progleam or Water Performance invoices. The Applicant's complaint is that the contractors were only cleaning the communal windows. However, that is all they were required to do. Barratt may well have cleaned the apartment windows, but this is more likely to have been because there was the construction work close by causing dust and dirt. It would also appear that Water Performance Ltd cleaned "all windows and balcony glass except patio doors" (R3 p33). We have no evidence to suggest that the amounts charged by Progleam and Water Performance ought not to have been charged. WE DETERMINE that they were reasonably incurred.

5.3 Carpet cleaning – Item 2.3 –Year 8 – Moben Cleaning Services - £94.00 R1 p154
£99.88 R1 p155

(a) The Applicant's issue is that the "deep clean(s)" stated in the invoices for the two Blocks F and G were only necessary because the site was still under construction and therefore the cost should be borne by Barratt. The residents had to pass close to the construction work to reach their blocks. Inevitably the communal carpets would require more cleaning as a result. The Respondents' argument is that purchasers are made aware that the site is under construction and that Barratt carried out street cleaning and employed "considerate construction methods" in order to alleviate the problem. Carpet cleaning was also necessary because of tenant misuse and spillages.

(b) We have some sympathy with the Applicant on this point. The invoices concerned are dated 23rd January 2008 and 11th March 2008. Neptune, Block E, came on stream on the 10th March 2008 and the houses and apartments in June 2008. The Applicant is right in her assessment that prior to the "deep cleans", she would have been living next to the construction site. It is no criticism of the construction workers, but however hard they try to keep the surrounding areas clean, there is a daily build-up of mud and debris which the residents of occupied blocks will have had to negotiate. It is bound to have had an effect on the communal carpets. It is all very well to say that purchasers were told that this would be the case. They would not have expected to pay for the additional cleaning made necessary as a result. In our view the invoices are payable by Barratt, not by the lessees. Barratt is the cause. Barratt should pay. It should not pass the cost of putting right problems caused by its own construction work on to the service charge payers. There is no evidence to support Mr Seigle's comment that carpet cleaning was necessary because of tenant misuse and spillages. In any event, most spillages would be dealt with in the regular cleaning. WE DETERMINE that these costs were not reasonably incurred and the Applicant is therefore entitled to a credit for her proportion.

5.4 Smashed window – Item 2.4 – Year 8 – J Manny Ltd - £842.48 – R1 p160

This was the only issue raised by the Applicant at the hearing relating to this item. The Applicant accepted Mainstay's explanation concerning this and so WE DETERMINE that this cost was reasonably incurred.

5.5 Out of hours calls – Item 2.5 –

Year 8 – Mainstay -	£32.61 – R1 p163
	£135.13 – R1 p164
Year 9 – Mainstay -	£135.13 – R2 p69
	£135.13 – R2 p70
	£4.71 – R2 p71
	£18.80 – R2 p72
	£197.40 – R2 p73
	£27.06 – R2 p74
Year 10 – Mainstay -	£133.00 – R3 p115
	£190.87 – R3 p116
	£190.87 – R3 p117
	£174.27 – R3 p118
	£673.18 – R3 pp269/316
Year 11 – Mainstay -	£47.00 – R4 p103
	£47.00 – R4 p104
	£47.00 – R4 p105
	£47.00 – R4 p106
	£47.00 – R4 p107
	£47.00 – R4 p108
	£48.00 – R4 p109
	£197.50 – R4 p353
	£316.60 – R4 p354
	£202.10 – R4 p349
	£23.50 – R4 p350
	£202.10 – R4 p351
	£25.00 – R4 p352

(a) The Applicant has questioned why the charges vary and the reasons for them. These are additional charges to the unit management fee. They relate to charges to provide out of hours emergency help. There are some out of hours charges not mentioned above which appear elsewhere in the accounts, but the Applicant did not refer to these.

(b) The Applicant did not challenge the amount of the charges or the reasons for any particular call out. In the circumstances, WE DETERMINE that these costs were reasonably incurred.

5.6

Front Door – Item 2.6 – Year 8 –	Daemon Fire & Security Ltd –	£341.04 – R1 p165
Year 9 –	J Manny Ltd -	£193.88 - R2 p50
		£105.75 - R2 p51
		£611.65 – R2 p53
		£626.28 – R2 p58
		£425.35 – R2 p63
	Daemon Fire & Security Ltd -	£314.94 – R2 p75
	J Manny Ltd -	£141.00 – R2 p76
		£180.95 – R2 p77
	Daemon Fire & Security Ltd -	£172.50 – R2 p78*
	J Manny Ltd –	£241.50 – R2 p79
		£258.75 – R2 p80
		£925.75 – R2 p81
		£526.70 – R2 p82

Year 10 –	J Manny Ltd –	£126.50 – R3 p98
		£947.60 – R3 p102
	Facilities -	£338.63 – R3 p109
	Spectrum Facilities Mngmnt -	£311.38 – R3 p113
	J Manny Ltd-	£103.50 – R3 p122
		£224.25 – R3 p124
	Facilities -	£251.80 – R3 p125
	J Manny Ltd -	£408.25 – R3 p126
	Waverley Fire & Security Ltd -	£230.00 – R3 p129
	Daemon Fire & Security –	£365.70 - R3 p130
		£115.00 – R3 p137
Year 11 -	Spectrum Facilities Mngmnt -	£199.75 - R4 p88
	Waverley Fire & Security Ltd -	£293.75 – R4 p115

*Only one half of this invoice is posted to Door Entry Systems

(a) The Applicant told us that when she first moved in, the door entry system was constantly breaking down. She would type in the code and the door would not release. Her argument was that there were so many adjustments required to the door entry systems that they were clearly faulty. The cost of putting things right should not fall on the service charge payers but on Barratt as the system should have a two year warranty. Failing that, it ought to be a matter for the NHBC. From 2009, the systems were working properly.

(b) The Respondents' case is that the warranty is only for one year from installation. The NHBC cover is not intended to cover minor repairs but major defects which affect the habitable areas.

(c) The first of these invoices, for £341.04 (R1 p165), refers to a fault on the front door entry system of Block G. The narrative on the accompanying work sheet (R1 p166) states: "badly fitted rim release lock in door frame shorted psw & blown fuse, rectified & refitted lock as best as possible. Would strongly advise replacement lock as problem will return..." The work sheet is clear that this is a construction fault. The first apartments in Victory (Block G) were completed in June 2007. Block G came into management on the 26th October 2007. The order for this work is dated the 21st December 2007 (A5 p11). This issue arose within the 12 month warranty period and should have been resolved without cost to the lessees. WE DETERMINE that this cost was not reasonably incurred and the Applicant is entitled to a credit in respect of her share of this cost.

(d) Whilst it is true to say that there are a large number of invoices relating to problems concerning the door entry systems, - and there are approximately 40 orders contained in the bundle A5 – it is not altogether clear to which blocks they relate. Further, some of the orders refer to "damage" which suggests to us that this is not a fault but someone has done something to the lock. For example, the order for the second invoice (£193.88 – R2 p50) at A5 p32 states "repair damaged lock". Repair was undoubtedly necessary and the cost of the repair was not challenged. WE DETERMINE that the cost was reasonably incurred.

(e) The invoices at R2 pp 51 53, 58, 63 and 77 refer to labour "as per attached engineers work sheet" but no work sheets were attached. The order for the third invoice (£105.75 – R2 p51, dated 28th May 2008) at A5 p16 simply states "repair door lock". The order for the work referred to in invoices R2 p 51 and 77 do not indicate which block (R5 pp16 and 63). The invoice at A2 p53 states that the repair was at Block E (A5 p39). The repairs in respect of the invoices at R2 pp58 and 63 are shown to relate to Block F (A5 pp27 and 57), thus giving some credence to the Applicant's assertion that the door entry system

did from time to time (perhaps not constantly) break down. The invoice for £314.94 (A2 p75, dated 31st July 2008) states that it is an emergency call out to "fire alarm system". The invoice has an order number 60081 typed on it, but the Mainstay staff have written "PO 60816". These orders refer to "door entry call out" (A5 p50) and "communal door entry" (A5 p52). The invoice itself has written upon it "Door Entry sys". We conclude that it is an issue relating to the door entry system and not the fire alarm system.

(f) The fact that there were so many calls out in the first 12 months after occupation of the apartments suggests to us that all was not right, a point which we put to Mr Seigle. This supports the Applicant's oral evidence that the door entry systems were not working properly. The Respondents have not provided anything to indicate that the repairs were necessary as a result of normal wear and tear or because of tenant abuse rather than the door not operating properly.

(g) Victory was first occupied at the end of June 2007 (R1 p3), Britannia in September 2007 (R1 p5) and Neptune in November 2007 (R1 p7). They came into management in October, 2007, November 2007 and March 2008 respectively. The invoice for £611.65 (R2 p53) was created following an order dated 18th June 2008 (A5 p39). Similarly the orders for the work invoiced for £626.28 (R2 p58) and £425.35 (R2 p63) are dated 17th April 2008 and 19th September 2008 respectively, the order for the latter being placed exactly 12 months from the date of the first completion, although there is no evidence as to when the problem arose or was first reported. The orders for the invoices at R2 p75 and 77 (at R5 pp 50 and 63) are dated July and October 2008. There is no reference to the blocks to which they refer. The former states "door entry call out" and the latter "door entry system". As flats in Neptune were being completed from the end of November 2007, the repair would have been within the warranty period for that block. We have nothing in the way of evidence from the Respondents indicating to which block these invoices referred or when the issues arose. In our view, the Respondents had the ability to provide that evidence – access to the work sheets or by contacting the contractor. They have not done so. We accept the Applicant's evidence that there was something wrong with the door entry systems and without more in the way of evidence from the Respondents, we cannot be satisfied that the costs relating to those issues which arose prior to November 2008 – except as referred to in sub-paragraphs (d) and (h) - were reasonably incurred. WE DETERMINE that these costs were not reasonably incurred.

(h) The invoice for £141.00 (R2 p76) is for changing codes on the locks. This appears to us to be a maintenance issue and we consider it to be reasonably incurred. WE DETERMINE that this invoice was reasonably incurred.

