Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference no qA1007130/1

In the matter of 3 Flatholm House, Ferry Court, Grangetown, Cardiff CF11 0JB

In the matter of an Applications under Section 27A and 20C 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

TRIBUNAL	David Evans LLB LLM Roger Baynham FRICS
APPLICANT	Prospect Place Management (Cardiff) Ltd
RESPONDENT	Mr Atif Shabir

DECISION

1 PRELIMINARY

1.1 Prospect Place (the Development) is a substantial development of one and two bedroom apartments built by Bellway Homes Ltd (Bellway) on the western side of Cardiff on the shores of Cardiff Bay. It is adjacent to the A4232 which links to the M4 and is close to the Sports Village, several supermarkets and a number of out of town stores. There are currently 734 apartments and it is understood that when the Development is finished there will be over 900. There are also two gymnasia and a swimming pool and sauna.

1.2 The management of the Development is the responsibility of Prospect Place Management (Cardiff) Ltd (Prospect) which, as its name suggests, is a limited company set up for that purpose. Each lessee has a single share, but Bellway maintains a controlling interest in the company by virtue of a "golden share" which it will relinquish when all the apartments have been sold. Two senior executives of Bellway are appointed Directors of Prospect. Under the terms of the leases, it is open to Prospect to appoint a professional manager to carry out the day to day management of the Development and on the 1st November 2004, Bellway and Prospect entered into a management agreement with Mainstay Residential Ltd (Residential) appointing Residential to act as Prospect's managing agents for a "period of four years" from the commencement date of the agreement, as defined, and continuing until determined on three months' notice.

1.3 The leases for each of the apartments are in a common form. They are for 125 years from the 1st January 2003 at a ground rent of (in the example lease provided) £150 pa, subject to review every 21 years. Both Bellway and Prospect are parties to the leases which follow the usual pattern of leases of this nature. We were given to understand that the freeholds of a number of completed blocks have been sold. The current freeholder of the block in which the Respondent's apartment is situated is Fabrevan Ltd which is not a party to these proceedings. Under the leases, the costs of maintaining the Development are payable through the service charge with each lessee contributing a defined proportion of these costs. The costs themselves are separated into Block costs and Estate costs and each lessee pays a different proportion of each as set out in his/her lease.

1.4 The Respondent is the lessee of number 3 Flatholm House, (the Property). It was purchased on the 30th January 2004. It is located on the ground floor of Flatholm House (Block F) alongside the Concierge's office with its front door facing directly onto the public footpath and the roadway. It is a small one bedroom apartment with a combined kitchen/dining/living room from which can be seen the large communal grassed areas which stretch down the site to the water's edge. Block F is joined to Block G, but they are not inter-connected. In Block F at ground floor level, there is only one other apartment. However, there is also the Business Centre, a large room with adjoining kitchenette, and the undercroft parking and bin store. The other 48 apartments are on the 6 upper floors accessed by means of a staircase and a single lift and, on some floors, long well lit corridors. The Respondent's proportion of Estate costs is 0.1362% of the total and his proportion of the Block costs for Block F is 1.8079% of the total of those costs. We were not shown a copy of the Respondent's lease, merely a pro forma version, but as both parties accepted these proportions we have adopted them in these proceedings.

1.5 In January 2012, Prospect commenced proceedings in the Northampton County Court for recovery of certain service charges and administration costs as well as £310 ground rent arrears. On the 12th February, 2012, the Respondent filed a Defence and on the 6th March 2012, Prospect filed a Reply. The case was transferred to the Cardiff County Court where on the 14th March 2012, District Judge G Carson transferred the issue of the service and administration charges to ourselves for determination. On the 22nd March 2012, we issued directions in response to which the Applicant set out "a list of items which are in dispute and requiring clarification".

1.6 Following an unsuccessful application to have the order set aside, further directions were issued on the 10th July 2012 and the 17th September 2012. A pre-trial review was held on the 12th October 2012 at which the issues between the parties were clarified and again directions were given. At the foot of the Directions we added:

"IMPORTANT NOTICE

Both parties are reminded that whilst the Tribunal is entitled to use its knowledge and experience in determining issues it is incumbent upon the parties to adduce evidence eg relating to contractual arrangements, time spent in carrying out particular services or administration tasks and comparable costs, if it is seeking to challenge or justify any particular item(s) of expenditure."

1.7 The issues related to the balancing charge for the year ending 31st May 2011 (which we shall refer to as Year 11) and the "on account" demands for the year ending 31st May 2012 (Year 12) as well as a number of administration charges. In order to determine the issue of the balancing charge, we must of necessity consider whether the costs for the whole of Year 11 were reasonably incurred.

2 HEARING

2.1 The applications were heard together at the Tribunal Offices on Tuesday, Wednesday and Thursday the 20th, 21st and 22nd November 2012. Prospect was represented by Mr Alex Seigle the Area Manager for Residential assisted by Mr Richard Jones, the site based Property Manager and Mr Chris Manton the Service Charge Accountant employed at Mainstay's main office. The Respondent was represented by his brother, Mr Kashif Shabir. For ease of reference, we shall refer to "the Respondent" even though a particular comment may have been made by Mr Kashif Shabir. Mr Seigle explained that he had not been Area Manager for the accounting period 2010-2011 and that Mr Jones was only appointed in July 2011, after the end of that period.

2.2 Residential had prepared six bundles of documents, five of which were paginated, in order to assist us. We referred to them during the hearing as A1 to A6 with a document being identified by its page number where there was one. We shall adopt the same approach in this decision.

2.3 The Respondent had raised a number of questions in his statement of case. At the commencement of the hearing we identified the various heads of charge to which those questions

referred and in order to keep the focus of the proceedings on the issue of the service costs, we used the annual accounts as our starting point and invited the Respondent to develop his argument indicating the particular invoices which he was challenging and the reasons for so doing. The Applicant was then given the opportunity to deal with each of these issues in turn.

2.4 Upon hearing a number of Residential's explanations, the Respondent indicated that he was satisfied and did not pursue those particular issues further. We will not go into the detail of these issues but will merely record for the sake of completeness that the issues were conceded by the Respondent and that we determine the charges to be reasonably incurred. The Estate Accounts for Year 11 are at A3 p151 and the Block Accounts are at A3 p145. The issues conceded were as follows:

(a) Telephones - £2,471
(b) Out of Hours fee - £3,454
(c) Gardening/landscape maintenance - £17,828
(d) Security bollards, gates and barriers - £9,789
(e) Pumping station - £5,805
(f) Lightning conductors and mansafe inspection - £4,767
(g) Refuse collection - £3088*

*see item 5.5 below.

2.5 Before turning to the individual items in dispute, we consider that it may be useful to deal with three points which the Respondent raised which have a general application.

3 GENERAL ISSUES OF CONCERN RAISED BY RESPONDENT

3.1 The steep rise in service charges

(a) The Respondent complained that, in 2004, the initial service charges were estimated to be £800 a year. The charges were now over £2,100 a year. At the time the Respondent was buying, Bellway must have obtained the estimated figures from Residential. The Respondent prepared his budget – and his ability to afford the purchase - on the basis of those figures. In the Respondent's view it cannot be reasonable for the developer and the managing agent to produce inaccurate figures which they know prospective purchasers are relying upon when they make the decision to buy.

(b) Regrettably, this is an argument which is heard all too frequently in this Tribunal and it is one which we can understand. It is not, however, an issue for us. Our only concern is whether the charges were reasonably incurred, not whether the Respondent was given inaccurate information 8 years ago. What the Respondent was told then is not relevant to the cost of services today.

3.2 The Property is only a one bedroom flat with its own entrance

(a) The Respondent commented on several occasions during the hearing that the Property was a one bedroom flat on the ground floor with its own entrance. The implication which flowed from this is that the Respondent was not benefitting from the electricity costs, cleaning and lift costs and so why should he have to contribute to services for which he was receiving no benefit.

(b) When the Respondent purchased the Property, he did so in the full knowledge that he was obliged to contribute towards the cost of maintaining Block F as well as the Estate. The former included the lifts and corridors – even though he did not use them. It also included the Business Centre available for use by residents at no charge and used by Residential occasionally for which they contributed £1,000 to the Estate costs. The Estate also includes two gymnasia and a swimming pool area which inevitably add considerably to the cost of maintaining the development. The Respondent will have

known that he was bound to pay his share of both the Block and the Estate costs and whilst he may feel he is not personally obtaining value for these services, they are what he signed up to and he is contractually bound to contribute even though he may not have need of these particular facilities.

3.3 The Mainstay business model

(a) Residential is part of a substantial organisation responsible for the management of over 300 sites in England and Wales. It is based in Worcester. It is part of a group which operates through a number of separate companies. There is Mainstay Group Ltd which charged what is called the enhanced management fee which is stated in the accounts (A3 p152) as being "payable in the first year covering the exceptional cost associated with managing a site in the early months following the service charge going live." Mr Seigle said it was in fact the recoupment of the setting up costs incurred when they first took over the site which were charged as and when a new block was taken over. Residential is the actual manager. It employs the area manager and now the on-site property manager as well as other staff at Worcester who deal with contracts, accounts and customer service issues. Residential charges an annual fee for each of the 734 units (actually invoiced by Mainstay Group Ltd). It makes an additional charge for preparing the accounting records for the Accountants to prepare the annual accounts. Mainstay does not employ the on-site staff (other than Mr Jones). These are employed by Mainstay Facilities Management Ltd (Facilities). The concierges, cleaners and handyman are employed by Facilities on a permanent basis and hired out to Mainstay as agency staff at agency rates. As we will see, the agency rates are not liable to VAT , presumably as the service is being provided by an associated company, and so the hourly rate charged, say, for the concierges (£13.95), is only slightly more than an outside company would charge (£11.00 plus VAT @ 20%, ie £13.20). The additional 75p per hour was justified by Mr Seigle on the basis that the Manager for Facilities attended the site more frequently than Residential's Area Manager, keeping check on the on-site staff something which would be the subject of an additional charge if an outside contractor were used. Again, Mainstay (Secretaries) Ltd charges a fee for preparing the Annual Return to Companies House and if accounts fall into arrears, before solicitors are instructed, a firm of debt collectors is instructed, Maybeck Debt Recovery Ltd – another associated company – at a fee payable by the defaulting lessee.

