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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0036/08/13

In the Matter of Flat 20 Cork House, Mannheim Quay, Swansea, SA1 1RT

In the matter of an Application under Section 27A of the Landlord and Tenant Act 1985
And in the matter of an Application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002
And in the matter of an Application under Section 20C of the Landlord and Tenant Act 1985

TRIBUNAL	David Evans LLB LLM Michael Abraham FRICS
APPLICANT	Parkbrace Ltd
RESPONDENT	Mr Thomas Roger Hughes

DECISION

1 BACKGROUND

1.1 Mannheim Quay is a residential development comprising a number of blocks of flats in the Maritime Quarter of Swansea. Three of the blocks - Monmouth House, Weavers House and Cork House (the Houses) - are privately owned and managed whilst the others are owned by a housing association. We shall refer to these three blocks together with the external areas enjoyed by the lessees as the Development. The freeholder is the Swansea City and County Council which in September 1996 granted a lease of land in the Maritime Quarter to Marketlaser Ltd. This interest was assigned to Galliard Homes (Swansea) Ltd at a date prior to April 1998 (there is a deed of variation referred to in the documentation between the City and County of Swansea and Galliard Homes (Swansea) Ltd dated 23rd March 1998). On the 29th April 1998, Galliard Homes (Swansea) Ltd leased Cork House to Calcot Ltd for 125 years less 1 day from the 25th March 1993. No doubt after the flats were completed, in 2000/2001, Calcot Ltd granted leases for 125 years less 3 days from the 25th March 1993 to individual lessees at a premium. Calcot's interest is now owned by the Applicant. We were informed during the hearing that there were in fact three different builders involved in the construction of the Houses but according to the Applicant's representative, the Applicant has also acquired the superior leasehold interest in both Monmouth and Weavers Houses. We have only seen the Respondent's lease. We have not seen any of the superior leases or any of the leases of flats in the other blocks. We were told that the flat leases are not all the same, but neither party raised any issue concerning them or the uncoloured plans on the copy lease in our possession.

1.2 Monmouth House is built around the four sides of a quadrangle, in the manner of an Oxford college, with a communal area in the middle. Weavers House is in the form of an 'L' shape spur on the south western corner of Monmouth House whilst Cork House is more of a 'U' shape on the south eastern corner. The upper floors of both Weavers House and Cork House overlap Monmouth House. There is a further communal area between Weavers House and Cork House and

two additional open areas between Cork House and Monmouth House and between Weavers and Monmouth Houses and Gloucester House - one of the housing association blocks. To complicate matters even more, there is an archway over a communal access which incorporates some of Weavers' accommodation.

1.3 In the basement beneath the three Houses is the car park. It is in two sections divided by a wall. Pedestrians can access both sections, but it is not possible to drive from one section to the other. There are therefore two entrances - one each side of the development. However, the allocation of the spaces does not follow the boundaries of the Houses. A lessee of Cork House may, for example, find that his/her allotted car parking space is in fact beneath Monmouth House. The spaces are positioned in such a way that some lessees can accommodate two cars. One lessee has in fact constructed his/her own garage. Not every flat is allocated a car parking space. There are a number of open air vents in the basement ceiling which allow the rain to pass through from the communal areas above. Unfortunately there is inadequate drainage in parts of the basement which results in water collecting occasionally.

1.4 The Applicant has entrusted the management of the Development to Mainstay Residential Ltd (Mainstay). Whilst the Applicant deals with the insurance, Mainstay deals with all the other aspects of management at the Development - the maintenance of the Buildings, the provision of services, preparation of management accounts and collection of the service charges and so on.

1.5 The Respondent is the leasehold owner of flat number 20 which is located on the third floor of Cork House. His lease is dated the 14th February 2000. We shall refer to this document as the "Lease" rather than as a sub-under-lease. It contains many of the usual covenants generally found in leases of this nature. It imposes on the Applicant, as lessor, the obligation to insure Cork House and to maintain the Building and the Common parts, as defined. The cost of doing so is recoverable from the lessees through the service charge.

1.6 The financial year for the service charge is from the 29th September in one year to the 28th September the following year. In accordance with the lease terms, Mainstay prepares a budget in advance of the start of the financial year. The total amount of the budgeted costs is allocated between the lessees and Mainstay then serves on each of the lessees a demand for one half of that allocated sum payable on the 29th September with the other half payable on the 25th March the following year. After the end of each financial year, Mainstay prepares an account of the actual costs paid (or accrued). These are again apportioned between the lessees and any under payment is then demanded or an over payment is credited against future service charges.

1.7 The Respondent's proportion of the service costs is defined in the Lease as "such percentage of the service charge as shall be set by the [Applicant] from time to time in its absolute discretion provided that the [Applicant] shall act reasonably". The service costs are divided between the Houses and the car park. The proportions of the Houses' costs are based on the floor area of the flats (not counting the Common Parts) whilst the service costs for the basement car park are divided equally between the users. The Respondent's proportions are 2.3178% of the service costs attributable to Cork House and 0.9174% of those attributable to the car park. The Respondent raised no issue in respect of the proportions.

1.8 On 1st September 2011, Mainstay took over the management of the Development from a local firm, Rowland Jones. In view of the shortness of time before the commencement of the accounting year on the 29th September, Mainstay decided to adopt the Budget which Rowland Jones had prepared for the accounting year ending 28th September 2012 (2012). Invoices were sent to the lessees for payment of one half of each lessee's proportion of the budgeted expenses plus a proportion of amounts to be retained in a sinking fund on account of future expenditure. The Respondent's proportion was £1,182.91 for the half year in respect of Cork House and a further £61.47 in respect of the car park. There was no issue that both these invoices were paid.

1.9 On the 18th April, 2012, Mainstay sent out demands for the second half yearly payments. The amount due from the Respondent was a further £1182.91 in respect of Cork House and £61.47 in respect of the car park. As at the hearing date, both remained outstanding. Following the end of

the accounting year on the 28th September 2012, final accounts were prepared incorporating the actual costs and showing a credit of £2.03 due to the Respondent.

1.10 On the 21st September 2012, Mainstay issued demands for the accounting year ending 28th September 2013 (2013) representing each lessee's proportion of the budgeted expenses for that year. The first instalment of the Respondent's contribution for 2013 was £823.64 for Cork House and £61.47 for the car park. Again these amounts remained unpaid as at the date of the hearing. The total amount of unpaid service charges demanded from the Respondent was £2,129.49 which, less credits of £106.45 in respect of the 2011 costs, made a net total claimed of £2023.04.

1.11 The Applicant has a collection procedure which involves sending a series of letters for which it levies an administration charge culminating in a referral of the case to Solicitors, a procedure which incurs a further administration charge. The total of the administration charges demanded by the Applicant is £435. The overall claim amounts to £2458.04.

2 PROCEEDINGS

2.1 On the 11th March 2013, Solicitors acting on behalf of the Applicant issued proceedings against the Respondent in the Northampton County Court (claim number 3QT33143). The amount claimed was £2,458.04. With interest and costs, not a matter for this Tribunal, the total amount claimed was £3,329.94.

2.2 Although judgment in default was entered on the 4th April 2013, that judgment was on the 19th July 2013 set aside and there was transferred to this Tribunal "the question of determination of the service charge and administration charge, (if any) for the years commencing [sic] 2012,2013". Both parties agreed that this was a clerical error and the order was intended to refer to the accounting years ending 2012 and 2013.