(i) We consider that those invoices incurred after November 2008 (ie from 2009 onwards) and including the invoice for £199.75 relating to Royal Sovereign in June 2010 (over a year after it came into management) are more likely to be the result of wear and tear issues or tenant damage. The Respondents had to repair them. The Applicant did not challenge the cost and so WE DETERMINE them to have been reasonably incurred.

(j) To summarise, WE DETERMINE that the following costs were not reasonably incurred:

Year 8 – Daemon Fire & Security Ltd –	£341.04 – R1 p165
Year 9 – J Manny Ltd -	£105.75 - R2 p51
	£611.65 – R2 p53
	£626.28 – R2 p58
	£425.35 – R2 p63
Daemon Fire & Security Ltd -	£314.94 – R2 p75
J Manny	£180.95 – R2 p77
	£2,264.92

The Applicant is therefore entitled to a credit in respect of her proportion of these costs for Years 08 and 09. WE DETERMINE that the other costs were reasonably incurred.

6 MANAGEMENT FEES – Item 2.7 –

Year 8	I-Pad	£ 8,815.00
	Accountancy	£ 194.00
Year 9	I-Pad	£32,610.00
	Car-park	£ 4.323.00
	Estate	£ 4,323.00
	Accountancy	£ 282.00
Year 10	I-Pad	£43,531.00
	Estate	£ 9,767.00
	Accountancy	£ 450.00
Year 11	I-Pad	£39,363.00
	Estate	£11,975.00
	Accountancy	£ 317.00

6.1 The Applicant's complaint is that the management fees are not explained. She wanted to know how they were calculated per unit. Despite the wording of her schedule, it was apparent from the outset that she was seeking a justification of the fees and it was equally clear that the Respondents came prepared to deal with the issue on the same basis. The Applicant also queried the accountancy fee (which is in addition to the auditor's fee) on the basis that this ought to be included as part of the management fee. Mainstay's answer is that the management fee was agreed with Barratt on appointment "in line with market rates and with due regard to the services and management effort applied at the development". The Respondents suggest that the fee is "within the market rates for a development such as this for the services received".

6.2 Mr Seigle told us that the fees were calculated per unit. Mainstay tendered for the work. The amount of the management fee depends upon the level of service desired by the client and the number of meetings Mainstay would be required to have. The level of fees initially was £180.00 per unit plus VAT (£211.50). For that fee, Mainstay maintains the database of lessees. It does not charge for notices of assignment. It prepares an annual budget and conducts regular (quarterly) reviews of expenditure. The service charge team puts together the information for the auditors (for which an additional fee is charged). It deals with contractors and various annual contracts. It pays the invoices, operates the bank accounts and deals with credit control and the preparation and service of the service charge demands. Reminders and debt collection are charged directly to the defaulting lessee. There is a customer services team which deals with calls from lessees. Each scheme shares a dedicated property service adviser who deals with queries, a credit controller and service charge account support staff. The Property Manager, responsible for the Development, undertakes 8 site visits a year (not always 6 weeks apart), attends leaseholder meetings, the number of which may vary, and quarterly meetings with the client (Barratt, in this case). Mr Seigle attends two leaseholder meetings a year. He is responsible for 15 sites with 2,800 lessees. Mainstay will deal with snagging issues after the initial snagging, but it charges additional fees for this.

6.3 Mr Seigle considered that £180 per unit was "regular" for developments outside the South East of England. He regarded this as a reasonable market rate. In assessing the charge, Mainstay looks at what it charges elsewhere. He did not think that the company looked at what local agents charged and it was unlikely that it would be able to obtain information from competitors. Mainstay's figure would have been based upon 400 units. Mr Seigle suggested that if the proposed management fee had been "out of kilter" with the market, Mainstay would not have had the contract. He did say, however, that the fees were negotiated by a separate department in the company. He told us that there was an annual contract for electricity, a cleaning contract, an "all inclusive" annual contract with Kone (and another for Lift Maintenance Administration), an annual contract for the fire alarm as well as one for the door entry system (under which remedial work was paid for at cost). Risk assessments were carried out on an annual basis. However, Mr Seigle accepted that there was nothing unusual about the I-Pads. The newer blocks had sprinkler systems

and dry risers, but from 25th March 2012 the I-Pad service charge would be split between the old blocks and the new blocks.

6.4 Mr Seigle stated that it would not be correct to charge a management fee as a percentage of the service costs so there was no temptation to pay higher costs in order to boost the management fee. Mainstay charges a flat rate. He referred us to a residential development of 158 units at Altamar, Swansea and produced a list of their management charges (R6 p29). These worked out at £245 per unit in 2008 increasing to £255 in 2011 (in both cases inclusive of VAT). The number of units was equivalent to 5 I-Pad blocks, but the grounds were less extensive. There was no developer involved and their agreement provided for 4 quarterly meetings with the residents' management company. Mr Seigle accepted that a large development could achieve economies of scale. He accepted that as a percentage of the service costs, the management fees at the Development appeared high. However, the management fee reflected the management time and not the service costs. Taking into account economies of scale, Mainstay had agreed to a 20% reduction in the management fees for Year 12. Mr Seigle mentioned that there was a scheme which Mainstay managed which had little in the way of service costs (about £100 per unit per year) but the residents accepted their management charges of £200 per unit.

6.5 He referred us to a breakdown of the management fees (R6 pp25-27). A fee is charged in respect of the individual unit (I-Pad or Apartment), the car park and/or the Estate. In addition, a set-up fee of £70 plus VAT is charged when any apartment is brought into management. There are additional fees for meetings which are dealt with later in this decision. The effect of this is that on an annualised basis, the management fees charged were as follows:

2008	I-Pad	£180
	Set-up	£70
		£250
2009	I-Pad	£180
	Set-up	£70
	Estate	£50
	Car Park	£50
		£350
2010	I-Pad	£180
	Set-up	£70
	Estate	£50
		£300*
2011	I-Pad	£180
	Set-up	£14
	Estate	£50
		£244

*with the adjustment to the VAT rate it is actually £307.

6.6 The figures reveal certain anomalies which were considered during the hearing. The analysis of the car parking charges for Year 09 is based on there being 131 units contributing to the cost (see R6 p27). This comprises 3 I-Pads (111) and 20 Apartments or other units. According to Mr Seigle's evidence Barratt remained responsible for the car park until the 5th September 2008. The period of car park management therefore consisted of 201 days and the calculations on A6 p27 show an apportioned charge of £4,240.27. Mr Seigle initially stated that there was no Estate management charge for that year, only a car park management fee. For Year 10 onwards Mainstay charged an

Estate charge and not a car park management fee – ie in all years there was supposed to be a single charge of £50 plus VAT for the management of the areas not comprising the I-Pads and Apartments. However, the annual accounts for Year 09, which were provided separately during the hearing along with the Year 10 accounts, show that there was a car park management fee of £4,323 and an Estate charge of another £4,323. It was at one point suggested that the charge of £50 had been split between the car park and the Estate charges, but this was not borne out by the arithmetic. Mr Seigle subsequently confirmed that the correct figure Year 09 was £8480 (double the figure shown at A6 p27). For Years 10 and 11 there was only a single charge.

6.7 Another issue concerns the question of the set-up charges. Mr Seigle stated that the charge is in effect a one off charge payable by the lessees when their blocks are taken into management. It covers the cost of entering the service charge and payment data on the Mainstay system and sending out information packs to new lessees. Mr Seigle accepted that the system had already been set up when the first block in the Development had been taken into management. When new blocks came into management the only information required to be set up on the system was that relating to each new lessee. The basis of his evidence was that this charge of £70 plus VAT was charged once per unit per block. The charge was spread over a 12 month period and so if a block came into management during the course of a financial year, the fee of £70 would be split between that year and the following year. Mr Seigle referred us to A6 p26 which he suggested explained how the charge was applied. We spent a considerable amount of time dealing with this issue because on considering the figures, they did not seem to bear out what Mr Seigle said. We have no doubt that his evidence was intended to reflect what was supposed to happen, but the reality was somewhat different.

6.8 In Year 08, there were three blocks brought into management – G, F and E. The summary on A6 p26 states the number of units as 74 but as Block E came into management in March 2008, Mainstay increases the charges for the last 15 days of Year 08 to take into account the fact that there are 37 additional units and apportions that increased figure. For Year 09, the set-up charge should be only the balance of that charge. It is not. The annual management fee includes a full year's set-up fee despite the fact that all the lessees have in part contributed to the set-up fee to a greater or lesser extent in the Year 08 accounts. The amount charged is £32,610 which is in effect 111 units (3 blocks of 37) @ £250 plus VAT each for the full year. For Year 10, the picture is the same. The management fee in the I-Pad accounts is £43,531. That is virtually the same as 148 (3 blocks of 37 plus 1 block of 36) @ £250 plus VAT each for the full year (£43480 as shown on A6 p26).

6.9 In Year 11, the calculation has been split so that the £70 is only calculated on the basis of the additional 36 units. This is what Mr Seigle's evidence indicated was the intention. The set-up fee is, however, incorporated with the main I-Pad charge and the total is then divided between all the I-Pad units. The result, as Mr Seigle acknowledged, is that the existing lessees, having paid their own set-up charges, are also contributing to the set-up charges for the lessees of each succeeding I-Pad.

6.10 A further point was raised with Mr Seigle concerning VAT. From the 1st December 2008 until the 31st December 2009, the rate of VAT changed from 17½% to 15%. This covers the charges for Year 10 - 25th March 2009 and the 29th September 2009. The initial calculation of the charges (A6 p26) indicates that it was done with VAT at 17½%. The final figures appeared to show that the same total had been adopted (see 6.8 above). However, the invoices (eg R3 pp264-265) had been reworked with the total remaining the same but with a higher net management fee caused by the fact the VAT element was now at a reduced rate. In other words, the VAT saving was retained by Mainstay as additional income and not passed on to the lessees.

6.11 The Applicant also disputed the accountancy charge which is in effect an additional management charge. It covers the preparation of the papers by the in-house team for the accountants prior to audit. The Applicant considers this to be part of the normal management function the cost of which is included in the management fee. Mr Seigle explained that it was an agreed head of charge. He directed us to a copy of the latest version of the management agreement at A6 pp7-23 (in draft from only). As well as setting out the Schedule of Services and Excluded

Services, it sets out the fee structure (without figures) at A6 p19. At paragraph 1.2 of Schedule 3 it states that the manager is entitled to a fee "payable by the Landlord for the preparation of service charge accounts..."