(b) That is not all. When items are purchased by Facilities for use at the Development it generally adds a surcharge of 10% to the cost. Often a charge is made for collecting items from stores, sometimes as high as £50. The man with the van, employed by Facilities and recharged to Residential, is charged at £50 for the first hour and £25 per hour after that making the daily rate £225. Even allowing for overheads that is a substantial daily charge. On some occasions where a call out charge is levied a travelling charge is added to the bill.

(c) The Respondent's argument is that all these companies are profit centres in their own right. The Mainstay group of companies is not merely passing on the cost but making a profit at each turn, paid for by the service charge payers. Further, such arrangements are not competitive and are not likely to achieve fair value for money.

(d) We can understand the Respondent's concerns. After all, if the concierge is being paid £6.50 or £7.00 an hour, to be charged £13.95 an hour seems on the face of it excessive. That is, of course, not the whole picture. Facilities has to pay National Insurance, holiday pay, cover for sickness, recruit and train the staff as well as organise and pay them. There is no doubt a profit, but it is not as much as at first appears.

(e) It is not the Tribunal's role to dictate to a managing agent how it runs its business. We are required to determine, amongst other things, "the amount which is payable" (s27A(1)(c) of the Landlord and Tenant Act 1985 (the 1985 Act)). The charges are payable "only to the extent that they are reasonably incurred" (s 19(1)(a)) and "only if the works or services [provided] are of a reasonable standard" (s 19(1)(b)). In the case of budgeted amounts, "no greater amount than is reasonable" is payable (s19(2)).

(f) The issue for us, therefore, is not whether the services were provided by an associated company at a profit, but whether the charge to the individual lessee was reasonably incurred (see Country Trade –v- Noakes [2011]UKUT 407). However, in considering the level of the managing charge, we must look at the whole of the charge relative to the services provided. The extent, quality and cost of the services are matters for consideration. If, for example, a managing agent outsources some of its responsibilities, it may have to settle for a lesser management fee because some of its management responsibilities have been taken over by the agency company, or because some of the tasks involved are part of the general management of the development the cost of which would usually be regarded as included in the management fee. It will all depend on the facts of the case.

4 KNOWLEDGE AND EXPERIENCE

4.1 As a Tribunal, we are entitled to use the knowledge and experience gained over many years (in the case of this Tribunal decades) both in our various practices and as members of the Tribunal. As was stated in Arrowdell Ltd –v- Coniston Court (North) Hove Ltd [2007] RVR 39 (Arrowdell): "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.

4.2 Arrowdell has been followed recently in three decisions of the Upper Tribunal. 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". HH Judge Walden, in London Borough of Havering –v- MacDonald [2012]UKUT 154 (LC), observed that "knowledge and experience must be raised before the parties, again in order that the parties have the opportunity to comment on them", a view echoed by the President in Wales and West Housing Association Ltd –v- Paine [2012] UKUT 372 (LC).

4.3 We have therefore applied our knowledge and experience to assess the evidence and arguments put before us by the parties. Where, however, we had knowledge concerning a specific matter we informed the parties of our knowledge so that the parties could, if they wished to do so, comment upon it.

5 THE YEAR 11 ACCOUNTS

5.1 Concierge - £148,346.00

(a) The Respondent raised a number of issues concerning the costs for the concierges. They are to be found in his Statement of Case at A1 p257, usefully incorporated in the Applicant's Response at A1 p261. The issues, which are numbered 1,2, 9, 10, 11 and 12, relate to Facilities' "handling charge" of 10% on goods recharged to Residential, the cost of the annual contract, the number of staff employed, their rates of pay and the reasons for employing agency staff and not direct employees. Whenever Mr Shabir went to the

Concierge's office there were 3 or 4 people there. He was happy with two people during the day and one at night. He wanted to know who the other people were.

(b) Mr Seigle referred us to the information at A1 pp278 and 279. There are five concierges. Their shift patterns are set out at A1 p278. One concierge is on duty from 6am to 4pm during the day whilst another is on duty from 8am to 6 pm. A third concierge has a 12 hour night shift from 6 pm to 6 am. Facilities charged an annual fee of £144,000 or £12,000 a month. The fee works out at £13.95 per hour. He confirmed that there were no others. The other people in the office could be contractors or visitors. The office is the first port of call. They could also be cleaners, the handyman or other staff awaiting allocation of specific tasks. The Respondent expressed himself satisfied with this explanation.

(c) Mr Seigle's attention was drawn to the invoices at A4 pp16 – 20 from DSI International for the provision of concierge cover. The hourly rate is shown as £11 per hour plus VAT (then at 17.5%), ie £12.93. The concierges earned £6.50 - £7.00 an hour. The hourly rate charged covered sickness, holidays, training, IPSI courses and uniforms. The responsibility for providing the staff is passed to Facilities. If an outside agency has to be sub-contracted to provide cover, then the cost is down to Facilities whether the cost is more or less than £13.95 an hour. There is a dedicated manager. This justifies charging a higher rate than DSI who would charge extra for this service. Mr Jones suggested that it might also be the case that long term agency staff could be charged out at a higher rate on the basis that the responsibility for sickness cover and holidays were more of an issue the longer the contract. There were 10,322 hours of cover in the year.

(d) The Respondent raised the question of the DSI invoices. If the Facilities contract was comprehensive as Mr Seigle suggested, the DSI costs should have been absorbed by Facilities and not charged to the lessees. On the face of it, that seemed logical to Mr Seigle but having been given the opportunity to make enquiries, he reported later in the proceeding that these costs related to the previous financial year. The contractual arrangements with Facilities were different then with a lesser fee being charged for the basic cover and any supplemental costs being charged to the service charge. Due to the fact that it had been paid in Year 11, it had not been allocated to the right year. This was an error and so it had been corrected.

(e) The only other invoice which the Respondent queried was for £263.13 at A4 p21. Facilities has charged for the purchase by Residential of such items as toilet rolls, towels a health and safety poster as well as "concierge clothing". The actual amounts charged to Facilities are shown in the invoices at A4 pp22-27. The Respondent challenged the "mark-up" and queried the reason why supplies were obtained from Mara Services Ltd in London, Eureka in Dorset and Severnside Safety in Cheltenham when the items purchased could be sourced locally no doubt at a cheaper cost.

(f) Mr Seigle explained that in Year 11, there was no on-site manager and so it was reasonable to use the same suppliers as those used by other sites as it saved on management time. The group had preferential rates and Mara would charge a single despatch fee. A "mark-up" was charged to cover the cost of manpower in placing the order, settling the invoices, in some cases transferring the items to the site – generally handling the purchase. If Residential sent one of the concierges to collect items, it would take him/her away from his/her on site duties, possibly for longer than it should. If he/she was asked to collect items outside working hours, he/she would require some additional remuneration, an argument which the Respondent accepted. Furthermore, Facilities was funding the purchase. The items were ordered in Year 10 but not charged for until Year 11.

(g) A question was raised about the items supplied by Severnside Safety. They comprised a waterproof anorak and navy trousers at a combined cost of £56.20 plus VAT. If

Facilities was responsible for providing uniforms (see A1 p279) it did not appear reasonable for the cost of these items to be passed on to the lessees. Mr Seigle explained that if the concierge was required to carry out external work, eg jet washing, he/she would require waterproofs. Facilities regarded such items as waterproof anoraks and trousers as "protective clothing" for a specific task and not part of the concierge's uniform. It was therefore the responsibility of Residential to provide this, the cost of which would be passed on to the lessees through the service charge.

DETERMINATION

(h) As we noted earlier, it is not the role of this Tribunal to dictate to a managing agent how it is to run its business. Nor, unless there is something manifestly wrong, should we interfere in the day to day administration of such sites as the Development. It seems to us to be perfectly proper on a development of this size and complexity for Residential to decide to have a concierge's office manned 24 hours a day. The Respondent did not argue against this. Nor did he argue against the number of concierges "employed", nor their shift patterns. His arguments were essentially that it was cheaper to employ staff than to hire them from an agency, and that the overall charging rate of £13.95 is higher than could be obtained in the open market.

(i) According to Mr Seigle, the concierges are paid £6.50 - £7.00 an hour. Using the higher figure, 10,322 hours produces an annual wage bill of less than £73,000. However, as Mr Seigle says, there is national insurance to be paid as well as providing cover for sickness and holidays. There is also the cost of training, uniforms and the management time in recruitment, disciplinary and other employment issues. Even allowing for a generous uplift to allow for these issues the overall cost is bound to provide Facilities with a healthy profit. After all, there would be little point in organising things this way if it did not. We know from the invoices provided that DSI International was charging £11 per hour plus VAT or £12.93 - £13.20 inclusive of VAT. No doubt, DSI International is making a profit at these rates. Facilities is earning £7,700 to £10,300 more profit as a result of its arrangement (10,322 x 75p/£1.02.) It has a ready market and to that extent it could be charging more favourable rates if the arrangement were to be put out to competitive tender. We do not accept Mr Jones' comment that a long term commitment carried more risk for the independent agency which would be reflected in a higher charge. However, we do accept Mr Seigle's comment that DSI International's rates would not include regular supervisory visits which Facilities carries out. If Residential was to carry out the job of hiring, training, supervising and providing for the concierges, and the direct cost were to be charged, we accept the Respondent's argument that there would be a saving to the lessees. It would, however, justify some sort of enhancement in the management fee to accommodate the additional time and responsibility as well as the risk.

(j) On the balance of the evidence, we cannot say that it is unreasonable to hire agency staff as a matter of principle. To hire permanent staff would result in some cost saving which in part might be off-set by an increase in management charges. Using a different agency would certainly cost less - £7,700 to £10,300 – but again there may be some off-set in an agency management charge. Whilst we can appreciate the Respondent's concern we cannot say that Residential's use of agency staff is unreasonable. It may cost more, but there are management savings in adopting this practice. We would require more in the way of detailed evidence before we could conclude otherwise. Again, the use of Facilities may be open to criticism as there is no doubt that it costs more to do so. After all, even 75p to £1 per hour produces a differential of £7,700 to £10,300 a year. Whilst that is not inconsiderable, it only equates to between £10 and

£14 a year in additional service charges for the Respondent. Given that Facilities has taken on the role of managing the concierges including regular attendances on site, whilst such charges are on the high side, given the internal nature of the arrangement, we cannot say that they are unreasonable. WE DETERMINE that the costs were reasonably incurred.