2.3 By a letter, with accompanying documents, dated the 29th October 2013, the Respondent raised the following issues:

	2012	2013
(a) Cleaning costs	£ 5,089	£ 5,760
(b) Fire Safety costs	£ 3,195	£ 3,390
(c) Lift costs	£16,851	£ 8,100
(d) Communal Electricity	£10,034	£ 7,000
(e) Insurance	£10,716	£11,980
(f) Sinking Fund	£39,390	£12,000
(g) Car Park fire safety	£ 697	£ 3,600
(h) Administrative charges		£ 435 (actual)

2.4 Directions were issued on the 8th November 2013 and the matter was set down for hearing on the 7th and 8th January 2014 at the Waterfront Community Church, Langdon Road, Swansea. We inspected the Development prior to the hearing on the first day accompanied by Mr Alexander Siegle from Mainstay, as agent for the Applicant, and the Respondent. We were given access to the entrance halls, lifts, staircases and corridors of all three Houses (but not the Respondent's flat as it was occupied), the basement car park and the external communal areas.

2.5 At the hearing, we heard evidence from Mr Siegle and the Respondent. In accordance with the Directions of the 8th November 2013, the Applicant had provided a single hearing bundle. The bundle is tabbed and paginated. However, the numbering of each tabbed section within the bundle starts with a page 1. Therefore, in order to identify a document within the bundle we shall refer to each section by its tab number (Tab 1, Tab 2 and so on) followed by the relevant page number (p 1, p2 and so on). For example, the invoice for Mainstay Facilities Management Ltd's cleaning services dated 01/05/2012 is at Tab3 p10.

3 CLEANING COSTS

2012 - £5,089; 2013 - £5,760

After hearing Mr Siegle's explanation, the Respondent accepted that the charges for 2012 were reasonably incurred and that the budgeted cost for 2013 was reasonable. In view of this, we determine accordingly.

4 FIRE SAFETY COSTS

2012 - £3,195; 2013 - £3,390

4.1 The Respondent's case is based upon a comparison of the costs budgeted for Cork House (£3,390 for 2012) which are significantly higher than the costs budgeted for Monmouth House (£500) (see Tab4 p14). There are 43 flats in Monmouth House and there are 46 in Cork House. The floor area of Monmouth House is, according to the Respondent, 24,175 square feet whilst Cork House is 31,495 square feet (Tab 4 pp 9-13).

4.2 Mr Siegle's explanation is set out at Tab 4 p2 and was supplemented by oral evidence. Cork House has a more comprehensive fire safety system than there is in Monmouth House. For example, there are no automatic smoke vents in Monmouth House. As there are four accesses or "cores" in Cork House, each with a lift, staircases and corridors there are four stand alone systems with alarm panels, detectors, sounders, call points and automatic smoke vents. The systems are serviced twice a year. Each element has to be tested. The cost for Cork House will therefore be four times more than for a single stand alone system. Because the system is more comprehensive, there is a greater likelihood of false alarms and faults. The cost of repairs is higher than on a more basic system as parts are more expensive.

4.3 The actual costs are set out at Tab2 pp26-29 and are as follows:

- Monmouth House -£1,336
- Cork House - £3,195
- Weavers House - £1,440
- Car Park - £697.

4.4 Rowland Jones employed Facilities Services Group Ltd (FSG) to carry out the servicing and repairs. Mainstay has continued to employ them. According to Mr Siegle, its service has been excellent. Its costs are on a par with those of other engineers. Mainstay is considering employing FSG on other developments and it is currently tendering for other work. The contract for the Development will be put out to tender this year. On receipt of the first invoice from FSG (Tab 3 p75) after taking over the management, Mr Siegle had contacted FSG to ask it to split the account for the 6 monthly service between the three Houses and the Car Park. He had received a letter (not included in the bundle) which gave the breakdown. Cork House should be responsible for one half of the combined invoices. The figures in the actual accounts reflect this. In his view, the amount allocated to Cork House is in line with the amounts paid in respect of other similar blocks. An £80 call out charge for an out of hours call is not, in Mr Siegle's view unreasonable. Mainstay is paying a £75 call out charge for a day time call out.

4.5 Mr Siegle's attention was drawn to the invoice at Tab3 p81. The invoice from Chubb Fire Ltd is dated the 30th November 2010 and totals £111.28. £46.87 has been allocated to Cork House (see Tab 4 p15). However, Mr Siegle was unable to say when or if Rowland Jones received the invoice. Nor could he say whether it related to Weavers House or to Cork House (it could not have related to Monmouth House). He accepted that the invoice might also fall foul of the 18 month rule (section 20B of the Landlord and Tenant Act 1985 (the Act)).

4.6 The Respondent also asked Mr Siegle about an entry for £121.13 (Tab4 p15). This related to an apportionment of the following year's invoice for servicing the fire systems (Tab3 p89). According

to Mr Siegle, £121.13 is in fact less than one half of what should have been accrued and so Cork House has benefitted from the arithmetical error.

DETERMINATION

4.7 From our own inspection it was apparent that the fire safety systems in Cork House were superior to the system in Monmouth House. Not only were there four "cores", but the systems serving Cork House were markedly superior to the one serving Monmouth House. We accept Mr Siegle's evidence that he contacted FSG to request a breakdown between the three Houses and the car park and that he was informed that Cork House should bear one half of these costs. It does not appear to us to be an unreasonable suggestion given the number and complexity of the systems in Cork House. We do not think that this should necessarily lead to a greater number of faults and false alarms as Mr Siegle suggested, but it was sensible for Mr Siegle to obtain advice from FSG and to apportion the costs according to that advice. It would appear from the evidence that the accrual of £121.13 is less than half the total accrued for 2012. The Respondent raised no additional argument nor introduced any comparable evidence either in respect of the servicing costs or the cost of calls out. We cannot say that any of these costs was unreasonable and so WE DETERMINE that these costs were reasonably incurred.

4.8 Mr Seigle accepted that the invoice from Chubb Fire Ltd (Tab3 p81) dated 30th November 2010 should have appeared in the 2011 accounts. He was unable to say whether the invoice had been delivered late or whether Rowland Jones had overlooked it. He could not be sure whether it applied to Cork House or to Weavers House. In evidence, Mr Siegle recognised that he had a difficulty in respect of this invoice. On the evidence, we cannot be sure that the invoice actually related to Cork House. Neither the invoice nor the inspection certificate indicates which House is involved. A letter from Rowland Jones to Mainstay dated 17th July 2013 provides no assistance. Mr Siegle candidly accepted these points. We are therefore not satisfied that this invoice relates to Cork House and accordingly WE DETERMINE that the cost of £46.87 was not reasonably incurred. The Respondent is therefore entitled to a credit in respect of his proportion of this amount. We make no determination in respect of the section 20B issue.

5 LIFT COSTS

2012 - £16,851; 2013 - £8,100

5.1 The Respondent questioned whether there were any lifts in Monmouth House as there were no lift costs (Tab4 p14). The budget figure for Cork House for 2012 was £8,810. The actual figure was £16,851. The Respondent also pointed out that the lift costs for Weavers House were budgeted to be £2,025 for 2012.