6.12 In determining the various issues, we must consider the evidence which we have been given by the parties and we must evaluate that evidence as an expert tribunal applying a robust common sense approach to determine firstly whether the charges were reasonably incurred and if not to assess what we consider to be a reasonable charge for the work done. In assessing whether a charge is reasonable we must look at the situation from both sides. The managing agent must cover its costs and make a profit. The lessees must receive reasonable value for money. We must balance these two objectives to ascertain a fair and reasonable cost.

6.13 It is not for this Tribunal to dictate to the parties the evidence it should bring to the hearing. However, on the 22nd June 2012, we issued Directions requiring both parties to provide for each other details of the management fees of any other properties upon which she/they intended to rely. The Applicant provided none and the Respondents only the one – Altamar – referred to in paragraph 6.4 above. Mr Seigle gave no comparables relating to the many other developments which Mainstay manages. He was accompanied at the initial hearings by a Property Manager from Cardiff, but we had no evidence of the management fees charged there. No evidence was given as to the sort of contracts involved at Altamar or what factors were taken into account in determining the amount of the charges. We cannot rely upon Altamar as a comparable principally because it is one of Mainstay's own developments selected in order to support its contention that the management fees charged at the Development were reasonable. Mainstay does not test the wider market, and so Mr Seigle was unable to provide a range of examples necessary to enable us to place both the Development and Altamar in context. We cannot rely upon just one comparable when there are a considerable number of flat developments in the Swansea area from which it could have obtained evidence. We appreciate, as Mr Seigle pointed out, that Mainstay was given the contract by Barratt and the figures were agreed. However, apart from voids, Barratt is not paying the charges. In 2007, it would not have anticipated having voids for any length of time. We do not regard the contract with Barratt as a test of the market. We have no evidence as to the selection process involved or the reason why Mainstay was appointed.

6.14 Without robust comparable evidence of the local or regional market, the Respondents are not really able to argue that the management fees are "in line with market rates" or "within the market rates for a development such as this". Without proper evidence of the market, we must reject those arguments. We must therefore consider the other limb of the Respondents' case. Indeed, the whole basis of the justification for Mainstay's charges, as put forward in evidence, is that the fees have been set at a level "with due regard to the service and management effort". Considering that evidence, again as an expert Tribunal, we must make a fair and just assessment as to the reasonableness of the charges.

6.15 In Arrowdell Ltd –v- Coniston Court (North) Hove Ltd [2007] RVR 39 (Arrowdell), the Lands Tribunal commented: "It is entirely appropriate that, as an expert tribunal, an LVT should use its knowledge and experience to test, and if necessary, reject, evidence that is before it". That is subject to three conditions: our decision must be based upon evidence; we must not reach a conclusion on evidence not exposed to the parties for comment; we must give the reasons for our decision. In Country Trade Ltd –v- Hanton and others [2012] UKUT 67 (LC), Judge Mole commented that "of course the LVT is entitled to rely upon its own knowledge and expertise and is not confined to the evidence the parties choose to put – or are able to put – before it. But where there is a specific and potentially determinative piece of evidence, such as a Tribunal's comparable, the parties must be given a fair chance to deal with it". We did not put to the parties any specific examples of management fees charged locally, nor have we relied on any in making this decision.

6.16 In London Borough of Havering –v- MacDonald [2012] UKUT 154 (LC), HH Judge Walden, observed that "knowledge and experience must be raised before the parties, again in order that the parties have the opportunity to comment on them". This view was echoed by the President in Wales

and West Housing Association Ltd –v- Paine [2012] UKUT 372 (LC). However, in the absence of reliable comparable evidence, we must, as a Tribunal, go back to the basics and consider what it is we are required to do. We are to determine whether the service costs were reasonably incurred and the starting point must of necessity be the evidence. To this we must "apply a robust, common sense approach and make appropriate deductions based on available evidence (such as it is) from the amounts claimed always bearing in mind [our] reasons for doing so" (Country Trade Ltd –v- Noakes [2011]UKUT 407 LC).

6.17 The Development is substantial. It comprises a mixture of freehold units as well as the Apartments and I-Pads. There will ultimately be 400 units, but for the years under consideration there were two I-Pad blocks (74 units) for most of Year 08, three I-Pad blocks (111) and 20 other units in Year 09, four I-Pad blocks (148 units) and 24 other units in Year 10 and five I-Pad blocks (184 units) and 27 other units in Year 11. The number of units under management must of necessity affect the overall cost. The more units there are, the more lessees there are with issues to be resolved, the more footfall so that more cleaning and repairs may be required, the more demands to be issued with the appropriate statement of rights and obligations. More blocks means that there are more lifts, more door entry systems, more lighting, more vents and more car parking. Different types of accommodation may require different kinds of attention: the freehold units would require little; the Apartments, not a great deal; and the I-Pads rather more. Further, where there is, as we understood from the parties to be the case here, a relatively high proportion of tenanted units, there are likely to be more day to day issues to be dealt with.

6.18 Mr Seigle accepted that there was nothing unusual about the I-Pads – ie in management terms – and that with larger developments it was possible to achieve economies of scale. Certainly that accords with our experience. After all, there may be 12 meters for the electricity, but until December 2010, there was only one supplier. The lifts have an all-inclusive maintenance contract. The fire alarms have an annual contract as do the door entry systems. The cleaning was organised on an annual basis and although Facilities was the contractor from 2008, it was charged on an agency basis with Facilities taking the responsibility and the profit. The caretaker was also provided by Facilities on an agency basis (see A4 p264). In Year 11 there was a single order for garden maintenance (A5 p191) even though invoices may have been submitted monthly. There was no on-site property manager and the area manager only attended 8 times a year. The out of hours calls service was provided at extra cost – with an additional charge if any action was required.

6.19 It is of course necessary for Mainstay to have the administrative staff and the accounting and computer facilities to provide the necessary support. Contracts have to monitored, contractors instructed and chased. The area manager, who is responsible for a number of sites, makes 8 visits to the site each year plus two meetings with lessees. There is a service team which deals with the practical day to day management issues, one member of which is assigned to the Development as well as another scheme or other schemes. There are also accounts and credit control staff dealing with orders, costs, budgets and invoices. In addition, there are office overheads, computers, and other business expenses. The managing agent must also have a return on its capital and make a profit.

6.20 Apart from the number of units, there is nothing unusual or unusually difficult in the management of this Development. Each of the I-Pads is a modern recently built block of standard construction, so far as one could tell. Although there are roof lights in the sloping roofs, the cost of cleaning these falls on the lessees. There is a single entrance hall in each block with a front door and one leading to the car parking, a single stairway, one lift and two short lengths of corridor on each floor leading to the apartments. There is not a great deal of common areas in the blocks. Undercroft parking can create problems as can the bin store areas, but from our inspection these problems are unlikely to be any different from those in similar developments elsewhere. We accept that the lighting caused an issue, but that was more a question of the type of activation rather than maintenance.

6.21 One indicator as to the amount of management time involved in a development is the entries involved in day to day maintenance. We appreciate that that is not the whole story, but it gives an indication as to the sort of issues and the times involved in dealing with lessee problems. In Year 08, there were only 5 entries – albeit for only part of a year - 26 for Year 09, 16 for Year 10 and 22 in Year 11. Some these involved out of hours calls for which additional charges were made. There were problems concerning the door entry system which we have referred to elsewhere (8 billed in Year 09, 7 in Year 10 and none in year 11, not including service contracts). In our view, this is a reasonably straight forward management job and certainly not one which would merit substantial management fees.

6.22 Mr Seigle also acknowledged that with larger developments there would be economies of scale. So whilst there is undoubtedly a considerable amount of paperwork generated, there are also substantial savings to be made in the time spent inspecting the Development as well as negotiating and supervising a single contractor carrying out a particular task in respect of, say, four blocks rather than just one.

6.23 We also cannot ignore the question of proportionality. The fees represent what Mr Seigle accepted was a high proportion of the service charge. For the first two years the management fees were not far short of the actual costs:

2008	Service costs -	£13,943	Management fee -	£9,009	39.25%
2009	w/o management fee	£50,228		£41,538	45.27%
2010	excluding sinking fund	£81,405		£53,748	39.77%
2011	contributions	£115,898		£51,655	30.83%

6.24 Whilst we appreciate that managing a development of this kind takes time and expertise, lessees expect the charges to be proportionate unless there are significant reasons for them to be otherwise. Charges which represent 30% - 45% of the service costs are in our view disproportionate and whilst we appreciate that management charges are no longer calculated by reference to the amounts of costs expended, there has to be some reason why the management fee constitutes such a high proportion of the service charge. We accept that in the example given by Mr Seigle the management fee was twice the service costs. However, there was a reason for that. It was a small development and the lessees were willing to pay for having the benefit of a professional manager. This is not a small development and as Mr Seigle acknowledged economies of scale come into consideration. For that reason, he told us, Mainstay had reduced its management fees by 20% for Year 12 – ie £144.00 plus VAT or £5,328 plus VAT for a block of 37 units, down £1,332 from £6,660 per block. Such a dramatic reduction cannot in our view be explained just by economies of scale. The adjusted figure is bound to have been influenced by the market.

6.25 If the Respondents are going to justify a management fee of £180 per unit, it has to provide a service which merits such a charge or there must be issues or complexities which justify it. In our view, the kind of service which Mainstay contracted to provide was of the most basic type: eight visits a year – each taking up to a day after the first year, according to Mr Seigle – two meetings with lessees and the day to day management taking place at the end of a telephone or by e-mail in the head office in Worcester. In our view a visit every 6 weeks is not sufficient for a development of this nature. Prior to the introduction of a caretaker – for which the lessees are paying – there was very little in the way of hands on management. There is, as conceded by the Respondents, nothing complex or unusual about the Development. There is nothing in the evidence which justifies that level of fee. Even if the management had been carried out to a reasonable standard, it does not merit a fee of £180 per unit. The fact that it has been reduced in Year 12 by 20% (to £144 plus VAT per unit) amounts to an acknowledgement that the fee was too high. The addition of another block with 36 units will increase the "core" costs, so if the original charge had been "reasonable", some increase in the total fee would have been expected. Applying the figure of £180 per unit, the management fee for 184 units for Year 11 was £33,120 (net of VAT)(R6 p26). An additional 36 units

(total 220) at £144 would produce a fee of £31,680 instead of £39,600. Businesses do not generally reduce their charges out of the goodness of their hearts. Market forces will more often than not provide the necessary stimulus. For the level of service which Mr Seigle described as being provided by Mainstay, we consider a fee of £150.00 plus VAT per unit to be reasonable.