(k) According to Mr Seigle, the DSI International invoices were inadvertently omitted from the Year 10 accounts. A different arrangement was in place then as far as holiday or sickness cover was concerned. We note that the invoice at A4 p16 has been split and only the costs pre 31st May 2010 have been charged. This supports Mr Seigle's explanation and we accept his evidence on the point. WE DETERMINE therefore that these charges were reasonably incurred.

(l) We have no evidence to suggest that the items stated in the invoices at A4 p21 – 27 were not purchased and delivered as stated in the invoices, nor that they were deficient in quality in any way. The issue is whether it is reasonable to use such organisations as Mara, Eureka and Severnside Safety to provide general supplies and waterproof clothing. Mr Seigle stated that they use different suppliers and shop around from time to time. There are management advantages in this. It saves time. The supplier knows what is required. There may be cost savings in view of the regularity of the business, eg in delivery charges. There may be favourable credit arrangements. From our own knowledge and experience it is not uncommon for managing agents to purchase their supplies from a limited number of outlets for these same reasons. We cannot say that this approach is unreasonable, particularly bearing in mind that the Respondent's contribution to this invoice is £0.36p so any saving to an individual lessee if the contract were to be the subject of a competitive tender would be pennies. As far as the "protective clothing" is concerned, we accept Mr Seigle's explanation that this would not be supplied by the agency and it is therefore reasonable for the managing agent to provide this where necessary and for the cost to be charged to the lessees through the service charge.

(m) The final issue is the question of the mark-up. We do not accept Mr Seigle's argument that the management time spent in placing an order and dealing with the invoices is additional to the normal management duties. In our view it is no different from placing a contract for lift maintenance or cleaning windows. It is part of the managing agent's job and the complexity of the management and the time spent will be borne in mind when the management fee is agreed or determined. However, the Respondent accepted that if an employee collected items in his/her own time, he/she would be entitled to some additional remuneration. Rather than charge a separate fee each time such a task is undertaken, we can see that it is more convenient simply to add a small percentage to the cost of each item to take account of this, even if, as in this case, the items were delivered directly to the site. With this arrangement, there will be occasions when the charge will exceed the time cost involved (in this case £23.95) and other cases where the situation is reversed. The amounts involved - in this case 4p – are not substantial and we cannot say that the overall cost is unreasonable. WE DETERMINE that the invoice for £263.13 was reasonably incurred.

5.2 Stationery - £1,663

(a) In item 14 (A1 p264), the Respondent states that he regards the amount involved as very high and wished to know what items were included. He also considered that the supplies were overpriced and could be sourced locally at cheaper cost if Residential cared to shop around.

(b) The breakdown of the costs is at A2 p2. They include a camera which Mr Seigle said was to provide evidence for such issues as "illegal" parking. Chairs had been purchased for the office. They belonged to the site and would remain if Residential lost the management contract. Stationery was purchased for the printer which was in the office on site. Letters and notices were printed there as it was more convenient to carry out these tasks locally. As referred to in paragraph 5.1 above, it is more cost efficient to purchase items from a limited number of sources. The benefits of shopping around can often be too small to spend much time doing so.

DETERMINATION

(c) We accept Mr Seigle's explanation. The chairs are necessary and belong to the site. There are benefits for management and the lessees in having a camera available to record "incidents" in case of a dispute and in having facilities on site for printing notices and letters. We have already dealt with the issue of supplies in paragraph 5.1. WE DETERMINE that the costs were reasonably incurred.

5.3 Day to day maintenance - £36,685

(a) The Respondent raised a number of issues in items numbered 4, 8 and 15 (A1 pp262-265). They relate to invoices for EAP Solutions and Spectrum and the reasons for the overspend against the budget. As well as the level of charges, the Respondent asked us to look at four matters of principle:
  - the 10% mark-up on supplies;
  - the pick-up charge for collecting items for delivery to the site;
  - the travel charges where an employee of Facilities visited the Development and travel time was charged in addition to a call out fee.

(b) We have already dealt with the issue of the mark-up and the reasons why Residential regarded it as a reasonable charge. However, Mr Seigle did not consider that he could justify Facilities charging for collection and delivery as a separate labour cost where it was also charging a mark-up which was intended to cover the cost of servicing the order. He was also unable to justify charging for travel time where a Facilities employee charged a call out fee (ie £50 for the first hour whereas the following hours were charged at £25).

(c) In our judgment, if a contractor such as Facilities has an arrangement which allows a mark-up on supplies which is intended to cover the servicing of the order including its delivery (and in respect of the protective clothing the mark-up was also applied to the supplier's delivery charge) it cannot be reasonable for it to charge a labour cost in some cases as well. Further, a call-out charge is higher than the on-going hourly rate because it covers the tradesman's cost of travelling to the location where his/her services are required as well as the first hour (or whatever period). Again, we do not consider it reasonable to charge for travelling time as well as making a call out charge.

(d) As the Respondent's case had been stated in generalised terms, we invited him, overnight, to consider the invoices which Residential had supplied and to specify those which he wished the Tribunal to look at and to discuss them with Mr Seigle prior to the next day's hearing It is, after all, not our role to act as auditors nor are we required to carry out a forensic examination of the Respondent's books, accounts and invoices to see if we are able to identify issues which need to be explained. We may come across such issues which come to light during the course of a hearing, but that is a different matter and is not the case here. We were concerned that Mr Seigle should have the opportunity to consider the invoices. If he had needed time, we would have certainly

agreed to it, but he was able to deal with the points raised by the Respondent and to refer us to the supporting invoices in the various bundles without difficulty. As with other items, after he had heard Mr Seigle's explanation, the Respondent accepted a number of invoices. We will therefore deal only with those items which remained at issue and which required determination.

Supply only concierge various light bulbs - £1,189.10 @ A2 p68; A4 pp28-29; A5 pp10-20

(e) The Respondent's issue was that there were a large number of light bulbs. Also, the cost recorded in the various supporting invoices was higher than the amount recharged. Residential's case was that the light bulbs were purchased for use on site and that the difference was the mark-up which we have considered at paragraph 5.1. It is apparent from our inspection that the Development requires a large number of light bulbs. On each floor there are long corridors with limited natural light. There is nothing wrong in a manager purchasing supplies in anticipation of usage; in fact, we would consider it prudent to do so. We need not rehearse the argument set out in paragraph 5.1 concerning the issue of the mark-up. WE DETERMINE that these costs were reasonably incurred.

Supply and PAT test commercial kettle - £80.94 @ A2 pp96-97; A4 p41-42; A5 p24-26

(f) The kettle cost £51.25 plus VAT (A5 p26). It was recharged to Prospect for £56.38 (plus VAT). In addition there is a labour charge of £12.50. The narrative on the job sheet (A5 p25) states that this is for "travel". Mr Seigle explained that all electrical equipment had to be PAT tested. In this case it may have been a visual check, but they needed to go through the process.

(g) The invoice from A N Supplies refers to "Branch: A N Supplies Cardiff" which is in East Moors, Cardiff. The cost of supplying an item to the site was one of the reasons given by Mr Seigle for the "mark-up" of 10%. The visual check would have taken barely a minute and is not stated on the job sheet as the basis for the charge. It is an additional charge for collecting the kettle. For the reasons stated in sub-paragraph (b) above WE DETERMINE that the charge of £12.50 plus VAT (£14.69) was not reasonably incurred and the Respondent is entitled to a credit in respect of his proportion. There was no issue concerning the cost of the kettle. We have accepted the principle of Residential's mark-up and so the charge of £66.25 for the kettle was reasonably incurred.

Repair to cupboard – £123.96 @ A2 pp98-99; A4 pp43-44; A5 pp27-28

(h) The job sheet at A5 p28 refers to repair of "the cupboard in the concierge office when possible. The back has fallen off and paperwork keeps falling out." The only materials are "glues and fixings" which appear to have come from "van stock". According to the job sheet, the Facilities employee spent 2.75 hours dealing with this. There is no suggestion that the back was broken and nothing in the narrative which indicates that it was anything more than gluing and fixing the existing back onto the sides. The Respondent considered the cost excessive for what is, on the face of it, a straightforward job. Mr Seigle could not explain why the job took so long. The job was not stated to be urgent – it was to be done "when possible". In the absence of a plausible explanation as to why the job took so long, WE DETERMINE that the labour charge of £117.50 was not reasonably incurred, but that a charge of £50 for labour and £5.50 for materials plus VAT (total £65.21) was reasonably incurred. The Respondent is therefore entitled to a credit of his proportion of £58.75.

Replace bulbs in Business centre corridor – £161.36 @ A2 127; A4 pp47-48; A5 pp34-36

(i) The Respondent could not see why it should take 2 hours (£50 for the first hour and £25 for the second) to "replace a few bulbs in the business centre corridor". Mr Seigle explained that as the work involved replacing a ballast (the starter motor), the employee would have had to isolate the unit, take it down, replace the part, reassemble the unit, restore the electricity and test the unit. It was not just replacing four bulbs.

(j) We accept Mr Seigle's evidence that this job was more than simply replacing bulbs. It could have taken more than the initial hour. Whilst we are inclined to the view that the cost was on the expensive side, we cannot say it was unreasonable. WE DETERMINE therefore that this cost was reasonably incurred.

Supply paint - £301.25 @ A2 p129; A4 pp49-50; A5 pp29-31

(k) The cost of the paint purchased from B & Q in Cardiff (A5 p31) is £182.76 plus VAT. With the additional 10% charge, Facilities has charged £201.04. There is a charge of £50 plus VAT for "supply only" which, according to Mr Seigle's earlier evidence was part of the justification for the mark-up. Mr Seigle told us that he would not have expected a charge as well as a mark-up. We agree. WE DETERMINE therefore that the cost of £301.25 was not reasonably incurred, but that the cost of £241.25 was reasonably incurred. The Respondent is entitled to a credit of his share of the sum of £60 (£50.00 plus VAT @ 20%).