5.2 Mr Siegle confirmed what our inspection had already informed us that there was indeed no lift in Monmouth House and there was only one lift in Weavers House. As already mentioned in this Decision, there are four lifts in Cork House. Mr Siegle referred us to Tab2 p26-28 where the actual costs are set out. Weavers House costs for one lift in the 2012 accounts were £4,315. Both Cork House and Weavers House overspent in 2012. The costs comprised annual servicing, an annual lift service contract, administration undertaken by ILECS, lift insurance, inspections and emergency telephone.

5.3 Until November 2012, three of the lifts in Cork House had been maintained by Swansea Lift Repair & Service Ltd (Swansea Lift). The other lift had been maintained by Cardiff Lift Company (Cardiff Lift). Swansea Lift charged £300 per year (plus VAT) for each lift and charged for additional calls out. Cardiff Lift charged just over £300 per year (inclusive of VAT) for the one lift, again making additional charges for calls out. Mr Siegle explained that Mainstay had fallen out with Swansea Lift over charges. It had contacted ILECS, a lift contract administration company, which it employed on

its other sites, to review the contract arrangements. As Mainstay manages 350 developments which involves in the region of 2000 lifts, it employs ILECS as consultants to negotiate and administer lift contracts. ILECS had considered the Swansea Lift and Cardiff Lift contracts and had contacted some of the major UK lift companies (OTIS and Kone) for alternative costs. Both offered an all-inclusive contract - all servicing, maintenance and repairs. The only exclusions were vandalism and obsolescence. ILECS had recommended OTIS. Before OTIS was prepared to take over responsibility for the contracts, the lifts had to be brought up to an acceptable standard which involved considerable expenditure.

5.4 Rowland Jones had been aware for some time prior to 2011 that a substantial amount of refurbishment was required. In the year to 28th September 2011, current account expenditure for the lifts in Cork House comprised £7,944 (Tab2 p5) whilst a further £41,271 had been spent from the Sinking Fund, or Special Funds, as Mainstay calls them (Tab2 p9). (The accounts were actually prepared by Mainstay which was appointed manager from 1st September 2011.) The work had included changes to the panels, internal refurbishment, lights and flooring. ILECS had looked at this work and did not comment on it. OTIS did not need to redo this work.

5.5 In July 2012, the lift in core 1 failed. Swansea Lift had refused to attend and so OTIS was instructed to carry out the work. The July invoices were approved by ILECS for payment and will appear in the 2013 accounts (seeTab3 pp211-214). However, further substantial work was required. The invoices at Tab3 pp165-168 which totalled over £11,000 are dated 14th and 22nd August 2012 respectively. Mr Siegle remembered the incident well. The engineers had had to remove the oil manually and take the pump workings apart. The snapped shaft had damaged the valves. A new hydraulic pump and motor had been required.

5.6 The Respondent told us that he had contacted Swansea Lift and Cardiff Lift. He had read out the description of the work as appearing on the invoices at Tab3 pp165-168 and had been told by Cardiff Lift that a ball park figure would be £3,500 to £4,000. OTIS is the Rolls Royce of lifts, London based and with London prices. Mr Siegle could not see how Cardiff Lift could quote for a job in respect of the lift in core 1 as it had only dealt with the lift in core 2. Swansea Lift had refused to look at the job. Mainstay was trying to get the lift repaired. An elderly lady was housebound. Mainstay had left it to ILECS to sort out the contract. It had recommended OTIS. He did not know what other companies had been approached. ILECS did not give details. It only gave a recommendation - which is what it usually does. Mainstay would only override a recommendation if it had had a bad experience with the recommended contractor. ILECS generally deals with the 5 or 6 main contractors, not usually with smaller local companies. This is their specialism. OTIS engineers are based locally. The same engineer attends each call out so he can build up knowledge of the lift. The Respondent commented that OTIS charged £500 per day and that it would have been worth a phone call to find out how much Cardiff Lift would charge. Mr Siegle responded that Mainstay had been advised by ILECS who were independent consultants acting in its best interests. He saw no reason to argue with them.

5.7 The Respondent also pointed out that Swansea Lift charged £48.50 per hour (Tab3 p95) to £55.00 per hour (Tab3 p125). OTIS charged its engineers out at £122 per hour (Tab3 p211). Mr Siegle explained that the engineers were qualified professionals whose firms charged at these rates, in the same way as Solicitors and accountants do. We noted that Swansea Lift had charged £97 per hour for travel time and £194 per hour for working time on the 8th December 2011 (a Thursday)(see Tab3 p124).

5.8 With regard to other expenses under this heading, Mr Siegle explained that the Virgin accounts were for the emergency telephones in the lifts. The principle cost was the standing charge. The usage was minimal. The Mainstay accounts were not set up to deal with standing orders from the service charge accounts as these were trust accounts. Hence there was no alternative but to pay the additional charge for the paper bill. The Respondent indicated that he accepted these charges. The Respondent also queried the invoices for Engineering Insurance (Tab 3 pp92 and 94). Mr Siegle again explained the purpose of this. He also explained that where invoices related to the five lifts in

the Development, only a proportion was charged to Cork House. The Respondent did not pursue this further.

DETERMINATION

5.9 We can appreciate the Respondent's concern when a major managing agent, such as Mainstay, ceases to instruct a local contractor and instead employs a national company to carry out the same work. It is bound to lead to a suspicion that costs will rise. We accept Mr Siegle's evidence that Mainstay had fallen out with Swansea Lift and so it was not unreasonable for Mainstay to look for another contractor to service and maintain the lifts.

5.10 The Respondent's point is that Mainstay had not fallen out with Cardiff Lift and that Cardiff Lift's service had been satisfactory in respect of the one lift which it serviced. Mainstay could easily have invited Cardiff Lift to tender for the servicing and maintenance of the other lifts. With lower overheads than a large national company, Cardiff Lift could have been a cheaper option than the one selected. Instead Mainstay had approached ILECS, another national company, to negotiate and administer the lift contracts and ILECS had recommended OTIS.

5.11 Lifts are essential to the concept of apartment living. Failure to maintain the lifts and repair them promptly can lead, as it did here, to a tenant being housebound. Mainstay had no issue with Cardiff Lift. However, because it has a portfolio of 350 developments with 2000 lifts, it employs ILECS to find the best deals and then to oversee the arrangements with the selected contractor. ILECS had recommended an all-inclusive contract with OTIS. This is an arrangement which a number of managing agents prefer. In some cases it may turn out to be a cheaper option and in others, more expensive. However, it has the benefit of certainty and provided the managing agent is judicious in its selection process, it cannot be said to be unreasonable. In this case, Mainstay has employed ILECS to negotiate with the lift companies. We do not know why Cardiff Lift was not asked to tender but again it cannot be unreasonable to appoint an agent to negotiate terms and then to follow the agent's recommendation. We have no evidence to suggest that the selection process was flawed in any way or, indeed, that the end result was disadvantageous to the lessees. The Respondent did not provide us with any comparables and without such evidence we cannot say that the annual servicing and maintenance costs were unreasonably incurred.