6.26 From September 2008 onwards, Mainstay was responsible for the management of the Estate for which it has charged an additional fee of £50 per unit (pro rata for Year 09). The Estate comprises the grounds which include the riverside walk. In Year 09, apart from the water charges, there are only pest control, litter picking, an extra rubbish collection, a couple of calls out and some supplies – very little in the way of issues to be dealt with. We cannot see how a management charge of £4,322.55 is justified. We appreciate that £50 per unit is just under £1 per week per unit but we were provided with no evidence to support the overall charge. Similarly for Year 10, there were 17 day to day issues dealt with which include 4 meetings referred to in paragraph 7.10 below. The gardening invoices are also dealt with here, but again it is difficult to see how a fee of £9,766.50 can be justified. For Year 11, as well as the water and the gardening, there is the caretaker – employed on an agency basis and for which Facilities is charging the full market rate – some consumables purchased and 16 entries (again including meetings) of day to day maintenance. The Estate management fee is £11,974.95. We do not see how the fee can be justified on the basis of the work undertaken. Certainly, we had no evidence to justify that level of charge.

6.27 Taking into account the very basic level of service agreed to be undertaken, the number of contracts and the daily issues which the management had to deal with, we have concluded on the evidence that a fee £50 plus VAT per unit cannot be justified. In our view a fee of £25 plus VAT per unit would be reasonable. WE DETERMINE therefore the Estate Management Fee to be £25 plus VAT per unit on an annual basis for each of the years charged (pro rata for Year 09). We appreciate that the area under management increased and costs will have also increased with inflation, but we consider that the additional responsibilities and additional costs are more than off-set by the extra fee income generated by those additional units. It is the same approach as adopted by Mainstay.

6.28 We have to consider the standard of the service provided (section 19(1)(b) of the Act). The Applicant raised a number of issues. Principally, there were criticisms of Helen Solsberg. She did not honour meeting arrangements. She did not attend as regularly as she should. She misinformed the meeting held on the 18th May 2010 that the gardeners would not be paid. Both parties agreed that the meeting had been hostile and Mr Seigle remarked that from what he had been told that Ms Solsberg would have agreed to anything in order to bring the meeting to a close.

6.29 The gardening is but one issue – it is of course an Estate charge, but it is indicative of the issues that the Applicant had with the management. It is no wonder that the residents were annoyed. The impression was that the gardeners were not doing their job properly, but in reality no gardeners had been instructed to carry out grounds maintenance during this period. Ms Solsberg was supposed to have visited the Development every 6 weeks. It is not credible that she did not notice the state of affairs on site. Yet nothing was done. Then at the meeting in May she misrepresented to the residents what had happened. Whether this was ignorance or deliberate lack of honesty on her part, we cannot say, but it is without doubt poor management. The fact that the meeting was "hostile" is an indication that there were serious problems with management. Concerns were also expressed about the standard of the cleaning (see Bundle A). The head of Facilities who was present at the meeting "took the feedback and will monitor the situation". We cannot say whether Ms Solsberg failed to report the problem or whether Facilities had not addressed it. Either way, it does not reflect well upon the management. We also refer to the issue at paragraph 5.1 above where the Applicant complained that the supervisor would attend, but no cleaners. Having heard the Applicant, we accept her evidence concerning the shortcomings in the management of the Development.

6.30 We also considered the inaccurate budgeting (see paragraph 7.7 below) and errors in invoicing which illustrate the lack of care on the part of the managing agents. The first invoice in paragraph 5.6 above for £341.04 confirms the problem to be a "badly fitted rim release lock in door

frame". According to the evidence this should have been a warranty issue. Yet it was passed to be paid through the service charge. Invoices relating to Street Lighting, Water tank inspection and a Company Secretary's fee (see paragraph 4.5 above) were erroneously included in the accounts. The management fee for the car park for Year 09 was invoiced in November 2009, 8 months after the year end. Management fees were invoiced months after the end of the financial year (see R2 pp125 -126 and 149-151 with a credit for overcharging at R2 p152). There is also a credit for overcharged management fees at R1 p169 and again at R3 p267. On the other hand there is an invoice for "Undercharged OOH Fees to Mar 10" dated 1st December 2010 (R3 p316). This does not give the impression of an efficient management service. Cleaning costs were increased in February and March 2009 because, according to Mr Seigle, there had been an inputting error and the fees were increased to compensate for the undercharge. The cleaning invoices from April 2009 to October 2009 are all dated 27th October 2009 (R3 pp9-15). Mr Seigle acknowledged in closing that there had been difficulties in obtaining information from Mainstay. Communication is an essential part of management.

6.31 There is also the application of the set-upcharges. Accepting the rationale for this as explained by Mr Seigle, it was apparent that the fee has not been applied as was intended. Again, the state of the flooring, which we deal with in paragraph 7.13, is something which is apparent immediately. However, as will be seen, Mainstay's attitude is to await the Tribunal's decision before dealing with it. Such an attitude is hardly conducive to good relations and is a further example of poor management.

6.32 In our view, the standard of service has been less than satisfactory in a number of respects. We have little doubt that this was in some part due to the shortcomings of the management team at the time. In fairness to the Applicant she acknowledged that matters had improved since Mr Seigle had taken over responsibility for the Development. However, we are considering the period before Mr Seigle became involved. Taking everything into consideration, we are of the view that a deduction must be made and we put that at 10% which we shall limit in its effect to the block management charge. WE DETERMINE therefore the Block Management Fee to be £135 plus VAT per unit on an annual basis for each of the years in question. We appreciate, once again, that the costs of management will have increased with inflation, but we consider that the additional responsibilities that come with taking on additional units - and in turn create the economies of scale referred to above - are more than off-set by the extra fee income generated by those additional units. It is, as we remarked earlier, the same approach as that adopted by Mainstay which charged the same fees from Year 08 to Year 11.

6.33 The set-up charge raises a number of questions. We are not satisfied that it is chargeable as part of the service charge. Under the terms of the lease, the term "Service Charge" is defined as the lessee's proportion "of the Service Costs" which in turn are defined as "the proper and reasonable costs and expenses which are properly and reasonably recoverable described in the Sixth Schedule hereto and shall include not only those costs and expenses incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinafter described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made during the Term..." The Sixth Schedule includes at paragraph 8 (A1 p54) the fees of the managing agents "for the general management of the Building the Reserved Property and the Development".

6.34 As far as the Property is concerned, these set-up costs are not costs which are "periodically recurring" in the same way as the cleaning costs or communal electricity charges are. They are a charge for in-putting information onto Mainstay's system – ie a one-off charge. It is intended, as Mr Seigle explained, only to be charged when the block is brought into management. The definition of Service Costs is not exclusive, of course. It covers the costs and expenses described in the Sixth Schedule. That includes the cost of insurance, inspections, supplying services, employing staff as well as "general management of the Building". The context of the other paragraphs is one of on-going costs and expenses and in our view "general management" must be interpreted in that light.

If Barratt had intended set-up costs to be included it should have said so. In any event, if the fee was intended to be unit specific, Mainstay could have sent an individual invoice or included it in the first service charge demand as a separate item of charge. To have done so would have alerted the lessees to the charge and this may not have produced a favourable reaction.

6.35 We are also not satisfied that such costs were reasonably incurred. It would not have taken an accounts clerk more than a few minutes to enter the Applicant's information onto the data base. Even allowing 15 minutes for this task would create an hourly charge of £280 an hour. In our view, such a function is part of the normal day to day management of the Development and we cannot see any justification for a charge of £70 plus VAT or indeed any extra charge.

6.36 It is not as if the charge has been applied correctly. The charge has been applied in part for Year 08 and charged again in full for Year 09 and again in Year 10. In fact in Year 10, because the charge has been calculated with VAT at 17½% (£82.25) and the same grossed up amount charged with VAT at only 15%, the lessees have actually paid £71.52 net! That is not all. As Mr Seigle acknowledged, when the scheme operated correctly as in Year 11, the £70 plus VAT has been calculated by reference to the new units, but the charges have been incorporated into the I-Pad Charge which is payable by all the lessees of all the I-Pads including those of the blocks already under management. The Applicant is paying not only her own set-up costs but contributing to the set-up costs of successive I-Pads. This cannot be reasonable.

6.37 We are therefore not satisfied that this charge is payable by the Applicant under the terms of the lease as a service charge. If we are wrong in our view, WE DETERMINE that, for the reasons set out in paragraphs 6.35 and 6.36, the set-up charges were not reasonably incurred.

6.38 Nor are we satisfied that the additional charge for preparing the accounting papers for the auditors is reasonably incurred. We appreciate that Barratt agreed this as an additional head of charge. Barratt was not going to be paying for it – except in respect of voids under management. That does not make it reasonable. We agree with the Applicant. The preparation of the invoices and management information is a routine task which is carried out in every business in readiness for audit. The management information will have been accumulated as the months passed. The computerised accounting system will have produced regular management accounts. Bank reconciliations will have been carried out monthly. It is a function which is carried out as an overhead cost as part of the management fee and should not, in our view, be the subject of an additional charge. WE DETERMINE that the accountancy charge is not reasonably incurred.

6.39 On the basis of what Mr Seigle told us, the two sets of charge for Estate and Car park in Year 09 were not a mistake. This was not, however, repeated in Year 10 or Year 11. From the accounts for Year 09, there is only one head of charge – a fee of £2.50 to the DVLC. There is nothing else but a management charge of £4322.50 stated as being "undercharged" in November 2009 (R2 p156), 8 months after the end of the financial year. No attempt was made to justify the cost. In view of this WE DETERMINE that the Car Park Management Fee for Year 09 in the sum of £4323 was not reasonably incurred.