Replace Pressure Washer - £ 301.39 @ A2 pp133-134; A4 pp51-52; A5 pp37-39

(l) The charge involved two visits on the 13th December 2010 (1 hour) and 13th January 2011(2 hours). Mr Seigle said that the handyman will have tried to repair the pressure washer. He accepted that £25 should not have been charged for travelling time.

(m) We do not accept Mr Seigle's explanation. He readily concedes that he has no personal knowledge of most of the items claimed and is applying his interpretation of the documents provided. The clear statement on the invoice (A5 p37) is that the pressure washer was being replaced. The existing one could not be repaired. The new pressure washer was purchased from B & Q on the 13th December 2010. It must have been self-evident to a reasonably competent handyman that the item was beyond economical repair, otherwise he would have tried to repair it before buying the replacement, not a month later. We have no credible explanation for the three hours of labour in attempting to mend something which has already been replaced. Facilities has charged its mark-up and so no collection charge ought to be included. WE DETERMINE that the cost of £301.39 was not reasonably incurred but that the sum of £181.39 was reasonable incurred. The Respondent is entitled to a credit of his share of £120 (£100 plus VAT @ 20%).

Supply only paint - £195.98 @ A2 pp146-147; A4 pp57-58; A5 pp45-48

(n) The Respondent raised two issues. Firstly, Facilities has charged a labour charge for supplying the materials as well as a mark-up. Secondly, the invoices (A5 pp47 and 48) do not add up to the amount charged for materials in the Facilities invoice. Whilst, Mr Seigle accepted that the former should not have been charged, he stated that there was a missing invoice. Matching the descriptions at A5 p46 to the invoices at pages A5 47 and 48, there is a reference to an indeterminate number of dust sheets which does not appear on the Dulux or B & Q invoices. This suggests that Mr Seigle is correct in saying

that there is a supplier's invoice missing even though dust sheets are only £1.82 each according to the B & Q invoice (A5 p48). On balance, we accept Mr Seigle's evidence. WE DETERMINE that the sum of £195.98 was not reasonably incurred, but that the sum of £135.98 was reasonably incurred. The Respondent is therefore entitled to a credit of his share of the labour charge of £60 (£50.00 plus @ 20%).

50 x 18W lamps - £122.79 @ A2 p166; A4 pp61-62

(o) The Respondent drew our attention to the A N Supplies invoice for £95.00 plus VAT. The Facilities invoice was for £104.50 plus VAT. The difference is the 10% mark-up. We have determined this issue earlier in the Decision and accordingly WE DETERMINE that these costs were reasonably incurred.

Paint, tape ties and self-adhesive - £222.04 @ A2 p167; A4 p63

(p) Mr Seigle was unable to provide any supporting invoices. Nor could he give any explanation as to what this item was. There is no saying whether it is correctly posted or not or whether it is an Estate charge or a Block charge. Without more, we cannot determine that the charge was reasonably incurred. WE DETERMINE that the cost of £222.04 was not reasonably incurred and that the Respondent is entitled to a credit for his proportion of the charge.

Clear out grit store room - £374.74 @ A2 p181; A5 pp49-51

(q) The Respondent considered that both the travel and labour costs were excessive. Mr Seigle told us that the cost was not merely for clearing out the store room, but for installing shelving in addition. He conceded that he could not justify the travel cost. That amounted to £12.50 with the nine hours labour being charged out at £250.

(r) We are unconvinced by Mr Seigle's explanation. The invoice for the shelving materials is dated the 6th December 2010 (A5 p51). There were two site visits. The first visit which supposedly lasted 7½ hours was on the 2nd December. The second was on the 7th January. The shelving must have been erected on the second visit. The job sheet (A5 p50) refers to 4 uprights and 8 brackets – not a substantial job and not in a location where the result has to be aesthetically pleasing. The task of clearing out the store room is not one which demands a skilled tradesman and Residential should not be paying tradesman's rates. During the hearing we discussed with Mr Seigle local rates for skilled tradesmen such as electricians. We suggested to him that a daily rate of £100-£120 was more in keeping with the local market for general work and not the daily rate of £225 which Facilities charged. He considered that £160 per day was nearer the mark. In our view, non-skilled labour would be charged at a lower rate. Considering the tasks involved, the nature of the persons required to carry them out and the time allegedly spent, a labour charge of £262.50 is well outside the bounds of reasonableness. In our view a charge of £125 would have been reasonable. WE DETERMINE that costs of £374.74 were not reasonably incurred, but that costs of £209.74 were reasonably incurred. The Respondent is therefore entitled to a credit in respect of his proportion of the sum of £165.00.

Replace defective lamps and fittings - £1,344 and £2,304 @ A2 pp179 and 180

(s) The Respondent's argument is that there is a single invoice in each case dealing with 12 Blocks but only one labour charge which has been allocated to the Estate Charge and not

apportioned between the individual Blocks. Block F's materials charges are only £58 and £130 plus VAT. These are relatively small and yet the lessees of Block F are each being charged the same labour cost compared with a lessee of some of the other Blocks where more work was required. The Respondent also questioned the daily rate of £160 quoted in the invoices.

(t)Mr Seigle doubted if the contractor could have split the labour if asked. The work had been carried out in March and January 2011, but the invoices were not received until the end of the financial year or the beginning of the next – hence the reference in the summary to "accrue". Residential considered that the fairest approach was to post the labour cost as an Estate Charge.

(u)We cannot say that Residential's approach is unreasonable. It has been presented with invoices late in the day and, as Mr Seigle suggests, it is doubtful if a request for more detail would have produced anything worthwhile. Ideally of course, Residential would have specified at the outset what its billing requirements were, but that is a counsel of perfection. After all, it is just possible that the small material cost in Block F related to a large number of time consuming jobs whereas the large material cost in Block C represented one or two straight forward jobs involving expensive parts. We agree that £160 per day is a high rate In the Cardiff area, but it is not unheard of and we cannot say that in the context of these jobs for a qualified electrician that it is unreasonable. WE DETERMINE that the costs were reasonably incurred.

Fixed electrical wiring test - £8,808.00 @ A2 p185

(v)The Respondent queried the choice of Bureau Veritas UK Ltd and the cost. Mr Seigle told us that the choice of company was made by their compliance department. He explained that Residential is responsible for Health and Safety at the Development and as part of its responsibility it commissions an annual fixed electrical wiring test. This includes the communal areas, the leisure areas and the air conditioning. The invoice is for a five year contract and so only one fifth of the invoice is charged in the Estate account in each year. The remaining four fifths is credited as a prepayment. This arrangement produced a better deal for the lessees. He regarded Bureau Veritas' charges as competitive bearing in mind the amount of work involved.

(w)The Respondent has not produced any evidence to suggest otherwise. We agree with Mr Seigle that the work involved is substantial and carries with it a major responsibility. The costs do not appear to us to be unreasonably high and so WE DETERMINE that the costs were reasonably incurred.

Splitter/repeater unit – £456.00 @ A2 pp159-160

(x) The Respondent's argument is that it is impossible to know if this is a reasonable charge because Spectrum's invoice is not split between materials and labour. He assumed that the cost of the parts would have been £100 with the rest being a few hours labour. Mr Seigle accepted that the charge would have included the time spent by the electrician(s) travelling to and from the Development.

(y) We can deduce from the job sheet that the electrician(s) attended the site, ascertained what the problem was, obtained the relevant part and fitted it. The Respondent is right in saying that we have nothing to assist us in determining a reasonable charge. We do not know the cost of the part. We do not know how long the job took. Whilst the Respondent has not brought anything in the way of evidence, he has raised what is, in our view, a reasonably query, and it is for Residential to provide at least a credible explanation as to how the charge was justified. It ought to be doing this as a matter of

course for its own benefit as any prudent business would. After all, if Residential cannot satisfy itself that it is obtaining value for money, how can it satisfy the lessees? Mr Seigle stated in evidence that Residential no longer employed Spectrum as that company had been found to use expensive components and was considered to be overcharging. In the circumstances, we cannot be satisfied as to the reasonableness of the costs and so WE DETERMINE that these costs were not reasonably incurred. The Respondent is therefore entitled to a credit in respect of his proportion of the sum of £456.00.

5.4 CCTV - £6,044

(a) In item 19 (A1 p261), the Respondent queried why the CCTV cost was so high and about 500% above budget. Residential's response was that there were two unbudgeted items, one a major repair costing £1590.95 and the other the replacement of a PTZ camera costing £2820. The Respondent drew our attention to an invoice from Spectrum Facilities Management Ltd for £2350 plus VATat A2 pp217-218. He contrasted the price with the invoice from ISTL Engineering Ltd at A2 p213 where the cost of a replacement Orbitor Dome camera was £690 and the total cost for one repair and two replacements including labour was £1,590.95.

(b) Mr Seigle pointed out that that job sheet for the Spectrum invoice (A2 p218) refers to a Honeywell dome swivel and zoom camera. Honeywell is an expensive brand. The Leisure complex could have needed a better quality camera with a higher specification because of the safety issues at the pool. He did not know anything about the Orbitor camera. He was sure that a job of this nature would have been put out to tender and that ISTL would have been asked for a quotation. Residential would have accepted a quotation which would have been considered reasonable. Quotations are not stored on their computer system.

(c) WE DETERMINE the costs were reasonably incurred. The camera in the pool area is of a higher specification than the Orbitor. We accept Mr Seigle's evidence that it needs to be so and also his evidence that Residential would not have given the contract for work such as this without carrying out a tendering process. We do not regard the Respondent's reference to the Orbitor as a reliable comparable.

5.5 Refuse collection - £3,088

(a) The Respondent's case was that the costs were 1000% over budget (£200) (item 24 at A1 p265). Mr Seigle's explanation was that the excess related to the bulk items collection from the bin stores which is over an above the Council collection service. The problem is that lessees leave beds, sofas and large electrical items in the bin stores. The Respondent argued that large bulky items were collected free by the Council for residential properties. According to Mr Seigle, that applies only when the Council is contacted directly by the lessee. The Council will nonetheless accept certain goods but they must be placed outside the site. In response to the Respondent's suggestion that the Council collects on other sites, Mr Seigle explained that on those sites, the concierge has to make an arrangement for the items to be collected, but at Prospect Place there was no facility for the storage of bulky items. If bulky items are placed in the bin stores, there is the risk that this might prejudice the normal refuse collection. In such cases, the Council will not collect.