5.12 The Respondent's other complaint was the cost of repairing the lift in core 1. When he had approached Cardiff Lift for an oral estimate as to the cost of the repairs to the pump and motor, he had been quoted £3,500 to £4,000 and yet the amount charged by OTIS was £11,000. We do not give any weight to this evidence. The Respondent had read out what was written on the invoices. This would only have been, at best, a summary. It would not have given the detail necessary for a fully costed quotation to be prepared. It was not in writing and the company knew that it was not going to have to work to that price. Mainstay had instructed ILECS which had recommended OTIS. ILECS is independent and Mainstay had, as it would generally do, accepted that advice. Again, without more in the way of evidence we cannot see that Mainstay was unreasonable in following that advice. We appreciate that the costs were substantial, but engineers are professionals and their charges are weighted accordingly. Whilst the Respondent referred us to Swansea Lift's charges of £48.50 per hour (Tab3 p95) and £55.00 per hour (Tab3 p125), and compared those with the charges for the OTIS engineer of £122.00 per hour (Tab3 p211), we observed at the hearing that the charges for Swansea Lift's engineers were £97.00 per hour for travel and £194.00 per hour for working time (Tab3 p124). We are not persuaded on the basis of that evidence that the charges of the OTIS engineers were unreasonably high.

5.13 We are required to determine whether the costs were reasonably incurred, not whether the work could have been carried out more cheaply. In this case, the managing agent has taken independent advice and has followed that advice. We have no evidence to suggest that the process was in any way suspect. It may be that Cardiff Lift could have done the job more cheaply, but the

evidence is not sufficient for us to come to that conclusion. WE DETERMINE that these costs were reasonably incurred.
5.14 The Respondent accepted that the telephone costs were reasonably incurred and did not pursue the issue of Engineering Insurance. WE DETERMINE that these costs were also reasonably incurred.

6 ELECTRICITY

2012 - £10,034; 2013 - £7,000

6.1 The Respondent's complaint is that the charges for Cork House bear no relation to the electricity charges for the other two Houses: Monmouth House - £1,300; Weavers House - £2,273 (Tab2 pp26 and 28). Further, the Car Park had electric lighting, but there were no electricity costs charged to the Car Park (Tab2 p29). In the Respondent's view the communal floor space in Monmouth House was larger than that in Cork House. Although there were four lifts in Cork House, he considered that lifts do not use a lot of electricity. Further as there were four lifts in Cork House servicing 46 flats and one lift in Weavers House servicing 43 flats, it followed that each lift was in use only one quarter of the time that the lift in Weavers was in use.
6.2 Mr Siegle acknowledged that there was a difficulty here and Mainstay intended to make adjustments to the 2012 communal electricity account. Mainstay is in the process of completing the 2013 accounts. Mr Siegle told us that there were four meters for the supply at Monmouth House, one for Weavers House and a separate electricity meter for each core at Cork House (ie 4 meters). He said it would be safe to assume that the Car Park was served either through Weavers House or Cork House. It was necessary to allot the correct proportion to the Car Park. This required an engineer and a survey monitoring the usage. He added that the lights were on timers and activated by PIRs set throughout the basement. Cork House was now averaging £500 per month, but this was at a lower rate than previously. Mr Siegle considered that it was not possible to compare Monmouth House with either Cork House or Weavers House. The systems are different there. He considered that the figures for electricity consumption at Monmouth House were about right for a building of that type - four cores but no lifts. He felt that with lift usage the charges would be more for Cork House.
6.3 Mr Siegle accepted that the difference between Monmouth House and Weavers House was the lift. The difference in electricity cost was about £1,000. It was reasonable to allocate that difference to the lift usage. As Cork House had 4 lifts, it would be therefore be reasonable to add a further £1,000 per lift to the Weavers House electricity cost. The Respondent suggested to Mr Siegle that it would be reasonable to attribute a figure of £5,000 to the cost of communal electricity at Cork House. Mr Siegle could not say that such a figure would be wildly off the mark. The balance would be attributable to the Car Park and the Respondent would be required to contribute his proportion of the cost. The Respondent would be entitled to a credit of 1.4% (2.3178-0.9174) - approximately £70.

DETERMINATION

6.4 Clearly something is not right, as Mr Siegle acknowledged. We note that Mainstay is proposing to make adjustments to the electricity account. However, the Applicant has issued Court proceedings with a view to obtaining a final judgment against the Respondent and it would not be right for the judgment to be for a sum admitted by the Applicant's agent to be in excess of the amount due. Mr Siegle accepted that the Respondent's suggestion attributing £5,000 to the cost of electricity for Cork House was not wildly off the mark.
6.5 Adopting the Respondent's reasoning, the electricity for Monmouth House with no lifts is £1,300. Weavers House with one lift has an electricity cost of £2.273. As the Respondent says this is

approximately £1,000 more. It is a reasonable assumption, as acknowledged by Mr Siegle, that this difference is attributable to the lift usage. Although the Respondent approximated the arithmetic (£1,300 + 4 x £1,000 = £5,000), the actual difference between Weavers House and Monmouth House is £2,273 - £1,300, ie £973. If we are to adopt the Respondent's approach, which we do, it is only fair to both parties if we use the actual figures. The cost of the electricity for the four lifts in Cork House will be 4 x £973 = £3,892 to which we add the non-lift electricity adopting the figure for Monmouth House (£3,892 + £1,300 = £5,192). On that basis WE DETERMINE that the amount of £10,034 for electricity was not reasonably incurred but that the amount of £5,192 was reasonably incurred. The Respondent is therefore entitled to a credit for his proportion of the excess of £4,842, ie £112.23. He, in turn, will have to pay his share of the basement costs (£4,842 x 0.9174% = £44.42) giving the Respondent a net credit of £67.81.

6.6 The figure for 2013 was £7,000 for Cork House. Electricity charges have generally increased although we note Mr Siegle's evidence that a change of supplier has resulted in a general reduction in the tariff. Nonetheless, it was not argued that this amount was unreasonable to put in the budget for 2013. It would be reasonable to allow for some increase just in case the hoped for savings were not achieved. Therefore WE DETERMINE that the budgeted costs for 2013 were reasonable.

7 INSURANCE

2012 - £10,716; 2013 - £11,980

7.1 Again, the Respondent was concerned about the differences between the cost of insurance for Monmouth House (£5,824), Weavers House (£4,580) and Cork House (above). He argued that insurance was based upon the floor area with Monmouth House (24,000 sq ft) paying substantially less per square foot than Cork House (31,000 sq ft).

7.2 Mr Siegle pointed out that the premiums were based on the reinstatement cost, not the square footage. The reinstatement values of the Houses were shown at Tab4 pp 19, 21 and 23. For Weavers House the cost was £3,141,750; for Monmouth House it was £4,761,895; and for Cork House it was £5,112,000. Mr Siegle did not know how the present figures were arrived at. The Applicant as freeholder dealt with the insurance through its brokers, Tysers whose invoices appeared at Tab4 pp20, 22 and 24. Values were revised each year in accordance with the index of building costs and the buildings were revalued every 3 - 5 years. They had not been revalued in the last two years. The cost of the lifts was factored into the reinstatement costs.

7.3 Mr Siegle accepted that the rate for the premium for Monmouth House (11.5p per £100) and Weavers House (13p per £100) were substantially less than the rate for Cork House (19p per £100) and that the rate of premium for Cork House was at the top end of the range usually applicable. The reason for this was the claims history for Cork House. He was not personally aware of the claims history for the Houses - he had not been provided with that information. There could have been leaks inside apartments which would not be Mainstay's responsibility.