7 ITEMS FOR DETERMINATION – Items 2.8 – 3.10

7.1	Cleaning – Item 2.8 –	Year 09– Facilities -	£3668.94 – R2 p20
			£180.31 – R2 p20
			£103.59 - R2 p23
			£68.28 - R2 p25 (part)
			£536.53 – R2 p29
			£536.53 – R2 p30
		Year 10 – Facilities	£390.00 (per month) – R3 pp9 - 15
			£536.53 (per month)- R3 pp16-20

(a) The Applicant questioned why, when Facilities had employed one of Moben's cleaners, the charges had increased. She also could not see why the charges had increased as there was only the one cleaner. The Respondents' reply was that the costs increased as additional phases were brought into management.

(b) Block H came into management in April 2009. The charges were increased in February and March 2009 but then dropped back to £390 from April 2009 until October 2009. In November 2009, they increased again to £536.53. Mr Seigle suggested that there had been an in-putting error earlier which was not recognised until the last two months of the financial year and the costs were increased to compensate for the under-charge. He did not explain what the error was or how it arose. If there had been an error, Facilities could have raised a supplemental invoice as happened at R2 p23. Further, that would not explain why the amounts reverted to the previous figures of £390 for the I-Pad cleaning and then coincidentally increased to precisely the same figure (£536.53)later in the year. We are not satisfied with Mr Seigle's explanation. In fairness to him, he was not the manager at the time and he is merely trying to suggest an explanation, but what he says does not fit the facts. Without a credible explanation for the increase, WE DETERMINE that the costs of £536.53 for each of February and March 2009 were not reasonably incurred but that costs of £390.00 were reasonably incurred for those two months.

(c) We were directed to the Facilities invoice at R2 p20 which for 2 months (July and August 2008) gives a figure of £3,668.94 for the I-Pad cleaning. Similarly, the mobile cleaner's costs for more specialist cleaning increased from £19.17 in June to £180.31 for July/August returning to £19.17 in September. Mr Seigle referred us to the credit of £1,500 and informed us that this amount had been allocated to the Apartments account. He did not explain how the figures had been calculated or what the reason was for the increased charges for these two months.

(d) In view of Mr Seigle's lack of explanation for the charges for July and August 2008 which increased from £390 monthly to £2,168.94 in respect of the I-Pad cleaning for the two months, after a re-allocation of £1,500 to the Apartments, and the increase in the charge for the mobile cleaner from £19.17 to £180.31 for the same period, WE DETERMINE that the amounts of £2,168.94 (£3,668.94 - £1,500) and £180.31 were not reasonably incurred, but that the amounts of £780 (2 x £390) and £38.34 (£2 x £19.17) were reasonably incurred.

(e) The other issue raised by the Applicant was the increase in November 2010 from £390.00 per month to £536.53 per month. She did not challenge the figure of £390 per month. The Respondents' explanation for the increase was that there was another I-Pad under management. This was clearly the case. In March 2009, there were 3 I-Pads under management; in April Block H came under management, but no addition was made to the charge for 7 months. The question for us to consider is whether the increased charge was reasonably incurred.

(f) When Moben was responsible for the cleaning, it charged £195 plus VAT per unit (see A1 pp144-153, also A2 pp15-18). When Facilities took over responsibility for cleaning, there were three I-Pads, but it retained the same charge. It added, however, the services of the mobile caretaker at £19.17 per month. When the fourth I-Pad was brought into management (April 2009), additional charges were levied for cleaning the I-Pad bin stores (£97.50). The mobile cleaner charge was increased to £30 per month although the Applicant raised no issue concerning this. The total amount paid for cleaning services for the I-Pads was therefore £487.50 per month including VAT (£390.00 + £97.50) or £112.50 per week. When the costs changed in November 2009, the I-Pad cleaning, which presumably included the bin stores, became £536.53 with the mobile cleaner's costs reducing to £26.36. To compare like with like, the monthly cost of

cleaning the I-Pad common parts per unit increased from £130 (£390 ÷ 3) (January 2009) to £134.13 (£536.53 ÷ 4)(November 2009). At the same time, the cost of the mobile cleaner per unit increased from £6.39 (£19.17 ÷ 3) to £6.59 (£26.36 ÷ 4). The combined figures increased from £136.39 to £140.72. The VAT treatment was never explained.

(g) £536.53 represents a charge of £134.13 per month or £30.95 per block per week. We have dealt with the issue of the quality of the cleaning elsewhere. We have nothing in the way of evidence which suggests to us that this is an unreasonable charge for cleaning the common parts of the I-Pads. There are five floors, landings and staircases as well as the lobby and lift. WE DETERMINE that these charges are reasonably incurred.

(h) Although referred to in the Applicant's list of invoices which she challenged, the Applicant did not in evidence raise any issue with the invoices for £103.59 (R2 p23) or £68.28 (R2 p25). Accordingly WE DETERMINE these to have been reasonably incurred.

7.2 Cleaning – Item 2.9 – Year 11 – Facilities - £976.67 per month – R4 pp9-19
£1,025.83 – R4 p20

(a) The Applicant wished to know why the charges had increased when only one cleaner was employed a few hours a week for all blocks. The Respondents' case again was that the costs increased as additional blocks were brought under management. Mr Seigle explained that the cleaner, whose name was Dorothy, had been working 17½ hours a week prior to April 2010. The hours were increased to 24½ hours in April and when Belle Isle (Block D) came under management on the 1st June 2010 her hours increased to 26 a week. Her wages also appear to have increased initially from £7.07 (£123.81 ÷ 17½) per hour to £8.67 (£225.39 ÷ 26) per hour and then to £9.11 (£236.73 ÷ 26) per hour in March 2011.

(b) We cannot say that either the number of hours or the hourly rates were unreasonable despite the increases. However, for April and May 2010 (R4 pp9-10), Dorothy's wages were stated as being increased to £9.20 (£225.39 ÷ 24½) per hour before dropping back to £8.67. Mr Seigle's explanation for this was that her wages went up in advance of the new block coming under management. We do not accept this explanation. We note that the invoices for April 2010 (R4 p9) and May 2010 (R4 p10) were dated the same day - 18th May 2010. The invoice for June 2010 (R4 p11) is dated the 2nd June (ie in advance), when Block D came under management. This invoice has the same total as the invoices for April and May. Whilst the breakdown of the costs has been written on the June invoice in the same way as the other Facilities cleaning invoices, that breakdown does not appear on the invoices for April or May. It does not seem to us likely that an employer would increase a cleaner's hourly rate for two months and then reduce it. Most invoices are dated the beginning of the month. These invoices have, in effect, been created after the normal billing date using the post Block D figures without reference to the hours worked. In our view that is not reasonable. WE DETERMINE that the costs for April and May 2010, namely £976.57 were not reasonably incurred, but that for each of those two months the sum of £920.47 per month was reasonably incurred (£8.67 x 24½ hours per week). The Applicant is entitled to a credit for her proportion of the difference. Further WE DETERMINE that the amount of £976.57 per month for each month from June 2010 to February 2011 was reasonably incurred and that the sum of £1,025.83 for March 2011 was also reasonably incurred.

7.3 Sinking Fund – Item 2.10 – Year 08 – I-Pad sinking fund - £1599
Year 09 – I-Pad sinking fund - £5350

(a) The Applicant wished to know why the amount had increased so much in the space of one year. She considered £5350 to be too much. Mr Seigle explained that the first year's budget was too low. Developers encouraged managers to keep it low as they were responsible for voids. After the first year, the manager has a better idea of likely expenditure. The amount in the sinking fund was in his view woefully inadequate. Mainstay needed to set aside £2,500 a year for each lift. He believed that each block needed to have £20,000 set aside in the sinking fund. There had been a problem in 2010 as there had been damage to pipes and as there was not enough money in the fund, it had not been possible to repair. The fund is set aside for major works but it may be used if something needs repair and there is not enough in the service charge fund. In extreme cases, the manager may have to go to the client to fund the service charges.

(b) We are satisfied with Mr Seigle's explanation. It is important that a managing agent has access to an adequate sinking fund in order for it to carry out major repairs. If it could not do so, the lessees would soon complain. After all, the alternative would be to levy a supplemental service charge should there be insufficient funds available and that is not generally very popular. The amount of contribution to a sinking fund is essentially one of judgment and we will not usually interfere provided the amounts demanded are, as here, justifiable. WE DETERMINE that the amounts were reasonable in respect of future expenditure.

7.4 Auto-vents and Fire Alarm – Item 2.11 – Year 09 – SCS Aftercare - £1092.50 – R2 p84
Daemon Fire & Security Ltd - £258.14 – R2 pp85-86
Maintenance Force UK Ltd - £120.44 – R2 p87
J Manny Ltd - £283.76 – R2 88
Year 10 – Daemon - £117.50 – R3 p156
£117.50 – R3 p157
Waverley Fire & Security Ltd - £64.63 – R3 p158
£257.60 – R3 p173
Daemon - £302.60 – R3 p174
£138.00 – R3 p177 (part)
£414.00 – R3 p178 (part)
Year 11 – Spectrum – £111.63 - R4 pp90-91
Waverley Fire & Security Ltd -£1520.45 – R4 p119

(a) The Applicant stated in her Schedule that the Auto-vent had remained open for several months after the fire alarm had been set off. The Auto-vent had never been re-set as no-one had been present on site. This had caused damage to the window frame and the wall which had been repainted but not treated for water damage. The vent bar remained broken and would not open in the event of a fire. The Applicant referred us to two e-mails: one from the Applicant to Hollie Gunter at Residential on the 15th July, 2010 and Ms Gunter's response on the 20th July, 2010

(b) The Respondents' reply was that e-mail correspondence suggested that the matter had been resolved within a few days. The Auto-vent system was subject to annual servicing and maintenance as well as general checks by staff.

(c) The issue is essentially one of fact. The Applicant claimed that she had gone away in January 2010 and the Auto-vent had been open at that time. When she returned in July

2010, it was still open. She had spoken to someone at Residential on the phone in January.

(d) At R5 p170, there is an order to "close AOV shaft Britannia Apts" dated the 21st December 2009. At R3 181, there is an invoice dated 23rd December 2009 for carrying out this work. At R5 p182, there is a further order regarding "smoke vent fault Britannia Apts" dated 19th February 2010. There is an invoice dated 24th February 2010 referring to "panel showing psu fault, return visit required" (R3 p158). We cannot see a subsequent order until the annual maintenance contract dated 1st July 2010.