(b) The Respondent drew our attention to the invoices from Spectrum Facilities Management Ltd at A2 pp263 and 264 which are both for the same price and both for "refuse collection". Mr Seigle explained that although the invoices were for identical amounts, they had different order numbers and therefore this was not duplication.

Residential no longer uses Spectrum, but the charges now are not much less. It depends on the amount collected.

(c) We accept Mr Seigle's explanation and it appeared to us that the Respondent did too. However, for the sake of clarity, WE DETERMINE that these costs were reasonably incurred.

5.6 Leisure facility – General Maintenance - £25,760

(a) In item 25 (A1 p265), the Respondent asked what items of general maintenance were required resulting in this cost. During the course of the hearing, the Respondent indicated that he had no issues concerning the leisure facility maintenance. However, when considering this decision, it became apparent that a number of the items which the Respondent raised under the heading "day to day maintenance" (5.3) were actually relating to the maintenance of the leisure facilities. We have therefore included them under this heading.

Attend and remove shower door - £227.95 @ A2 p270; A5 pp54-55

(b) There was a requirement to remove 4 doors within the Leisure suite. One door was to be disposed of. The Respondent considered the time involved (5 hours) to be excessive. Mr Seigle accepted that considering the nature of the task, 5 hours was difficult to explain. In our view, the task could have been completed inside 2 hours and without explanation or reference to any unusual difficulties a charge of £75 would be more realistic. WE DETERMINE that costs of £227.95 were not reasonably incurred but that costs of £139.83 were reasonably incurred. The Respondent is therefore entitled to a credit in respect of his proportion of £88.12.

Sand down and repaint benches - £349.65 @ A2 pp274-275; A5 pp59-63

(c) According to Mr Seigle, the benches in the Leisure Suite comprised metal frames with wooden tops. The metal had begun to rust. Vaughan, who is the "man in a van" from Bristol, was covering for his Cardiff colleague and charged £12.50 travel. Mr Seigle conceded that this should not have been charged. The labour charge was £200 for 7 hours. Referring to our observation that £100 -£120 a day was more likely to be charged in the Cardiff area for a general tradesman, he said that he would expect to pay £160.

(d) We consider £200 for 7 hours work to be outside the bounds of reasonableness. We have noted Mr Seigle's suggestion that £160 a day is more in line with local rates. In our view even that is on the high side. We consider that, taking into consideration the work involved, a reasonable charge for the job as a whole would be £125 plus VAT. WE DETERMINE that costs of £349.65 were not reasonably incurred and that costs of £246.83 were reasonably incurred. The Respondent is therefore entitled to a credit in respect of his proportion of the sum of £102.82.

Repair electrical socket fault in Leisure Suite - £70.89 @ A2 pp315-316

(e) The Respondent considered that a charge of £10.33 for a socket was excessive as the cost of a double socket is only £2.00. He also raised the necessity of a "call out" charge. Mr Seigle explained that the socket was in the Sauna area and it required immediate attention. We do not consider this charge to be unreasonable. Given the location, and its association with water and steam, we can imagine that management would regard it

as an emergency which would justify a call out charge. Also, a standard socket would not suffice. WE DETERMINE that the costs were reasonably incurred.

Partitioning Sauna and repair light in men's WC - £171.66 @ A2 pp317-318; A5 pp 68-69

(f) Mr Seigle explained that the light had to be refurbished and the ballast replaced although he could not confirm the hours involved in each of the tasks for which there was a charge. We accept that there was more to the job than simply changing a bulb. We cannot say that the over-all charge is unreasonable. The Respondent has not provided any alternative costings. In the circumstances WE DETERMINE that the costs were reasonably incurred.

Trace Sauna lighting problem - £111.08 @ A2 p344; A5 pp79-82

(g) The Respondent was challenging the labour charge of £75.00. He considered that it should only cost £25-£30 although he accepted the materials cost. He felt that Residential should employ a handyman as they do in Altolusso (another apartment block in Cardiff, which we informed the parties that we had knowledge of). Mr Seigle explained that as the job involved the Sauna, it was more specialist. He did not, however, elaborate and the parts involved consisted of light bulbs – not cabling or anything else in the way of materials. Mr Seigle told us that Bellway had made a similar point about employing a handyman and that Residential was looking to employ one in the near future. We can understand the Respondent's argument. £75 is a high rate of charge for a job of this nature. Without more detail from Mr Seigle, we cannot see that it is work requiring someone more specialist. After all, it is the "man in a van" who is carrying out the task, not an electrical engineer. We must also consider that the company providing the workman is Facilities which, irrespective of it group association with Residential, is enormously reliant upon Residential for its turnover. If this were a truly arm's length arrangement, Residential would be using its commercial muscle to negotiate a more competitive rate. We consider that a charge of £50 would have been more appropriate bearing in mind the nature of the job and the "qualification" of the tradesman able to deal with it. WE DETERMINE that the charge of £111.08 was not reasonably incurred, but that a charge of £81.71 was reasonably incurred. The Respondent is entitled to a credit of his proportion of £29.37 (£25.00 plus VAT @ 17½%).

Door handle repair - £759.77 @ A2 pp360-361 and A5 pp93-100

(h) Although the invoice at A2 p360 refers to "door handle repair D4 gym" the list of materials (at A5 p94) clearly shows that there is more than one job involved. The Respondent queried the labour cost of £87.50 which is, in our view, on the high side for 2¼ hours, but given the variety of the work involved, we consider it to be within the bounds of reasonableness. Accordingly WE DETERMINE that the cost was reasonably incurred.

5.7 Leisure Facility – Cleaning - £15,700

(a) At item 26 (A1 p265), the Respondent noted that the costs were exactly the same as the budget. He asked for details of the contract and the quotations. He also asked if Residential received a "referral fee". At A1 p279, Residential has set out a grid showing the total cost of cleaning the Development and the number of hours worked weekly and the hourly rate of charge. There is a single contract for cleaning the Development which

is invoiced monthly (see A2p391). Each invoice is then split between the Blocks and the leisure facilities.

(b) Mr Seigle explained that the pool and the gyms are cleaned daily – 3 man hours each day, ie 21 man hours a week. The Facilities manager attends and works out what is required to be done and the approximate time which is to be spent. There is an hourly charge of £12.41. This includes materials and clothing and, as with the concierge, it provides for sickness and holiday cover. Mr Seigle stated that Residential undertook a tendering process before awarding the contract to Facilities. Although Facilities is principally used to service Mainstay companies, Mr Seigle understood that it was trying to obtain outside contracts, but he did not know how successful it was in doing so. The Respondent suggested that a cleaner could be employed at cheaper cost which is what the managing agent of Altolusso did. Mr Seigle said that the Applicant could not employ staff. Residential does not receive any referral fee.

(c) Bearing in mind that the cost includes the materials and uniforms, the cost of holiday and sickness cover as well as the issue of man management, we cannot say that an hourly charge of £12.41 is unreasonable. An outsider is bound to be quoting at a disadvantage because its rate would have to be less than £10.50 per hour plus VAT. There was no suggestion that the hours were excessive. The Respondent did not provide any alternative figures. WE DETERMINE therefore that these costs were reasonably incurred.

5.8 Management fee – Management fee - £86, 370
Enhanced management fee - £969
Accountancy fee - £590
Company Secretary - £1,240
Payroll administration - £1,070
Block F Management fee - £4,760

(a) At item 27 (A1 pp265-266), the Respondent queried the reasonableness of the management fee. Residential's response was that the basic management charge was divided into two parts – the Estate management fee, which for Year 11 was calculated at £98.00 plus VAT per unit, and the Block management fee which for Year 11 was charged at £80.00 plus VAT per unit. The response went on to explain that "in recognition of a more difficult economic climate" it had reduced the Estate management fee for Year 12 to £130 plus VAT. There was no Block management fee for Year 12. For Year 11 the Respondent's proportion of the estate management charge was 0.1362%, ie £117.64 and his proportion of the Block management charge was 1.8079%, ie £86.06. The total cost for the Respondent's proportion of the Estate management charge and the Block management charge for Year 11 was £203.70.

(b) In addition, the lessees were charged four additional heads of cost. The enhanced management fee is described in a footnote to the accounts (A3 p152) as follows: "in addition to the standard annual management fee, a fee of £86,456 (including VAT) is payable in the first year covering the exceptional cost associated with managing a site in the early months following the service charge going live. This fee is only payable in the first year of ownership and averages £75 per leaseholder (plus VAT). The remaining balance will be charged to purchasers of unsold apartments."

(c) The Management Agreement (A3 pp163-183) refers to this charge "equating to an average of £75 per apartment by way of a contribution to the costs incurred by [Residential] in providing the additional services set out in clause 33 of Schedule 1 Part 1" of the agreement. This additional charge is stated to cover a variety of tasks during the period of 12 months following the handover of a phase. These tasks include

attendance at 4 additional meetings (in addition to the three envisaged in paragraph 8 (not 9, as stated) in the Schedule). They also include the provision of a "welcome pack" (4 pages of A4) and details of out of hours services for the lessees, vetting and appointing contractors, staff training, assistance in setting up a residents' association, dealing with higher levels of calls from residents following initial occupation (eg snagging issues) and the creation of the database and files for management information.

(d) Mr Seigle accepted that Residential's involvement was generally with the common parts, such as lighting. He considered that the £75 contribution was essentially for the cost of setting up the data. Following completion, Residential had to enter the name and address of the purchaser onto its computer system in Worcester. It used a dedicated management programme -"Qube". When Residential took on a development, it had to set up the system with data concerning the utilities and suppliers. He accepted that the system had to be in place before any lease had been granted as it had to "go live" as soon as the first completion had taken place. He accepted that the set up costs had already been incurred by then. Residential was spreading the cost over the period during which Bellway was constructing the Development until the last phase was taken into management. He accepted that this meant that a lessee was paying a contribution in 2010 towards costs which had been incurred in 2004.