7.4 We were concerned that, as a Tribunal, we were being asked to determine the reasonableness of the insurance premium for Cork House without being provided with a significant piece of evidence. We therefore suggested that it might be appropriate for us to defer consideration of this issue directing the Applicant to provide the claims record and to enable both parties to submit their representations in writing. Directions to this effect were issued following the hearing (dated 9th January 2014).

7.5 The information was received by the Tribunal on the 16th January 2014 together with a letter from Tysers dated 15th January 2014. In 2009, Cork House had 2 claims, one for fire/lightning costing £8,420.92 and one for accidental damage at a cost of £1,268.50. There have been two further claims - water damage in 2010 (£1,296.00) and escape of water in 2013 (£1,251.00). Weavers House has had one claim only in 2009 - water damage (£2,924.00) - as has Monmouth House - water ingress (£334.00). In 2012, the premium was £234 per unit for Cork House. Weavers House was £100 and

Monmouth House £134. The claims percentages for Cork House from 2009 were 147%, 92%, 48% and 5%. The rebuilding costs for Cork House in 2009 were £4,016,753 and, following a revaluation and applying inflation factors for 2012 were £5,152,896. The Respondent replied on the 23rd January 2014. A further letter was received from Mainstay dated 29th January 2014 enclosing a letter from Estates and Management Ltd dated 28th January 2014.

7.6 According to Tysers, the insurance is reviewed annually and the portfolio containing these properties is regularly tested against the market. Prior to renewal in 2010, a remarketing exercise was carried out as a result of which the insurer was changed from AXA to Zurich. A further benchmark exercise was carried out prior to the renewal in October 2012. In view of the historic claims experience, Tysers considered the premium for Cork House to be reasonable.

7.7 The Respondent argues that as the rebuild costs for Cork House were £5.152m and those for Monmouth House were £4.79m, Cork House is more expensive to rebuild by a factor of 1.075, due no doubt, in his view, to the lifts. He states that the total claims from 2009 to 2013 for Cork House were £12,236.42 whilst Monmouth House had only one claim during this period, namely £334. Assuming premiums for Cork House of £10,000 for 2009 and 2010, Cork House will have paid a total of £40,672 whilst Monmouth House will have paid £22,655 on the further assumption that the premiums for 2010 and 2011 were each £5,500. He points out that the difference in total premiums of approximately £12,000 more than covers the total losses incurred at Cork House and the "substantial loss of £8,420.92 in 2009" was well covered by the difference in premiums over the next 2 years. He did not understand the claims record percentages. However, in his view the increase in premium between 2009 and 2012 was due to the increase in rebuild costs as the rebuild costs increased by a factor of 1.283 and the premiums by a factor of 1.232. He asks if the premium for Cork House was ever as low as £100 per unit as it is in Weavers, querying whether this was because it has no lift (it actually has one lift - see above).

7.8 Estates and Management explain the factors which insurers take into account in assessing the premiums and state that the insurer generally looks at a rolling three year claims experience to assess how an individual risk has performed. The insurer adjusts the premium taking a view of the annual and three year record. As Weavers House claims total only £2,924 compared with £12,136.42 for Cork House, this is bound to impact on the premiums charged. Estates and Management argues that premiums of between £190 and £234 per unit at Cork House are reasonable.

DETERMINATION

7.9 We appreciate that there is a substantial difference between premiums of, on the one hand, £100 for Weavers House and £134 for Monmouth House and, on the other, £234 for Cork House. We accept that increases in rebuild costs will affect the premiums and the Respondent appears to be correct that the recent increases are directly influenced by the revaluation and the inflationary increases in the rebuild costs. But whilst the cost of the four lifts in Cork House is included in the sum insured, that figure does not take into account the additional electrical and mechanical components which themselves add to the risk. Damage due to malfunctions and vandalism can prove expensive. Certainly the claims experience will have an effect and we have little doubt that the claims in August 2009 for £1268.50 and £8,420.92 have affected the premiums for the years following.

7.10 As in all cases, we have to consider the case upon the basis of the evidence. The Respondent has not provided us with anything upon which we can safely rely. He has not arranged for alternative quotations. His estimates as to the premiums for 2010 and 2011 are mere assumptions and are made without referring to any evidence. His observation that the premiums have increased in line with rebuilding costs does not establish whether the premiums charged for Cork House are unreasonable. The premiums for Monmouth House and Weavers House are certainly less, but the Applicant's explanation is certainly plausible. The insurance is negotiated through a broker with a

reputable insurer. It cannot be said that the Applicant has acted unreasonably in so doing. WE DETERMINE that these costs were reasonably incurred.

8 SPECIAL FUNDS

2012 - £39,390; 2013 - £12,000

8.1 The Respondent comment (Tab4 p14) that as the car park is treated as common and everyone pays the same, should not the sinking fund contributions also be the same, but they are £6,180 for Monmouth House and £39,390 for Cork House.
8.2 Mr Siegle's answer is that the sinking fund contributions are provisions made for future expenditure eg, for the replacement of mechanical and electrical equipment and other major expenditure. As Cork House has more complex equipment the contributions of the lessees in Cork House have generally been set higher than for those in the other Houses. The 2012 contribution had been set by Rowland Jones in view of the anticipated expenditure on the four lifts. Mainstay then reduced the contribution to the previous level of £12,000 for 2013.
8.3 Mr Siegle appreciated that it must be irritating for a lessee selling a flat to know that he/she has paid a substantial sum into reserves from which the buyer will benefit. However, it must be concerning for a buyer if there is no fund to pay for a substantial repair. At some point, Rowland Jones realised that the lifts needed a partial revamp and that it had insufficient funds to achieve this. Swansea Lift was talking of future costs of £15,000 per lift (ie £60,000). In 2011, £41,271 had been spent from the sinking fund on refurbishment of the lifts in Cork House (Tab2 p9). That reduced the sinking fund to zero. It was necessary to replace the reserves. It needed a minimum of £12,000 to £15,000 as additional works were required to the lifts. In Mr Siegle's view there should have been £24,000 in the fund in September 2011. £12,000 is being charged in 2013. There was nothing significant in the way of expenditure in 2012 or 2013. Expenditure was paid for out of the general service charge. There is a potential upgrade required in 2014. Ideally he would like to see £50,000 to £60,000 in the sinking fund.
8.4 In the Respondent's view, £39,390 was "a bit of a shock".

DETERMINATION

8.5 Paragraph 13 of the Fourth Schedule of the Lease allows the Applicant "to set such sum from time to time as shall reasonably be considered necessary by the [Applicant] to provide a reserve fund or funds for items of future expenditure…" (Tab 1 p16). Unfortunately due to the cost of the lift repairs in 2011, the reserve fund for Cork House had been fully expended (see Tab2 p9). We accept Mr Siegle's evidence that prospective purchasers of leases in the block will expect to see a reasonable sum in the sinking fund so that he/she will not be expected to pay an excessive amount should major repairs be necessary.
8.6 Mainstay did not of course set the budget. However, it adopted the figures prepared by Rowland Jones. It demanded the sum of £39,390, over £900 per flat. We can understand that the Respondent found this amount "a bit of a shock". However, one of the purposes of a sinking fund is to remove the element of shock from the service charge so that the occasional peak in expenditure does not necessarily give rise to a sudden increase in the amount payable by the individual lessees. We appreciate that every managing agent likes to have a "comfortable" amount in the reserves. That is a sound policy and is not one with which we as a Tribunal will generally interfere. However, the extensive repairs (£16,851) in 2012 were covered by the general service charge. We are not sure we would regard that amount as insignificant, but if it was intended that that level of expenditure could reasonably be charged to the service charge, we do not see that it should be necessary to levy an additional £39,390 for the same year. Not all of the sinking fund would be earmarked for lift costs, but on the basis of the evidence that seemed to be the main contender. We accept that the

costs had to come out of current account as there was nothing in the sinking fund, but it is not unknown for managing agents to draw on the money paid into sinking fund in the year it is collected. As it happens, there was nothing "significant" in 2012 or 2013, but Mainstay did not know that in September 2011 when the budget was adopted. We appreciate that Mr Siegle stated that he would wish to see a fund level of £50,000 to £60,000, but he believed that Cork House should have had £24,000 in the sinking fund in September 2011.