(e) At R5 p229, there is an order to Spectrum Facilities Management Ltd relating to "window sensor problem" dated 13th July 2010 and at R4 pp90-91 there is the corresponding invoice for a "call out to repair automatic window vent" with a worksheet referring to a "problem with window on 5th floor. Found smoke vent override had been activated. Reset smoke vent control and window closed. NB plaster on wall need attention". This may account for Ms Gunter's response on the 20th July stating that "I believe the window is now closed" and saying that she will "arrange for the plaster to be redone".

(f) Unfortunately, the Applicant was not staying in her apartment in the period between January and July 2010 and she acknowledged that the window could have been closed and re-opened in the meantime. Mr Seigle said that the maintenance contract required 2 visits a year and there was no evidence of anything being broken. The problem was that residents would open the vents, for example if they wanted to smoke in the dry, and they were then not able to close them. There was nothing wrong with the vents themselves. The issue was one of tenant abuse.

(g) We accept that the vent was open in January 2010. We also accept that it was open in July 2010. It must have been open for a while because there is evidence of water damage to the corridor wall which would be unusual in the summer months even in Wales. However, Mr Seigle says that there are twice yearly inspections which would have picked up any problems. There is evidence of visits by engineers dealing with various issues, but nothing specific relating to the Auto-vent on the 5th floor of Britannia. There is also the curious entry referring to the necessity of as return visit, but neither order nor invoice appears in the bundles.

(h) There is a further invoice at R4 p119 for £1,520.45 which refers to the replacement of "AOV Controller on 3rd and 4th Floors" of Victory and "on 5th Floor" of Britannia. In addition, the invoice included the replacement of batteries which the Applicant did not challenge. The order is dated the 8th September 2010 and the invoice the 29th September 2010.

(i) We do not consider that the evidence points to defective installation or defective servicing. We agree with Mr Seigle that the most likely cause is unauthorised opening of the vents by residents. Nonetheless the cleaner attends weekly and the area manager attends every six weeks or so. We would have thought that someone would have reported the problem. With the top floor, there is only one "front door" and that is in the middle of the building, so it is possible that most residents were unaware of the problem, or if there were any they were happy to take advantage of it. Whilst Mainstay may be criticised for not responding quickly enough, it is possible that management was unaware that the vent had been open for a while.

(j) The invoices relate to repairs and service agreements. There is nothing in the evidence to suggest that the Applicant has paid for any service that was not provided. Nor are we satisfied that the cause is anything other than the misuse by the residents. It is possible that the administration has failed to respond as quickly as it should, but we do not consider that the Applicant has suffered as a result. After all she was not there

between January and July. In the circumstances WE DETERMINE that these costs were reasonably incurred.

7.5 Bin Store Cleaning – Item 2.12 – Year 10 - Facilities – 6 x £97.50 – R3 pp37-42
Oaklands Plastics Ltd - £290.01 – R3 p95

(a) The Applicant challenged the entries for bin store cleaning because, she suggested, "no-one was on site." The explanation given in reply was that the bin store costs were separated from the other cleaning costs for reasons of transparency. They were also charged on the same basis as the estate charge with each lessee contributing equally.

(b) That explanation does not seem correct to us as the charges appear in the I-Pad accounts for the year. The car park cleaning costs for Year 10, however, appear in the car park accounts and the proportions payable, we were told, are virtually the same as for the Estate charges.

(c) We have noted that the bin store costs were only charged from April to October 2009. From November 2009 the cost was included in the I-Pad cleaning costs which were increased from £390 to £536.53 per month, an increase which also took into consideration that Royal Sovereign (Block H) had been brought into management in the April of that year (see paragraph 7.1 above).

(d) The Applicant's real complaint was that residents from the Apartments and the freehold houses were using the I-Pad bins. She thought that the costs should therefore be an Estate charge. Mr Seigle told us that Residential had an issue with the Swansea Council. Its operatives will not pick up bin bags or rubbish from the floor. Further, if there is a build-up of waste making it difficult for the operatives to reach the bins, they will not collect. Now that the Council only collects fortnightly, rubbish can be in the bin stores for two weeks. When Residential found that residents of other parts of the site were using the I-Pad bins they put locks on the bin stores. In Mr Seigle's view, residents were not doing things properly. They were leaving out waste. If it were not cleared up, there would be a rodent problem. He did not consider £97.50 per month to be excessive. There were no charges for additional waste removal.

(e) During evidence, there was also mentioned the invoice for £290.01 at R3 p95 which Mr Seigle said was the cost of replacing a stolen bin.

(f) Dealing with the last point first, if a bin is stolen it has to be replaced. The Applicant did not raise an issue with regard to the cost as opposed to the need to buy one. WE DETERMINE that this cost was reasonably incurred.

(g) As far as the allocation of the cost is concerned, it is really a question for the management. We do not consider it to be our role to dictate to managers or lessors how they manage their properties provided that the costs they incur are reasonable. We do not consider that Mainstay can be fairly criticised for regarding the costs of the cleaning the I-Pad bin stores as part of the I-Pad costs. After all, the residents of each I-Pad are going to be the primary users of the bin stores within their block even though there may be occasions when residents of other parts of the Development deposit their rubbish there. WE DETERMINE that these costs were reasonably incurred.

7.6 Bin Store Cleaning – Item 2.13 - Year 11 – Facilities - £1,004.93 – R4 pp28-39
Spectrum Facilities Management Ltd – £211.50 – R4 p341

(a) Although the initial query related to the bin store cleaning costs, after hearing Mr Seigle's explanation, the Applicant declared herself satisfied. Accordingly WE DETERMINE that these costs were reasonably incurred.

(b) The issue developed into a discussion regarding the Spectrum Facilities Management Ltd invoice for £211.50 (listed in Item 2.18, but dealt with here). The narrative in the invoice refers to the removal of plastic roll tops which covered the bins in the stores.

(c) Mr Seigle explained that Barratt had originally consulted the Swansea Council concerning the type of bin which was regarded as suitable for use at the development. As a result, Barratt purchased bins with roll top lids. From 2007 to 2010, the Council had collected the refuse without problem. However, the Council had upgraded its collection lorries and the roll tops were no longer suitable. The choice was to have the roll tops removed or buy new bins. The less expensive option was to remove the lids.

(d) The Applicant argued that this bill should have sent to Barratt. She believed that the additional cost was because more capacity was needed; there were not enough bins. Mainstay should not have accepted the bill. Mr Seigle confirmed his understanding that Barratt had consulted the Council before buying the roll top bins. He could not be certain about this, but that is what happens on other sites. Roll top bins were used nationally. They had been used on the Development for three years before Swansea changed its policy.

(e) We accept Mr Seigle's explanation. The fact that the Council collected the refuse using the roll top bins for three years suggests to us that the original bins with roll tops were acceptable. Councils do change their policies from time to time and managers have no choice but to go along with it. If there was a risk that failure to remove the roll tops might jeopardise the fortnightly collections, Mainstay had no choice but to have them removed or alternative buy new bins. It chose the cheaper option of having the roll tops removed and in our view that decision was justifiable. There was no issue as to the amount of the invoice. Accordingly WE DETERMINE that this cost was reasonably incurred.

7.7 Electricity – Item 2.14 – Year 11 – E-ON Energy/Haven Power - £17,941.37 – R4 pp40-83
Item 2.22 – Year 09 – E-ON Energy - £10,847.57 – R3 pp44-87
(see also paragraph 4.3 above)

(a) The Applicant complained that the "deficits are not apparent" and she attached three letters dated the 2nd October 2009, 20th September 2010 and 10th January 2011 which were contained in bundle A. The Respondents argued that the "deficits are detailed in full in the annual service charge financial statements..." The Applicant also complained about the inaccurate budgeting.

(b) The confusion does appear to have been caused by some rather poor budgeting plus estimated accounts from the suppliers. The budget for Year 09 was £3,090, but the actual expenditure was £10,841. In Year 10, the budget was £3,937 but the actual was £13,936. The Applicant also referred us to the Year 10 invoice at R3 p47.

(c) Mr Seigle explained the invoices. There was no suggestion from the Applicant that the properly adjusted charges were wrong or

unreasonable and so there is nothing for us to determine. For the avoidance of doubt WE DETERMINE that these costs were reasonably incurred.

7.8 Office Supplies – Item 2.15 – Year 11 – Mara Services Ltd - £53.13 – R4 p343

Advantage Business Supplies £9.34 – R4 p347

£11.62 – R4 p355

Facilities £91.92 – R4 p360

Mara Services Ltd £80.03 – R4 p361

£257.89 – R4 p356

Year 09 OyezStraker (part) £81.78 – R2 p55

£65.07 – R2 p64

Facilities £143.75 – R2 p68

Year 11 - Facilities £208.70 – R4 p99*

*(dealt with in paragraph 3.9 above)

(a) The Applicant's case is that these items should not be charged to the lessees. The Respondents argue that the notice boards were to display Health and Safety information, and that the other supplies were such things as a laminator and other printing supplies for use at the Development. The Applicant told us she was not arguing about the notice boards.

(b) There are advantages for residents having a presence on site. The ability to have printing facilities and files also means that the caretaker (and other management staff) have access to information which otherwise might not be so readily available. The last of these items (£208.70) has been dealt with earlier (paragraph 3.9). As far as the other items purchased, the Applicant did not challenge the cost, nor in respect of the labour charge for fitting the notice board (R2 p68). The only question is whether the office supplies should be paid for out of the management fee. On balance, we cannot say that it is unreasonable to incur this expenditure as part of the service costs and so WE DETERMINE that these costs (apart from the sum of £208.70 dealt with in paragraph 3.9) were reasonably incurred.

7.9 Lift Repairs – Item 2.16 - Year 10 – Kone plc - £1,543.20 –R3 p227

(a) The invoice is for repairs to one of the lifts. The cost was incurred in Year 10. However, the repair was the subject of an insurance claim and, in Year 11, the cost was refunded subject to the excess of £150. We cannot say if the refund was credited in the same proportions as it was paid.