(e) Mr Manton told us that only the new lessees were paying the enhanced management charge. We suggested to Mr Manton that as the enhanced management charge appeared as an Estate management charge, the Respondent would be paying his 0.1362% proportion of this cost. Mr Manton did not accept this. The new lessees were not, however, invoiced separately for their contribution. On the face of it, it appeared to us that each existing lessee was contributing a proportion of the £75 plus VAT charged every time a new lease was granted. This would mean, for example, that those in the first phase paid their own enhanced management charge and also contributed to the charge incurred when all the succeeding phases were added. Mr Manton did not agree.

(f) The accountancy fee was the charge raised by Residential for preparing the "audit path" to assist the auditors when it comes to dealing with the annual accounts. It is included as a separate head of charge in the management agreement (A3 p179). The Respondent argued that this was part of the normal management process and the cost of this should be included in the general management fee.

(g) Prospect is required to submit an annual return to Companies House. Mainstay (Secretaries) Ltd has carried out this task and has charged a fee of £1,240. The Respondent submitted that this was again something which should be part of the management fee. The return was straightforward and could be completed on line.

(h) According to Mr Seigle, payroll administration is a charge made by Facilities. He said that it is not charged now (see 2013 budget at A2 p649). He accepted that this was not a charge incurred by Prospect as it had no staff.

(i) As far as the general management charges were concerned, Mr Seigle accepted that Facilities staff were responsible for the day to day running of the Development. For Residential, there was a manager, Helen Solsberg, who was responsible for 15 sites, a property services advisor who looked after 30-40 schemes, the purchases ledger department which dealt with the payment of invoices, credit control, Mr Manton's team which watched over expenditure and budgets and the administration team which dealt with mail shots, phone-calls, letters and e-mails. The initial fee had been £150 pa (see A3 p179). As a result of discussions with Bellway and pressure from the residents, Residential had decided to drop its management fee to £130 plus VAT (£156.00). Residential also agreed to absorb Mr Jones' salary. Mr Seigle agreed with the Tribunal that this fee was more in line with the market. The Respondent also agreed that this fee compared well with the fees charged at Altolusso.

DETERMINATION

(j) The fees structure adopted by many managing agents is often incorporated in a management agreement such as that which appoints Residential as the managing agent on behalf of Prospect. That agreement is often used as justification for the level of fees charged and the services provided. In this case, the agreement is dated 1st November 2004. This is after some of the leases were granted, but the year was originally stated to be 2003 and was altered to 2004. There was no suggestion that anyone else had been managing the Development prior to Residential becoming involved and Mr Seigle's evidence was given on the basis that Residential was involved from the beginning. The agreement is expressed to be for a period of 4 years continuing until terminated by notice. We expressed surprise at the length of the term with the possibility that the agreement may well be considered to be, or to have been, a qualifying long term agreement for the purposes of section 20 of the 1985 Act. However, we explained to the parties that as that particular issue had not been raised by the Respondent in the County Court, we would not deal with it. It would be necessary for the Respondent to seek permission to amend his pleadings and for the Court to determine the issue. The Respondent raised the matter again later in the hearing, but we once again explained that it was a matter for the County Court and that to embark upon an issue such as this in circumstances where Residential had had no notice of it would be prejudicial.

(k) Whether a fee is reasonably incurred is essentially a question of fact. Simply because a fee is agreed between a manager and a managing agent does not mean it is reasonable. It will depend upon the circumstances of each case. It will depend upon the number of units, the size and complexity of the site, the extent of the services provided and the amount of supervision necessary to ensure the continuance and smooth running of the operation as a whole. A large development such as this will undoubtedly attract its own problems. The more lessees will inevitably lead to more tenant issues which need to be resolved. Over 700 units mean that there are over 700 potential complainants if things do not go right. There are over 700 sets of documents which have to be delivered with each mail shot, and over 1400 demands (two a year). On the other hand, there will be economies of scale. There can be a single contractor for gardening, cleaning and maintenance. The draw of a substantial contract will concentrate a contractor's mind when it comes to customer service and quality of work. A small development of, say, a dozen units will require almost as many contracts as a large development with a higher resulting cost per unit.

(l) The provision of leisure facilities adds to the complexity as well as the cost. There are health and safety issues which need to be borne in mind. Lifts, cameras, 24 hour concierge services are all matters which need to be taken into consideration as does the question of responsibility. Where a manager delegates responsibility, it is passing the burden of the tasks involved onto the agent or sub-agent. Where, as here, the concierges and cleaners are not employed by Residential or Prospect but by Facilities on an arm's length, profit making basis, the responsibility has been largely passed across. When, as Mr Seigle stated, the hourly rate is slightly higher than could be found generally in the market because staff supervision and day to day management of the site is in effect the responsibility of Facilities, the effect must be to lower the fee for general management.

(m) The single most important factor must be the market. The problem in ascertaining the market value for management services is that the main developers tend to use a limited number of professional companies and so to some extent these are creating their own market. These organisations generally do not to trade information as it is commercially sensitive. Smaller, local agents are not usually the first call and are more often

introduced when residents are looking for cheaper management and possibly more flexible management options.

(n) The most significant evidence, of course, came from Mr Seigle. Bellway held "discussions" with Residential and there was "pressure" from the residents about the level of management charges. The result was that Residential made a substantial reduction in its management fee for Year 12 and for that fee included the services of a site representative or property manager. Leaving aside the additional value of the site property manager, the drop in fee of £43.36 from £173.36 (net of VAT) to £130 is approximately 25%. Mr Seigle also accepted the Tribunal's suggestion that the Year 12 fee was more in line with the market. The Respondent also accepted that it "compared well" with the fee payable in Altolusso.

(o) Taking into account therefore the evidence from the parties and our own knowledge and experience, we have concluded that the Respondent's proportion of the management fee was not reasonably incurred. After all, if it is reasonable to charge £130 plus VAT in Year 12 for a better quality service, it cannot be reasonable to charge £173.36 plus VAT in Year 11. Costs, if anything, have increased rather than decreased and we would therefore have expected the Year 11 fees to have been slightly lower than those for Year 12 on a like for like basis. In Year 12 there is the additional cost of the site property manager. It would not in our view be reasonable to deduct a salary equivalent from the overall management fee to calculate the Year 11 fee as this would have an exaggerated effect on the result – a unit charge of £100 or possibly less depending on the salary and benefits payable to Mr Jones. Our role is to determine a reasonable charge. In doing so, we must balance the size and complexity of the Development with the economies of scale and the delegation of much of the responsibility for day to day management to Facilities as well as the market considerations. We have concluded and accordingly DETERMINE that a fee of £121 plus VAT (£142.18) is a reasonable amount for the management fee for Year 11. The Respondent is therefore entitled to the appropriate credit.

(p) The enhanced management charge caused us some concern. Mr Manton suggested to us that the new lessees were charged the £75 plus VAT as their contribution to the set up/additional costs. However, the new lessees were not sent a separate invoice. The amount of the charge appears in the accounts as an Estate cost and this forms the basis of the Respondent's service charge for the year. There is no suggestion that the enhanced management charge is deducted from the Estate accounts and reallocated. If that were the principle, it would make it a pointless exercise including the cost in the Estate accounts in the first place. It would make more sense to submit a supplementary account to the new lessees – although, as we mentioned to Mr Manton during his evidence, it might not be well received. We are not convinced by Mr Manton's explanation and on the basis of the evidence presented to us we consider that the Respondent is paying a proportion of the enhanced management fee which becomes chargeable under the management agreement when new leases are granted.

(q) In any event, we do not consider that a charge of £75 plus VAT is merited for the following reasons:

(i) Snagging issues relating to individual apartments are not service charge issues. They are contractual issues between Bellway and the individual lessee.

(ii) Issues relating to common parts should be resolved by Bellway or if they are out of warranty they are part of the normal management function dealing with repairs and decoration and ought not command a higher management charge. After all, if the property is new, it should not need much in the way of repair and decoration in the first twelve months.

(iii) Staff training is a matter for Facilities and not Residential.

(iv) Vetting and appointing contractors is part of the normal on-going management function, not something which is only done in the first twelve months following completion of a lease

(v) The welcome pack was described in evidence as four sheets of A4.

(r) The Year 11 charge of £969 represents 11 new leases at £75 plus VAT. The Respondent's individual contribution is very small (£1.32). However, we were given nothing in the way of evidence which explained what particular tasks were undertaken to justify this cost. We cannot determine that these costs were reasonably incurred if the Applicant or Residential does not provide us with evidence. It is not surprising, therefore, that Mr Seigle preferred to argue that the fee was justified as it was a contribution to the set up costs necessary when a new lease is granted. However, the cost of setting up the management system was, as Mr Seigle conceded, incurred before any of the leases had been granted. It had to be. Once the first Block came under management, the system had to be fully operational. The only additional work required was to load the lessee's personal data into the system, a task which, with all due respect to the staff concerned, is not difficult or particularly time consuming. If a mortgage was involved, an administration fee would have been payable (see A3 p249).

(s) On the basis of Mr Seigle's evidence, we accept that the enhanced management charge is in reality a contribution to the set up costs. When any manager takes over responsibility for a development, whether it is new or established, there is a cost incurred in setting up the system which provides the necessary management information to enable the manager to carry out its functions correctly. Sometimes, a manager will "take a view" and absorb this cost in order to secure the management contract. Sometimes, it will indicate to the lessor that it will require a fee. That fee is a legitimate charge as between the lessor (which may be a residents' managing company) and the managing agent. However, that set up cost is not an expense incurred in the day to day management of the development which is what the lessees are required to pay for. The lease (at A3 p241) refers to "general managing and administering" and "the running and management of the Estate" and at A3 p242 to "general management" and to "the maintenance and proper and convenient management and running of the estate". The lessee is obliged to pay "the Lessee's Proportion" (A3 p244) which is defined (at A3 p230) as "the proportion of the Maintenance Expenses", namely, "the monies actually expended or reserved for <u>periodical</u> expenditure" (our underlining). The expressions used in the lease are all consistent with Maintenance Expenses being the on-going costs of maintenance, management and so on. In our view, if Bellway or Prospect had intended lessees to pay a contribution to the set-up costs of the managing agent, the lease should have said so in clear terms. After all, set-up costs are a precursor to the general management of the Development, not part of it. They are really development costs, not maintenance expenses. The lease does not make it clear that these costs are to be recovered and therefore WE DETERMINE that the sum of £969 is not recoverable as an Estate charge under the terms of the lease. Further, these costs cannot be recoverable from the Respondent for Year 11 under the Respondent's lease because they are costs stated to be "charged to the purchasers of unsold apartments" (A1 p222). It would not be reasonable for a managing agent to indicate that costs are to be recovered from certain lessees only and then to charge others as well.