8.7 Budgeting costs is always easier in hindsight. In assessing whether the demand for £39,390 was reasonable we must consider the position as it must have appeared in September 2011. In 2011, £7944 had been spent on lift costs on current account (Tab2 p5) and £41,271 from the sinking fund (Tab2 p9). This totals £49,215. We do not know when Swansea Lift suggested that a further £15,000 per lift would be required, but we are, however, reminded of Mr Siegle's evidence that Mainstay was sceptical about Swansea Lift's charges anyway (see paragraph 5.3 above). We were given no evidence about what Swansea Lift had in mind, whether it was just a general comment in passing or whether it was as result of detailed assessment concerning the condition of the lifts. Expenditure at that level would have required consultation with the lessees, even for one lift. We were not presented with any evidence as to what expenditure Rowland Jones, or for that matter Mainstay, anticipated leading them to include such a large amount in the budget because, according to Mr Siegle, in reality nothing substantial was carried out either in 2012 or 2013. There is a possibility of an upgrading in 2014. Even this did not have an air of certainty. Undoubtedly, there would have been an understandable desire to replenish the depleted funds just in case of problems. However, we have no evidence as to whether there was any particular expenditure it was considering at the time and as far as Mainstay was concerned, it had merely adopted Rowland Jones' figures. Without evidence of something specific we do not see why the exercise could not have been spread over a few years. In our view, it would have been reasonable to have adopted a more gradual approach, particularly as Mainstay regarded it reasonable to recover lift costs of nearly £17,000 through the service charge without resorting to a replenished sinking fund and there was nothing specific which required such a substantial amount to be held in reserves at that time.

8.8 WE DETERMINE that the sum of £39,390 was not reasonable. The budgeted figure for reserves for 2013 was reduced to £12,000. We can appreciate that a managing agent will feel the need to have an initial boost to the sinking fund where it has been reduced substantially as a result of major works. We consider that £12,000 would not be enough as that would take too long to replenish the reserves. WE DETERMINE that the sum of £20,000 would have been a reasonable amount to take on account. The Respondent is therefore entitled to a credit for his proportion of the balance of £19,390.

9 CAR PARK FIRE SAFETY

2012 - £697; 2013 - £3,600

9.1 Mr Siegle referred us to the evidence given previously relating to Fire Safety (paragraph 4 above). The apportionment of the cost for 2012 had been provided by FSG. When Mainstay had put together the 2013 budget, it had been concentrating on the major items of expenditure. He conceded that it was not fully conversant with the actual expenditure and had used the previous year's budget as a guide. He agreed that the figure of £3,600 for 2013 was an overstatement. Mainstay had only 8 months' management figures and they had not been apportioned - although he conceded that he had received the letter from FSG referred to in paragraph 4.4. When dealing with the budget for 2013, he had not referred to that letter.

DETERMINATION

9.2 There is no issue concerning the 2012 figure and so for the sake of completeness WE DETERMINE that this was reasonably incurred. Mr Siegle has acknowledged that £3,600 is an over estimate for 2013. If he had been aware of the management figures for 2012 and had referred to the FSG letter, he would no doubt have realised that this figure could not be justified. In the absence of evidence that some major expense was anticipated, we would have thought an amount closer to the 2012 figure would have been appropriate. In the circumstances, WE DETERMINE that the amount of £3,600 is not reasonable but that an amount of £700 is reasonable. The Respondent is entitled to a credit for his proportion of the difference of £2,900.

10 ADMINISTRATION CHARGES

Cork House		
15/11/12 Late payment fee (Tab1 pp125 and 114)	£48.00	
14/12/12 Late payment fee (Tab1 pp124 and 114))	£48.00	
08/02/13 Land Registry fee	£ 3.00	
08/02/13 Late payment fee (Tab1 pp126 and 117)	£48.00	
19/02/13 Solicitor referral fee (Tab1 p117)	£96.00	£243.00
Car Park		
25/06/12 Late payment fee (Tab1 pp146 and 138)	£48.00	
25/06/12 Late payment fee	£48.00	
15/11/12 Late payment fee (Tab1 pp148 and 141)	£48.00	
14/12/12 Late payment fee (Tab1 pp149 and 141)	£48.00	£192.00
		£435.00

10.1 Mr Siegle informed us that the second car park entry for £48.00 dated 25/06/12 was duplication and had now been removed.

10.2 We invited Mr Siegle to refer us to the relevant clause in the Respondent's lease entitling the Applicant to charge late payment fees. He drew our attention to paragraph 14 of the Third Schedule (Tab1 p13). The clause reads:

"*To pay all reasonable expenses (including Solicitors costs and Surveyors fees) incurred by the [Applicant] on a full indemnity basis (a) incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925…"*

Mr Siegle said he had assumed that the clause covered the costs. He outlined the procedure adopted by Mainstay for recovering outstanding service charges:

- Arrears letter 1 - (Tab1 p120) - a letter advising the debtor of the amount due and informing him/her that if payment was delayed, an administration charge of £48 will be added to the account.
- Arrears letter 2 - (Tab1 p121) - a letter informing the lessee that £48 has been added and that a further £48 will be added if Solicitors' action is required and "pre-legal notification" necessitated.
- Arrears letter 3 - (Tab1 p122) - a letter informing the lessee that a further £48 has been added and that if payment not made in full the file will be passed to Solicitors and a further £96 will be added to the account.
- Solicitor referral - the file is then passed to Solicitors and the £96 added to the account.

The letters at Tab1 pp120-122 followed that procedure, but the file was not passed to Solicitors because Mainstay had instructions to hold fire because there was a Right to Manage application in progress.