(b) The Applicant accepted this explanation and, in the circumstances, WE DETERMINE that costs incurred in Year 10 were reasonably incurred.

7.10 Meeting costs – Item 2.17 – Year 09 - Mainstay - £616.88 – R2 p138

Year 10 –Swansea Council - £105.00 – R3 p310

Item 2.20 – Year 10 –Mainstay - £575.00 – R3 p305

£317.25 – R3 p307

£317.25 – R3 p311

£822.50 – R3 p312

Pumphouse - £50.00 – R3 p97

£75.00 – R3 p100

Year 11 –Mainstay - £158.63 – R4 p325

£411.25 – R4 p337

£158.63 – R4 p338

£158.63 – R4 p345

(a) The Applicant considers that residents should not be charged for the costs incurred by Mainstay in attending meetings. She feels that the cost should be borne by Barratt.

(b) The Respondents' case is that room hire is necessary as there is no-where on the Development for meetings with residents. The meetings with Barratt were outside the agreed number in the management agreement and so were chargeable. Meetings dealing with specific leaseholder queries, defects on handover and one off projects are outside the contract and are chargeable at an additional rate in accordance with Mainstay's published tariff.

(c) The invoice at R2 p138 (£616.88) related to a "meeting re defects" (R2 p127). The meeting at R3 p305 (£575.00) was, according to Mr Seigle, a meeting at Barratt's offices in August 2009 to review the quality of Barratt's work and covered defects. In Mainstay's view, Barratt was not dealing with them quickly enough. The meeting would have been for 2 hours at £250 per hour as a senior representative of Mainstay would have been present. The narrative at R3 p269 states that it was a meeting "with Sales Director and Site Manager"

(d) In December 2009, Helen Solsberg, the Property Manager, held a meeting with a lighting specialist because the communal lighting was not working properly. Her charge was £135 per hour and the charge of £317.25 represents 2 hours plus VAT. She held a further 2 hour meeting with residents described as "service charge meetings" in February 2010 for which an additional charge of £317.25 was made (R3 p311). The meetings would have been necessary in circumstances where e-mails would not have been able to be used. The fact that the narrative uses the plural would indicate that these were meetings with individual lessees or small groups.

(e) The meeting in March 2010 (R3 p312) was charged at £822.50. The meeting was between the Sales Director and Site Manager for Barratt and Helen Solsberg and Mainstay's Regional Director to review the service provision. Ms Solsberg could have had the meeting herself, but felt that she needed to have with her someone with more authority. The fee represents 4 hours at £175 per hour. Ms Solsberg's time would not have been charged for. Travel time is also not charged.

(f) The invoice at R4 p325 (£158.63) refers to a meeting in May 2010. The narrative in the invoice summary refers to "meeting re waste" (R4 p261). There were 2 further meetings in October 2010 (R4 p337 - £411.25 and R4 p338 - £158.63). The first of these was dealing with "waste issues due to access" and the second "meeting for parking controls". There is a further meeting in January 2011 (R4 p345 – £158.63) which relates to "meeting with waste savers re recycling". We were not given any details concerning these meetings but it is reasonable to assume that the invoices for £158.63 represent Mainstay's fee for the Property Manager at £135 plus VAT.

(g) From our inspection it is apparent that there are no on-site facilities for meetings and so we can see that it would be necessary for Mainstay to hire a room. The Applicant's argument is that this should be paid for by Mainstay out of its management fee. We do not agree. The fee is intended to cover the day to day management costs – salaries, office overheads such as postages, telephones and so on, but it is not intended to cover disbursements of this nature. WE DETERMINE that the costs of £105, £50 and £75 were reasonably incurred.

(h) The other invoices fall into two categories: those relating to defects or work involving Barratt; and those concerning the management of the Development. Mr Seigle told us that the number of meetings with Barratt and which

were incorporated into the fee was limited. Any extra meetings were chargeable. He maintained that the cost therefore was to be borne by the service charge payers. The Applicant's case is that the reason for the extra meetings was the failure on the part of Barratt to carry out remedial work. She did not regard it as reasonable that the lessees should pay. Mr Seigle suggested that Mainstay was representing the lessees at these meetings even though one of Mainstay's complaints at one of the meetings was that Barratt was not dealing with remedial work quickly enough. He confirmed that the meetings charged for related to issues concerning common parts. Any individual lessee with a problem within his/her apartment would have to pay for Mainstay to become involved in that.

(i) The first point to note is that Mainstay is Barratt's agent, appointed to carry out the job of general management of the Development. Mainstay is not the lessees' agent. It is appointed by Barratt to carry out Barratt's management functions under the leases. If Mainstay is having a problem with its principal, it is only right and proper for it to meet Barratt and try to resolve issues. Barratt was obligated to remedy material defects provided Mainstay notified Barratt within one month of a particular block coming into management (A1 p96). It is reasonable to assume that the particular issues came within that category as otherwise there would have been nothing to discuss. The cause of the meeting must therefore have been Barratt's default in honouring the terms of its own agreement with its agent.

(j) Barratt built the Development and has the ultimate responsibility for managing it. If Barratt has failed to remedy defects in a timely manner so that its own agent is raising the issue with it, that is a matter between them. The fault lies with Barratt. Under the pro forma new management agreement Mainstay is entitled to charge for the extra meeting, but that is a charge which is at first properly directed to Barrett. The question is whether Barratt should be permitted to pass that charge on to the lessees. We cannot see any reason why it should. The meetings were brought about by Barratt's failure to fulfil its obligations. We cannot see why Barratt should be allowed to pass on the cost to the lessees. In our view it is not reasonable to do so. If Mainstay does not wish to pursue the bill against Barratt for fear of damaging the working relationship, then that is a matter for them. The lessees must not be required to pick up the cost. Further, we are not satisfied with Mr Seigle's explanation of the figure of £575 (£500 plus VAT). He told us that the Regional Director was charged at £175 per hour. We cannot see what justification there is for a charge of £250 per hour. Again, the evidence is that the Regional Director was called upon to attend one of the meetings because the property manager did not feel capable of dealing with Barratt's Sales Director and site manager. It was never explained why a meeting involving the failure to deal with outstanding issues needed the Sales Director on the one side and the Regional Director on the other. It seems to us that this has more to do with the relationship between the two parties than with the detail of outstanding snagging issues. WE DETERMINE that the costs of £616.88. £575.00 and £822.50 were not reasonably incurred and that the Applicant is entitled to a credit in respect of her proportion of these costs.

(k) The other meetings were more to do with the day to day management of the Development. Three of the meetings dealt with waste issues, one with lighting and another with parking controls. Problems such as these arise in any Development. A meeting to discuss recycling may well have involved a "meeting with waste savers". That is part of management. Considering whether to have a different lighting system is something which the management would be doing as a matter of course if there were issues with the existing system. Similarly parking problems and meeting residents for whom e-mails are not appropriate (but presumably letters would

have sufficed) are all part of general duties of a managing agent. We were not told anything which indicated to us that any of the issues was of such proportions as to require anything extraordinary. Each meeting was only one hour. There is nothing in the evidence to suggest that Ms Solsberg was paid any more for attending the various meetings. After all, if she supervised 15 sites (as Mr Seigle) and visits them only 8 times in a year, that accounts for only 120 days out of the working year. The remainder of her time would have been spent on general management duties which would have included meetings such as those described above. Her salary is an overhead and it is incorporated into the management fee. There is no evidence that any of the meetings involved any additional expenses. We do not consider it reasonable for Mainstay to be charging extra for problem solving. Management is a hands-on task and sometimes managers, on some sites, have to be available to meet people or deal with problems. It is not reasonable to make an additional charge for doing so.

(l) We consider it pertinent to note that no justification was provided for the amounts of any of the charges. The rates are "charge out rates" on the basis that they incorporate overheads, salaries and contribution to profit. They fail to take into consideration that the overheads, basic salaries and profit are already accounted for in the management fee. We do not consider it reasonable for Mainstay to add such amounts even if an additional charge could be justified – which in our view it is not. WE DETERMINE that these additional charges are not reasonably incurred and that the Applicant is entitled to a credit in respect of her proportion.

7.11 Bin Stores – Item 2.18 – Year 09 – Rentokil - £199.75 – R2 p140
£705.00 – R2 p141
£1,173.00 – R2 p143
Mainstay - £46.00 – R2 p147
Seerclean - £373.75 – R2 p146
£46.00 – R2 p14
Year 10 – S4U - £280.00 – R3 p296
Lanes Group plc - £97.75 – R3 p299
S4U - £170.00 – R3 p300
£120.00 – R3 p303
Rentokil - £855.60 – Cyc Mtce
£205.80 – R3 p309
£195.50 – R3 p302
Spectrum – £763.75 – R3 p314
Rentokil - £195.50 – R3 p294
£205.80 – R3 p306
Year 11 - Spectrum - £411.25 - R4 p329
Swansea Council - £183.30 – R4 p336
Rentokil - £793.53 – R4 pp371-374

(a) Many of the issues raised by the Applicant have already been dealt with earlier in this decision. There are two additional points, however: additional refuse removal costs and pest control.

(b) The Respondents' answer to the first is that there is a high proportion of buy to let properties at the Development. When tenants change over, the out-going tenants frequently leave unwanted items at the bin stores. The Council will not remove these items and if they prevent access to the bins, this jeopardises the normal refuse collection. These items have to be removed at a cost.

(c) With regard to the second point, the pest control invoices are for preventative measures (bait). As the Development adjoins a river, Mainstay considers it prudent to take precautions rather than react to an infestation.

(d) Fly tipping by residents is a problem. In many cases it can prejudice the normal collections as the Respondents state. Mainstay has little choice but to remove the items as and when they appear. The Applicant did not challenge the actual costs involved merely the necessity for its being done. In the circumstances, we consider these costs to be reasonably incurred.

(e) We agree with the Respondents that given the location, it is reasonable to have in place a pest control arrangement. Prevention is better than cure. Again, the amount of the costs was not an issue and so we determine that these costs were also reasonably incurred.

(f) There are some additional invoices referred to by the Applicant in her Schedule. These invoices included the hire of three bins from the Council, clearing a blocked drain, an out of hours call (the purpose for which was not stated) and a two week rodent trapping programme which appears in the Statement of Special Funds for Year 10. No particular issue was raised concerning these invoices and they appear to us to be reasonable in the circumstances.