(t) We have no evidence as to how the totality of these set up costs was justified. In any event, according to Mr Seigle, these costs pre-date the lease. They are carried forward from year to year and allocated to expenditure when new leases are granted. We appreciate that costs may be part of a service charge even when they are incurred "in an earlier or later period" (section 18(3)(b) of the 1985 Act) but we do not consider it to

be reasonable for these costs to be incurred in 2003/4 and recovered from the lessees (in part) in 2010/11. These costs must surely fall foul of section 20B of the 1985 Act as they were incurred – according to Mr Seigle – more than 18 months before the Year 11 demands for payment, both on account and in the final account. There is nothing to suggest that the Respondent was informed that he would continue to be charged for these costs. The only reference is that mentioned in sub-paragraph (s) above, namely that the liability to pay will fall on "future purchasers". There is no suggestion that the Respondent was notified that "he would subsequently be required under the terms of his lease to contribute to them by payment of a service charge" (section 20B(2)).

(u) As far as the accountancy fee is concerned, we agree with the Respondent that collating the information for the accountant is part of the general management and the cost of this is included in the management fee. If the management is carried out correctly, this is hardly an onerous task, producing the original invoices (paper or scanned) and the account records. We accept that the Development contains a number of Blocks and over 700 units, but there are limited numbers of contractors and invoices. We are not satisfied on the evidence that the preparation for the accounts in respect of this Development merited any additional work over and above that which would have been expected to be carried out by a managing agent in the course of its normal duties and as part of its general management fee. WE DETERMINE that the accountancy fee of £590 was not reasonably incurred and that the Respondent is entitled to the appropriate credit.

(v) Prospect is a limited company and there is a statutory requirement for it to complete and file an annual return. The Respondent did not take issue with the requirement or the fact that Residential was passing on a charge from its associated company, Mainstay (Secretaries) Ltd. His objection was the charge of £1,240 for the work involved. Again, we have some sympathy with the Respondent on this point. Filing an annual return is now a straightforward process and can be done on line, as the Respondent stated. It is a task often carried out by the auditors at a modest cost. Residential did not provide us with any evidence which justified the amount of the charge and so WE DETERMINE that the cost was not reasonably incurred but that a fee of £200 plus VAT (£240) was reasonably incurred. The Respondent is therefore entitled to the appropriate credit.

(w) We are also not satisfied that there is any justification for charging for payroll administration. Prospect does not have any staff. It does not therefore need payroll administration. Mr Seigle indicated that the charge was from Facilities. However, Facilities is charging Residential an arm's length agency fee. One of the benefits of employing agency staff is that the burden of the administration of these staff, including the administration of their pay and benefits, is passed on to the staff agency. Residential provided no justification for the fee. In fact Mr Seigle informed us that the fee was no longer charged (see A2 p649). We do not consider it to be reasonable for Facilities to pass on to Residential part of its own administration costs in addition to its fees. WE DETERMINE that this cost of £1070 was not reasonably incurred and the Respondent is entitled to the appropriate credit.

5.9 Day to day maintenance - £3,714

(a) In evidence, these issues were considered along with the day to day maintenance in the Estate accounts. To assist with the accounting, we have placed them under this heading.

Lighting Check – £ 531.84 @ A2 pp425-426; A4 pp128-129; A5 pp109-112

(b) The Respondent pointed out that Facilities had charged for 2 hours travel plus 7 hours labour (A5 p110). Mr Seigle told us that the charge of £187.00 consisted of 6½ hours labour and no charge for travel. The lighting check was not as straight forward as replacing a few light bulbs.

(c) For the same reasons as we have put forward in 5.6(d) above, we consider that £187.00 is outside the bounds of reasonableness. Mr Seigle conceded elsewhere that £200 for 7 hours' work for the "man with the van" was a high charge. We have noted his suggestion that a daily charge of £160 was more appropriate. Our view remains as before that this is still on the high side. WE DETERMINE that the cost of £531.84 was not reasonably incurred but that a charge of £458.99 was reasonably incurred (labour cost - £125 plus VAT). The Respondent is therefore entitled to the appropriate credit.

Bike store light - £178.16 (part of £534.48) @ A2 pp430-431; A4 pp132-133; A5 pp115-117

(d) The Respondent's criticism is that if a local contractor had been used the job would have cost less.

(e) The problem here is that the bill is a composite one and whilst the tradesman has been asked to bill separately for the different jobs which relate to the different Blocks, it is not apparent how the apportioned figure of £178.16 is calculated. However, even if it included only one of the non-emergency GAMMA fittings the labour cost would have been approximately £87 plus VAT. The job was described as "urgent" (A4 p133) and whilst there may be some suggestion that the cost was on the high side, it is not always possible to negotiate in such circumstances. We can understand that a manager in this kind of situation might calculate that as the cost per unit in the block was less than £2, the amount saved by seeking and commissioning a more competitively priced contractor would be negligible and might result in delay and cause dis-satisfaction among the residents. We do not consider that Residential can be criticised for adopting this approach, although more transparency would have been preferred. WE DETERMINE that this cost was reasonably incurred.

5.10 Communal Cleaning - £5,660

(a) This issue was dealt with at the same time as the cleaning of the leisure facilities. The monthly cleaning invoice (eg at A2 p391) is for the whole Development which includes both Block F and the leisure facilities. The apportioned amount for Block F is £471.67 per month, ie £5,660 for the year. According to Mr Seigle, there are four cleaners which operate at the Development. They spend 9 man hours per week in Block F. A schedule of work has been prepared. The ground floor, lobby and lift are cleaned every day. The communal areas on two floors are also cleaned every day. Facilities charges £12.41 per hour (see A1 p279).

(b) The Respondent's criticism is essentially that set out in paragraph 5.7 and for the reasons we have set out in paragraph 5.7(c), WE DETERMINE that this cost was reasonably incurred.

6 THE YEAR 12 BUDGET

6.1 The Year 12 Budget is to be found at A2 pp620-640. The Estate budget is at A2 p628 and that for Block F is at A2 p635. Mr Seigle explained that the budget process started in January and February each year. He would look at the figures for the 8 months to January and try to project the likely outcome. He then took into account what contracts would require re-tendering, those where the contract renewal dates did not coincide with the financial year end and whether there were

going to be any significant changes. After preparing the draft budget, he would then meet the finance director and regional director for Bellway and to discuss it. They may suggest changes as it is their budget. Bellway controls Prospect as it has a golden share. Insurance is dealt with by the lessor and not Bellway.

6.2 There are some changes between Year 11 and Year 12, eg there is no Block management fee and pest control and refuse collection have become Estate charges, but the significant increase relates to the water charges which were seriously under-budgeted in Year 11 resulting in a variance of nearly £60,000 in the final accounts. This issue has been addressed, properly in our view, in the Year 12 budget. Nevertheless the effect is that there is a slight reduction from the Year 11 actual Block figure (£53,072) to the Year 12 Block budget (£48,975). There is an increase from the Year 11 actual Estate figure (£704,185) to the Year 12 Estate budget (£714,075).

6.3 The respective cases of the parties were the same for the budgeted figures as they had been for the Year 11 figures insofar as they related to the general heads of expenditure and these were taken as read.

6.4 We consider that Residential has approached the question of the Year 12 budget in a reasonable manner and has dealt with the figures in a logical and transparent way. The overall management fee has been reduced and is now set at a reasonable level. We have, however, remarked in paragraph 5.8 about the Accountancy fees and the payroll administration fee which in our view should not be charged and the Company secretary fee which should be reduced substantially. The Respondent's proportion of these costs is less than £5. In our view, the overall budget is reasonable and we see little purpose at this stage in requiring any amendment as some costs may exceed the budgeted figures and some may be less. However, we would expect Residential to take note of our comments when the final accounts are prepared. WE DETERMINE that the demands based upon the Year 12 budget are reasonable.

7 ADMINISTRATION CHARGES

7.1 The charges concerned are as follows:

-11.05.11 – A4 pp5-6 – Maybeck	£85.00
-21.06.11 – A1 p45 – Residential	£48.00
-07-07.11 – A1 p47 – Residential	£48.00
-10.10.11 - - Residential	£96.00
-10.10.11 - - LR fee	£4.00
-11.10.11 – A1 pp76-78 – Maybeck	£85.00
	£366.00

7.2 Mr Seigle explained that Mainstay operated an Arrears Policy which was set out at A3 pp255-257. The process comprises:

(a) a polite reminder letter dated the 8th June 2011 (A1 p42). There is no charge but a warning that further delay "will result in an administration fee of £48 (inclusive of VAT). This letter is automatically generated. The balance quoted in the letter is £1,014.00 which agrees with the balance shown on the statement of account at A1 p3.

(b) a second letter dated the 21st June 2011 (A1 p45). The letter informs the Respondent that Residential has applied a charge of £48.00 and warns that a further charge of £48.00 will be applied "for the pre-legal notification, plus all additional referral and legal costs that arise..." The balance quoted remained at £1,014.00.

(c) a third letter dated the 7th July 2011 (A1 p47). The first £48 has been added to the account as the balance is now quoted a £1062.00. The letter informs the Respondent that the further charge of £48, referred to in (b) above, has now been added to the account. It states that if payment is not paid in full in 7 days "the matter will be passed to Solicitors...to recover the debt". It also warns the Respondent that "a referral fee of £96 (inclusive of VAT) will be applied to your account" if he does not pay the debt within that timescale.