10.3 At each stage, the computer generates a report. The Credit Controller looks after 22 developments and the defaulting lessees are collated into a single report. Mr Siegle receives a spreadsheet which he goes through. He may put an account on hold if, for example, he is aware of a dispute, or if the property is in process of being sold, or a lessee has died. He decides which cases should be pursued and this information is fed into the computer and the arrears letter 1 is generated. There is also an automatic envelope machine so the letters are sorted and franked.
10.4 When the file is prepared for Solicitors, the Credit Controller puts together a full statement of account, copies of the service charge demands, arrears letters, service charge administration letters, a summary of any disputes and correspondence. This was largely an automated process. Mr Siegle agreed that this did not seem to take long as described by him. The Regional Director was involved in making the decision to refer to Solicitors. The client has to be contacted and sometimes the client may wish to have the Managing Director involved.
10.5 The charge of £48 for arrears letters 2 and 3 is set by the Credit Control Manager in agreement with the Board. They know the staffing costs. There are 6 credit controllers and one manager. The credit controllers need not have experience. They are 25-26 year olds earning £17,000-£18,000 a year. After arrears letter 1, 50% of the defaulting lessees pay. The cost of this letter is included in the management fee. Mr Siegle agreed that the amount of £48 (£40 plus VAT) is pitched as a deterrent. If Mainstay threatened a charge of £10, it would not have the same effect. He accepted that it was not reasonable to charge for 2 letters sent out on the same day to the same lessee - one letter concerning flat arrears and the other concerning car park arrears. However, the letters were computer generated and the accounts for the flat and the car park were separate.
10.6 We referred Mr Siegle to the decision of this Tribunal in Prospect Place Management (Cardiff) Ltd -v- Mr Atif Shabir (ref LVT/0024/04/12) (Prospect Place) in which the question of administration charges was discussed and in particular the amount of such charges. Mainstay had been the managing agent in that case and Mr Siegle had given evidence on behalf of the applicant. The amount of the charges had been the same as in this case and the Tribunal (which included the present Chairman) had determined that charges of £48 were not reasonable. Mr Siegle told us that he was not aware that we could refer to that case. We explained that we were able to do so as long as we gave him the opportunity to comment on it, argue against it or distinguish it. It was not binding on this Tribunal.
10.7 Mr Siegle wished to know if he had explained the procedure at the earlier hearing. We read out the relevant paragraphs of the decision and it was apparent that he had. We drew Mr Siegle's attention to the fact that the Prospect Place case had related to charges in 2011 whereas these charges were incurred in 2012 and 2013. We were told that Mainstay had decided to ignore the Prospect Place decision and continued to charge on the same basis as in that case. However, he did not have details of the actual cost of credit control. He did not know how many arrears letters were sent, nor whether the credit control department made a profit or a loss. He did not know of any other decision relating to their administration charges.
10.8 The Respondent argued that debt letters ought to be included in the management charge. He considered that they could not be expensive. Mr Siegle responded that credit companies charge for their services. The Respondent also pointed out that the arrears letters had been sent to Siân Day at Eglwys Nunnydd, Margam. He had not received letters from Mainstay for 18 months. They had not been sent to the right address until February 2013. Mr Siegle explained that Mainstay had been given that address as the Respondent's address for correspondence by Rowland Jones. Demands had been sent there and the demand for 29th September 2011 and all arrears including two late payment fees had been paid in January 2012 (£4,757.91). The Respondent told us that Siân Day worked for a firm of financial consultants. Richard Harry was his Financial Adviser.

DETERMINATION

10.9 Amounts payable in respect of the "failure by the tenant to make a payment by the due date" are "administration charges" (see Schedule 11 of the Commonhold and Leasehold Reform Act 2002) and as such are only payable "to the extent that they are reasonable". It is now settled law that a lessor must serve a notice under section 146 of the Law of Property Act 1925 before seeking to forfeit a lease as a result of the lessee's failure to discharge his/her obligations to pay his/her proportion of the cost of services provided by the lessor through the service charge. This is so even though that service charge is stated in the lease to be recoverable as rent (see Freeholders of 69 Marina, St Leonards-on-Sea -v- Oram [2011] EWCA Civ 1258]). The steps taken by Mainstay, the warning letters and the preparation of the file for Solicitors, are necessary preliminaries to that process. The costs incurred in carrying out these steps are incidental to the preparation and service of a section 146 notice and as such are administration costs.

10.10 The first issue raised by the Respondent is whether the costs should be included as part of the management charge. Mr Siegle accepted that the first arrears letter was accepted as part of the management charge, but that the further letters were not. Mainstay's management charge takes account of a certain level of default, but there comes a point when the cost of pursuing defaulting lessees is outside the general cost of management. Whether it be one letter or two is not for us to decide provided that it is within the bounds of reasonableness. In this case, the Respondent was warned that extra charges would be incurred if there was a continued default. If a lessee ignores that warning, we cannot say that it is unreasonable to charge for the administration of the next stage in the process. Indeed, each next step is presaged by a warning that if Mainstay carried it out, the lessee would incur further costs.

10.11 The Respondent argues that he did not receive the correspondence. However, the address given to Rowland Jones was at Eglwys Nunnydd and that was the address passed on to Mainstay. What is significant in our view is that a demand sent to that address was paid in January 2012. It is the responsibility of a principal to notify the other party to an agreement that he/she has changed or dismissed his/her agent. The other party may have no other means of knowing as the former agent may not pass on this information. Whilst we appreciate that the Respondent was at the time suffering certain medical problems, Mainstay was not to know that and those charged with looking after the Respondent's affairs ought to have made arrangements for the fulfilment of the Respondent's obligations under his lease. This included the payment of service charges. Siân Day had been held out as the Respondent's agent and failure to notify Mainstay of any change is the responsibility of the Respondent and those dealing with his affairs. The Applicant should not be prejudiced by this failure.

10.12 Mr Siegle told us that one of the two charges for the car park dated the 25th June 2012 was duplicated. WE DETERMINE that the second of these charges was not reasonable. He also agreed that it was not reasonable to charge for two arrears letters when both were sent to the same address on the same day, one for the flat and one for the car park. Accordingly, WE DETERMINE that the two charges for the car park dated 15th November 2012 and 14th December 2012 were not reasonable.

10.13 Mr Siegle frankly accepted that the amount of £48 for the arrears letters 2 and 3, set by the Credit Control Manager in agreement with the board, was a deterrent and that an amount of £10 would not have the desired effect of encouraging defaulting lessees to pay. The fee charged is not so much to recompense Mainstay for sending out the letters as an "encouragement" to ensure prompt payment. The lease entitles the lessor to recover "all reasonable charges… incurred by the [Applicant] on a full indemnity basis (a) incidental to the preparation…" of a section 146 notice. The deterrent effect is not incidental to that purpose and as such is not recoverable. The question is therefore how much is reasonable.

10.14 Mr Siegle accepted that the process was largely automated, with minimal management input, and with credit controllers who need not have any experience, earning fairly basic wages. Even the

production of the file for Solicitors was largely automated with minimal management time. We appreciate that some lessors may wish to discuss matters with senior management who would not normally be involved but we do not see why the Respondent should pay for the privilege.

10.15 We had drawn Mr Siegle's attention to the decision of this Tribunal in Prospect Place. He was not aware of any other case involving Mainstay's administration charges. He did not seek to distinguish Prospect Place from the present case. Nor could he provide us with any justification for the amounts claimed. In Prospect Place, this Tribunal had determined that charges of £48 for the arrears letters and £96 for preparing the file for Solicitors were not reasonable and that charges of £20 inclusive of VAT were reasonable. We recognise that Prospect Place involved charges incurred in 2011 and that the costs in this case were incurred in 2012 and 2013 so that the level determined in Prospect Place may no longer be appropriate. Bearing in mind that £20 per letter equates to £200 per hour, the rate charged in many parts of England and Wales for experienced Solicitors, and that the charge for a letter includes the perusal of the incoming letter as well as dictating and checking or preparing the reply, we consider that such a charge would be reasonable to take into account the small element of management time incurred in the operation. VAT is to be added to this amount. The Land Registry fee is reasonable.