(g) WE DETERMINE that these costs were reasonably incurred.

7.12 Other issues

(a) Gardening- Item 2.19 – dealt with in paragraph 4.8 above.
(b) Meeting costs – Item 2.20 – dealt with in paragraph 7.10 above
(c) Dog bins - Item 2.21 – the Applicant informed us that she did not wish to proceed with this item. Therefore WE DETERMINE that these costs, which were paid out of the sinking fund were reasonably incurred.
(d) Electricity – Item 2.22 – dealt with in paragraph 7.7 above
(e) Street Lights – Item 2.23 – conceded by the Respondents. See paragraph 4.5 above.
(f) Budget variances – Item 2.24 – the Applicant did not pursue this issue following Mr Seigle's explanation. There is no issue for us to determine.
(g) Installation of smoking bins – Item 2.25 – the Applicant again indicated that she did not wish to proceed with this issue.
(h) Flooring in Britannia - Item 2.26 - see paragraph 7.13 below.
(i) Initial payment – Item 3.00 – This was not an issue for us. The parties will liaise.
(j) Payment breakdown 2011 – Item 3.10 – This again was not an issue for us.
(k) Beamrite Aerials invoice – Item "Other" – The invoice for £81.08 dated 14th November 2008 (A2 p66) was charged to the I-Pad service charge. The same item also appeared as an Estate cost. There was, however, a credit shown so that there was no question of double charging. The Applicant indicated that she was happy with the explanation.

7.13 – Flooring in Britannia - Year 10 - Item 2.26 - RMT Builders -£994.75 – Paid from Special Funds

(a) The Applicant's complaint is that the job was of poor quality. We do not have the invoice as the costs were paid from the sinking fund as can be seen from the Year 10 accounts. The order is dated 10th November 2009 to RMT Builders Ltd for £994.75 (R5 p162). The amount appearing in the accounts is rounded up to £995.
(b) From our inspection we could see that the flooring had been laid upon top of the existing carpet. Mr Seigle accepted that job was unsatisfactory. We agree. WE DETERMINE that the

cost was not reasonably incurred and that the Applicant is entitled to a credit for her proportion of these costs.

(c) We understood that Residential was proposing to redo the whole job. If this is done satisfactorily, the Applicant may well consider waiving the credit rather than involve Mainstay in a complex process of giving credits to all contributors to the cost and then recharging them the cost.

8 COSTS

8.1 The Applicant has made an application under section 20C of the Act. Provided there is provision in the lease for so doing, the Applicant is entitled to include its costs as part of the service charge unless this Tribunal determines otherwise. In the Applicant's view, the issues raised could have been resolved. When she spoke to Ms Solsberg, they were not being resolved. She had had to e-mail the managing director of Mainstay and the head of Barratt. It had taken from 2007 to 2011 to be taken seriously. She had asked several times for accounts. She did not understand the proportion she was required to pay because additional phases were coming into management. Things were promised but did not get better. Barratt referred her to Mainstay and Mainstay said that it was nothing to do with them.

8.2 Mr Seigle said that he was not involved until July 2011. The Applicant had already contacted the managing directors and there had been a high level meeting. He offered one to one meetings. The Applicant took up the offer. There was a telephone call on the 24th July 2011 which lasted an hour in which she went over historical issues. There was a meeting on the 4th August 2011 with Barratt and Mainstay. All told, they met 12 lessees. They had allocated 30 minutes but the meeting lasted 2 hours. He had thought that most issues had been resolved. He thought this application had been withdrawn and was surprised to receive the Tribunal's Directions. When he spoke to the Applicant about it, she confirmed that she was proceeding and that the reason was Mainstay's failure to deal with the flooring issue. The application had involved a significant amount of work. Mainstay had not been able to contact the previous manager. Mr Seigle felt that it had not been necessary to bring the case to the Tribunal. He acknowledged that in the past there had been difficulty in obtaining information from Mainstay, but since he had taken over responsibility there had been no issues. He discussed budgets with Barratt and residents in an effort to reduce costs.

8.3 The Applicant told us that when she had met Barratt, she had agreed to suspend the application for 3 months. If nothing was improving, she would continue with the application. Things have improved, but only as a result of residents complaining. There had been no response in 2007.

8.4 Section 20C(3) gives us power to "make such order on the application as [we] consider just and equitable in the circumstances". This is a wide discretion, but in exercising that discretion, we must "have regard to what is just and equitable in all the circumstances" which includes "the conduct and circumstances of all the parties" (per HH Judge Rich QC in The Tenants of Langford Court (Sherbani) –v- Doren (LRX/37/2000)). Judge Rich continues that we should keep in mind "that the power to make an order under section 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that make its use unjust". The entitlement to costs is after all "a property right". We should not lightly deprive the Respondents of such a right (see also HH Judge Mole in Plantation Wharf Management Co Ltd –v- Jackson and Irving [2011] UKUT 288 (LC)).

8.5 In The Church Commissioners –v- Derdabi [2010] UKUT 380 (LC), HH Judge Gerald provides useful guidelines as to the exercise of our discretion. He suggests that we consider the degree of success enjoyed by (in this case) the Applicant, proportionality, the conduct of the parties and other "circumstances" such as the property being part of a resident-managed development. In St John's Wood Leases Ltd –v- O'Neil [2012] UKUT 374, the Upper Tribunal reinforced the principle that "whether the order should be made depends upon the facts and circumstances of the case and what

is just and equitable in those circumstances" and that "*the reasons why* and *amounts by which* any service charge expenditure have been disallowed will always be important" (Upper Tribunal's italics).

8.6 On the one hand we must balance Barratt's contractual property right to have its (ie Mainstay's) costs paid with Mainstay's acknowledged failure to provide information and that in approximately 16 out of 45 categories, the Applicant has succeeded in obtaining some reduction (35½ %). In respect of some categories (eg Electricity, Gardening, Lighting, Bin Store Cleaning) no reductions were made, although in Electricity, the invoices were not at all easy to follow and in Gardening, poor management has certainly contributed to the problem. Even in something as straightforward as Window Cleaning, there was confusion as to which windows should be cleaned.

8.7 Leaving to one side the issue of the management fees, the amount of costs disallowed only represents approximately 10½% of the total in issue, but that is never the whole story. The Electricity charges did not represent a challenge to the amount involved, but required some explanation as to the reason why the budgets had been so far from the actuals. The response as we have seen was a combination of poor management (bad budgeting) and estimated billing. The Electricity charges constituted over £35,000 of the amounts in dispute. Disregarding those items, the costs disallowed represents approximately 14% of the amounts in dispute.

8.8 As to the management fees, they have been reduced by approximately 44% on an annualised basis. In dealing with the question of costs, we cannot overlook the fact that the set-up charge continued to be charged in respect of accounts which had ready been set up. The breakdown of the charges for 2009 was initially stated to include a fee for the car park but not the Estate. It was confirmed subsequently that a charge had been, and had been intended to be, levied in respect of both areas for that year, a practice not followed in subsequent years when only an Estate charge was levied. We cannot fail to comment upon the fact that when the management fees for Year 10 were drawn up, it was done on the basis that VAT would be charged at 17½%, but when they came to be billed the VAT had been reduced to 15%. Mainstay did not pass on the saving to the lessees, but kept the saving itself.

8.9 We have concluded that the application under section 20C must be granted. The question is on the facts of this case how to balance the issues which we have outlined. As a Tribunal, we cannot endorse a scattergun approach when challenging service costs. That puts an unreasonable burden upon managing agents who are forced to spend inordinate amounts of management and clerical time researching and putting together evidence and bundles for the Tribunal and the parties as well as spending days sitting in Tribunal hearings when their time would be better spent dealing with the business of managing the sites under their responsibility. Sometimes the task is made even more burdensome if the matters raised are three or four years old – in some cases even more. It often happens that staff have moved on and original documentation has been lost.

8.10 On the other hand, there are issues which involve the consideration of multiple invoices and where the time spent seems out of proportion to the amounts involved. But, here too, one has to bear in mind that a single invoice for something will not attract attention, but twenty invoices relating to the same issue may signify that something is amiss. The result of that consideration may be that some are reasonably incurred and some are not, but the time spent or the amount involved may not fairly reflect the importance of the issue to one or other of the parties. Again, some issues may well only be conceded because there has been a Tribunal hearing.

8.11 Taking into account all these factors – the lessor's right for the costs to be paid by the lessees, the number and value of the issues where the Applicant has been successful relative to the number and value of those upon which she sought a determination, the nature of the issues and the reasons for our determinations as well as the conduct of the parties - we have concluded that the Respondents' right to recover the costs of this application is to be limited to 65% of Mainstay's costs. WE DETERMINE that the Respondents' costs in excess of 65% of Mainstay's costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

9 SUMMARY

9.1 The Applicant is entitled to a credit in respect of her proportion of the following items:

Paragraph	3.2	Padlock	£158.13
	3.4	RMT Builders	£220.31
	3.5	Janitorial cupboard	£312.14
	3.9	Caretaker supplies	£860.92
	4.4	Pipe repairs	£1,514.55
	4.5	Street lighting	£428.88
		Water tank	£333.50
		Co. Secretary fee	£860.00
	5.1	Site Cleaning	£1,833.00
	5.2	Window cleaning	£399.50
	5.3	Carpet cleaning	£193.88
	5.6	Front door	£341.04
			£2,264.92
	6	Management fees	various
	7.1	Cleaning	£1,823.97
	7.2	Cleaning	£112.20
	7.10	Meeting costs	£3,536.02
	7.13	Flooring	£994.75

9.2 The amounts of the credits will no doubt vary as they are attributable to different accounting years. Some of the amounts involved may also relate to different accounting years. Mainstay must within 28 days of the date of this decision prepare a revised set of accounts for Years 08, 09, 10 and 11 incorporating our determinations and submit them to the Applicant (electronically if so requested). The accounts shall include details of the Special Funds where adjustments are required.
9.3 In the event of there being any dispute between the parties relating to those accounts, the Applicant and the Respondents have liberty to apply to us for further determination.

DATED this 22nd day of March 2013

CHAIRMAN