(d) a letter from Maybeck (an associated company) informing the Respondent that the current balance was £1,210 (ie the original £1,014 plus the Residential charges of £192 and a Land Registry fee of £4.00). It gives the Respondent a further 14 days to pay not merely the £1,210 but £15.12 interest and a further £85 including VAT which are stated to be "legal fees" but which are in reality Maybeck's own fees. If payment does not result, the file is then passed to Solicitors. Further fees will then be charged. Alternatively, the Respondent can admit the amount claimed and Maybeck will approach the Respondent's mortgagee for payment. Again further fees will be charged - £250 for corresponding with the Respondent's mortgagee and a further £172.50 if a notice under section 146 of the Law of Property Act 1926 is required.

7.3 Mr Seigle told us that in addition to the letters, Residential staff would try telephoning a debtor. Residential will not accept payment by instalments until after the case has been referred to either Maybeck or the Solicitors. If a payment plan is then agreed, Residential will accept it.

7.4 The Respondent told us that he had attempted on a number of occasions to set up a payment arrangement, but Residential would not agree. He had been told that Residential would not accept part payment. Helen Solsberg (the previous manager) had responded: "why should I? I can go to your lender." He had spoken to Laura Ryan (at Maybeck) about setting up an arrangement, but the amount she wanted in instalments was unrealistic (see A1 p83). Also included was a letter to be signed by the Respondent addressed to his mortgagee admitting not only the debt, but also Residential's costs of £196 and a further £592.50 for "legal costs" – two charges of £85 plus the £250 and £172.50 referred to in paragraph 7.2(d) above.

7.5 The Respondent commented that he only had to pay the amount that was justified. He said that the cost of Residential's letters and those from Maybeck were too high as they were automatically generated letters and there was no personal input. Mr Seigle argued that there was in-put from the credit controller. The system generated a report. This would be sent to the Property Manager who would review it and who might put some action on hold. The reviewed list would be returned to the credit controller who would generate the letter. Mainstay had to invest in the system and there were costs involved in managing that system. There was a constant review of arrears. Residential had to keep on top of arrears because failure to do so could jeopardise the delivery of services to service charge payers. He justified the Residential charge of £96 for referring papers to Maybeck or Solicitors as Residential put together a pack comprising accounts, copy correspondence and details of attempts to contact a debtor. This had to be verified and authorised by the Property Manager and then sent to Maybeck. Even though the letter at A1 p47 states that the matter will be passed to Solicitors, it is passed to Maybeck because it is more cost effective. It is part of the same company. Mr Seigle did not know how many cases Maybeck settled, but it had a good track record. As far as the Respondent was concerned, he had reviewed the file and there had been very little communication from the Respondent. The Respondent had signed a legal document (the lease) setting out what he had to pay for. He had not written to Residential. He had not availed himself of the Complaints Procedure (A3 p259).

DETERMINATION

7.6 Administration charges are (amongst other heads of charge) amounts payable in respect of a "failure by the tenant to make a payment by the due date" (paragraph 1 Schedule 11 Commonhold and Leasehold Reform Act 2002 (CLARA)). Such charges are only payable "to the extent that the amount is reasonable" (paragraph 2 Schedule 11 CLARA).

7.7 As Mr Seigle stated in evidence, it is essential for Residential to keep on top of arrears because failure to do so could prejudice its management of the Development. In principle, therefore, we have no issue with its taking steps to seek recovery of outstanding sums from the Respondent. Nor do we see any objection to the principle that the defaulter should pay, rather than have the cost falling on the service charge payers as a whole. After all, in Part 1 of the Eighth Schedule to the lease, the Respondent covenanted to pay "all costs charges and expenses (including

legal costs and fees payable to a Surveyor) incurred by the Lessor in or in contemplation of any proceedings". The costs charged must, however, be a reasonable amount and reflect the work done. They must not be inflated either as a deterrent or simply as a means for making up for deficiencies elsewhere in a landlord's operation.

7.8 The Respondent has objected to the amounts charged on the basis that in the main the letters generated are standard computerised documents. We have some sympathy with that objection. The second and third letters are not specially composed for the Respondent. They were generated by a credit control clerk almost literally at the press of a button. The fact that each of these letters incorporates the threat of more and, in the case of the second letter, even higher costs makes it clear that part of the exercise is to put the defaulting lessee under pressure to make a payment. We cannot see that a charge of £48 for letters two and three is reasonable. In our view a charge of £20 including VAT would have been a reasonable amount. We appreciate that the computer programme has been installed and that there is management supervision both of the default lists and the working of the system, but the whole operation is straight forward and is one which is carried out without complication in most businesses. Even allowing 10 units per hour – which would be the standard unit of cost for a bespoke non-complex letter in a Solicitor's office, - £20 would produce an hourly charge of over £160 net of VAT. That, in our view is more than adequate for the work involved in producing each of letters two and three.

7.9 We have not been directed to an invoice for the charge of £96. However, it has been applied. We are not satisfied on the basis of Mr Seigle's evidence that this charge can be justified. It is simply the collation of the papers to be passed to the Solicitor or, as it happens in this case, to Maybeck. The papers are either in a file or are scanned onto the computer system. We cannot see that a charge in excess of £20 including VAT can be justified for this.

7.10 Although Residential informed the Respondent that the file would be passed to Solicitors, it was not. Instead it was passed to an associated company or organization, Maybeck, which charged £85 stating the amount to be "legal fees". They are not "legal fees". Maybeck is a debt collecting arm of Mainstay and in our view it is totally inappropriate to refer to its costs as "legal fees". It is giving the debtor entirely the wrong impression. In any event, we cannot understand why the letter from Residential says that it will be passing the file to Solicitors when it simply passes it to an associated company. This is just adding another layer of bureaucracy and cost, putting pressure on the Respondent. Even the letter from Maybeck includes another threat to pass the file to Solicitors. The alternative for the Respondent is to admit the charges and open himself up to further costs of £422.50. That admission has a profound legal effect which many lessees will not appreciate. It removes the Respondent's right to challenge any of the service costs. It also opens the way up to an approach by Residential to the Respondent's mortgagee to pay the whole sum including the costs. Whilst Maybeck may have a success in recovering outstanding costs, we do not regard it as reasonable to add this additional layer. Maybeck does not issue proceedings. It passes the file to Solicitors to do this. We are not saying that Mainstay cannot deal with default in this way. However, we were not convinced by Mr Seigle that it was reasonable to keep adding layers of cost to the process. Such a process is bound to add pressure on lessees who may well be disinclined to challenge items of cost for fear of incurring more and more expense. We do not consider Maybeck's costs to be reasonably incurred. WE DETERMINE that the sum of £366 in respect of the various administration costs is not reasonable but that the sum of £64 (3 x £20 plus £4 Land Registry fee) is reasonable.

7.11 We respectfully draw the attention of the County Court to the possibility that in respect of the claim for £96 and the amounts claimed by Maybeck, the Applicant may not have served the Respondent with the statutory summary of rights and obligations as required under the Administration Charges (Summary of Rights and Obligations) (Wales) Regulations 2007. The issue has not been raised by the Respondent. We have not determined it therefore. In the context of this decision, the parties and the Court may consider that the practical effect of insisting upon the

omission (if there be such) being remedied before payment of the relevant sum is ordered will in the long run benefit neither party.

8 COSTS

8.1 The Respondent made an application under section 20C of the 1985 Act for an order that the Applicant's costs in connection with the proceedings before this Tribunal "are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the [Respondent]." He argued that he has been asking Residential to produce paperwork since 2004. He had been asking for information. The Respondent had attended a meeting of residents. He had spoken to Helen Solsberg and raised issues with her. He had not argued over trivial issues.

8.2 Mr Seigle referred us to the statement of account at A1 pp1-4 which showed the history of non-payment. In the past, the mortgagee has settled and this is the first time that the Respondent has asked the LVT to review the costs. He explained that some lessees do complain – write, e-mail or telephone. Generally issues can be resolved by sitting down and discussing them. It removes the need for an application to the Tribunal. Had the Respondent exercised his rights, these proceedings would have been unnecessary.

8.3 This application has involved management time – preparation and hearing. He said that Residential would absorb the management cost of the preparation, but three members of staff had attended the hearing, two of them for three days. He said he felt that Residential could fairly charge £7,000, but he felt that such an amount would be unreasonable. He indicated that Residential would charge £2,400 as an Estate charge for the application, although he suggested that Residential would need Bellway's agreement.

DETERMINATION

8.4 Provided there is provision in the lease for so doing, as there is in this case (see A3 p244), the Applicant is entitled to include its costs as part of the service charge unless this Tribunal determines otherwise. 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)).

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 the Respondent, proportionality, the conduct of the parties and other "circumstances" such as the property being part of a resident-managed development.

8.6 On the one hand we must balance the Applicant's contractual property right to have its costs paid, the Respondent's conduct in failing to make any payments or enter into meaningful discussions concerning the service costs which he challenged and the fact that the Applicant/Residential was largely successful in the proceedings against the various small reductions in charges and the substantial reduction in the management fee.

8.7 We have concluded that Mr Seigle's suggestion is a reasonable one and so WE DETERMINE that the Applicant's /Residential's costs in excess of £2,400 (including VAT) are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

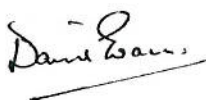
9 SUMMARY

We have determined that the Respondent is entitled to credits in respect of the following:

Paragraph 5.3(g)	£14.69	
(h)	£58.75	
(k)	£60.00	
(m)	£120.00	
(n)	£60.00	
(p)	£222.04	
(r)	£165.00	
(y)	£456.00	£1,156.48 x 0.1362% = £1.58
Paragraph 5.6(b)	£88.12	
(d)	£102.82	
(g)	£29.37	£220.31 x 0.1362% = £0.30
Paragraph 5.8		£203.70 - £142.18 = £61.52
Paragraph 5.8(s)	£969.00	
(u)	£590.00	
(v)	£1,000.00	
(w)	£1,070.00	£3,629.00 x 0.1362% = £4.94
Paragraph 5.9(c)	£72.85	£72.85 x 1.8079% = £1.32
Paragraph 7		£302.00
The Respondent is entitled to total credits of		£371.66

The amount of service charges and administration charges claimed in the proceedings is £2,425.40.
The amount of service charges and administration charges we have determined is £2053.74.
The balance of the claim – ground rent, interest on the claim and legal costs in the proceedings – is a matter for the County Court.

DATED this 5th day of February 2013



CHAIRMAN