10.16 WE DETERMINE that administration charges of £435 were not reasonable but that the sum of £123 was reasonable, as follows:

Cork House		
15/11/12 Late payment fee (Tab1 pp125 and 114)	£24.00	
14/12/12 Late payment fee (Tab1 pp124 and 114))	£24.00	
08/02/13 Land Registry fee	£ 3.00	
08/02/13 Late payment fee (Tab1 pp126 and 117)	£24.00	
19/02/13 Solicitor referral fee (Tab1 p117)	£24.00	£99.00
Car Park		
25/06/12 Late payment fee (Tab1 pp146 and 138)	£24.00	
25/06/12 Late payment fee	nil	
15/11/12 Late payment fee (Tab1 pp148 and 141)	nil	
14/12/12 Late payment fee (Tab1 pp149 and 141)	nil	£24.00
		£123.00

11 COSTS

11.1 Prior to the hearing, the Respondent had indicated that he wished to make an application under section 20C of the Act. He confirmed at the hearing that he wished to pursue that application. However, Mr Siegle, on behalf of the Applicant, had no notice as to what grounds were being advanced in support of that application. Neither party wanted to have a further hearing. Therefore, both parties agreed that the issue could be determined on the basis of written representations. Directions were given and following these we received representations from both parties.

11.2 The Respondent argues that information only came to light as a result of the proceedings:

- Mainstay failed to obtain a quotation for Cardiff Lift, a company it was happy with;
- Mainstay failed to consider who was paying for electricity in the car park;
- Insurance for Cork House was twice as expensive as for the other Houses;
- Charging £48 for computer generated letters.

11.3 Mainstay referred us to:

- The Respondent's payment record;
- The Respondent's refusal to engage with Mainstay prior to judgement being obtained against him;
- Some of the Respondent's queries were merely a lack of understanding on his part;

- Mainstay was investigating the issue of the electricity charges for the basement;
- A considerable amount of management time had been incurred in preparing for these proceedings (20 man hours at £115 per hour for preparation and 14 hours at £115 per hour for the hearing) - total £3,910 plus VAT. Mainstay would be prepared to absorb the preparation costs and requested the ability to charge the hearing costs - total £1,932.

DETERMINATION

11.4 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 Applicant of such a right (see also HH Judge Mole in Plantation Wharf Management Co Ltd –v- Jackson and Irving [2011] UKUT 288 (LC)).

11.5 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".

11.6 We must therefore balance the Applicant's contractual property right to have its costs paid as part of the service charge, provided such costs are recoverable under the terms of the lease with the Respondent's right not to have to pay in circumstances where it would be manifestly unjust.

11.7 Our starting point in this case must be that the Respondent was in arrears. Neither he, nor those managing his affairs, had raised any issues with Mainstay. He had not paid anything since January 2012. The Applicant could not allow this state of affairs to continue. Mainstay has a responsibility to manage the Development, and efficient management is in the interests of all lessees. Defaulting lessees reduce the pot of money available for services, repairs and (where permitted under the leases) improvements. It is also not fair on those who pay their share of the service costs for others to have those services provided without payment. How robust the process adopted is down to the individual manager provided it does not stray beyond the bounds of reasonableness. Inevitably, if payments are not made, the manager has to commence some sort of legal process. This takes up management time and it is common practice for managers to charge lessors for the additional time spent in carrying out enforcement whether in the County Court or in Tribunal. The management fee is only intended to cover the costs of general management. This will often, as here, include the start of the recovery process, but it is rarely, if ever, intended to cover Court or Tribunal proceedings.

11.8 One aspect to be considered is the extent to which the Respondent was successful in challenging the service costs. The Respondent must be given credit for itemising the issues he wished to challenge. Too often this Tribunal is faced with lessees who adopt the scatter-gun approach, more in hope than in expectation that reductions will be achieved. Of the seven areas of service costs challenged, the Respondent has succeeded in reducing costs significantly in three: electricity, special funds and car park fire safety. There was also a small reduction in the Cork House fire safety costs and a substantial reduction in the administration costs. This amounts to reductions

of approximately 30% in the service costs challenged and a reduction of over 70% of the administration charges. That is not the whole story, of course, but it is a factor for us to consider.

11.9 We accept that Mainstay was aware that there was an issue with the electricity costs, but it should have realised that something was not right as soon as it started receiving bills. The car park fire safety budget bore no resemblance to the costs incurred previously or any anticipated expenditure.

11.10 As in all such cases, it is a question of balance, weighing up the material facts and arguments and coming to a fair and reasonable conclusion based upon those facts and arguments. It is often the case that we will make an order referring to the percentage of costs which must not be exceeded. In this case, Mr Siegle has indicated a figure that he considers to be reasonable - £1,932 inclusive of VAT. That figure is based on an hourly rate for his preparation and attendance of £115 per hour. We have no evidence to support that hourly rate, and our decision cannot be taken as endorsing it. However, it seems to us in the overall context of this dispute that the figure fairly reflects the management time spent for the preparation and at the hearing and makes a reasonable allowance for the success achieved by the Respondent in his challenges. These costs will of course be payable out of the service charge but we are not determining that they are reasonably incurred for the purposes of s19 of the Act.

11.11 WE DETERMINE that the costs in excess of £1932 (inclusive of VAT) incurred by the Applicant in connection with these proceedings before this Tribunal are not to be regarded as service costs to be taken into account in determining the amount of any service charge payable by the Respondent.

12 OTHER SERVICE COSTS

The Respondent did not pursue any other issues and therefore in the absence of argument or evidence to the contrary WE DETERMINE the other service costs in 2012 to have been reasonably incurred and the service costs budgeted in 2013 to be reasonable.

13 SUMMARY

Amount claimed Cork House - 2012			£1,182.91		
Credit 2011			£92.00	£1,090.91	
Disallow -	Fire Safety	£46.87 x 2.3178%	£1.09		
	Electricity	£4,842.00	£112.23		
	Special Funds	£19,390.00	£449.42	£562.74	£528.17
Amount claimed Car Park - 2012			£61.47		
Credit 2011			£14.45	£47.02	£47.02
Amount claimed Cork House 2013				£823.64	£823.64
Amount claimed Car Park - 2013				£61.47	
Disallow -	Fire Safety	£2,900 x 0.9174%	£26.60÷ 2	£13.30	£48.17
Administration charges				£435.00	
Disallow				£312.00	£123.00
					£1,570.00
Debit Car Park Electricity 2012		£4,842.00 x 0.9174%			£44.42
					£1,614.42

Note:

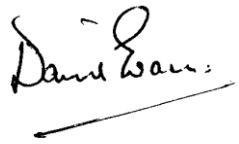
The payment due 29th September 2011 was paid in full and so the credits in respect of service costs for 2012 have been set against the second half yearly payment which is that being claimed in these proceedings.

The credit in respect of the car park for 2013 is only half of the amount disallowed as it is being credited against one half of the annual payment. The Respondent will be entitled to a similar credit against the second half year car park charge.

14 CONCLUSION

WE DETERMINE that the amount payable by the Respondent in respect of the service charges and administration charges referred to us by the Bridgend County Court is £1,614.42.

DATED this 25th day of March 2014



CADEIRYDD/CHAIRMAN