Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0044/09/13 and LVT /0045/09/13

In the Matter of Flats 1 and 2 Dock Chapel, Embankment Road, Llanelli, SA15 2BT

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

TRIBUNAL	David Evans LLB LLM Ruth Thomas MRICS
APPLICANTS	Mr Sushil Kantibhai Patel and Mr Deshan Sushi Patel
RESPONDENTS	Ms Sharon Lewis and Mr Michael Paul Joseph Shepherd

DECISION

BACKGROUND

1 The Applicants are the freehold owners of a former Independent Chapel located on Embankment Road, Llanelli (the Property). The Chapel has been converted into 8 flats and in 2007/2008 the then owner, Mr Gerald Raynard Fuller(Mr Fuller) granted leases of four of the flats, numbers 1 to 4, for 125 years from the 1st April 2007 at initial ground rents of £120. Flat 1 was let to the first Respondent (Ms Lewis) and Flat 2 was let to the second Respondent (Mr Shepherd). The owners of flats 3 and 4 are not parties to these proceedings. The ownership of flats 5 to 8 was retained by Mr Fuller and these were let to tenants on assured shorthold tenancies.

2 The leases of flats 1 - 4 are in common form, in a style frequently adopted in flat developments, with the manager or lessor insuring, maintaining and repairing the structure and common parts of the building and the external area with the lessees each contributing one eighth of the cost of doing so. It follows from the fact that 4 only of the flats were let on long leases that the lessor would need to contribute one half of the total costs. The leases also enable the manager/lessor to demand sums on account in advance of such costs being incurred although we were given to understand that Mr Fuller did not exercise this right.

3 In 2011, Mr Fuller encountered financial problems and on about the 15th July 2011, J A Pitt and B J Moon of BNP Paribas Real Estate were appointed receivers (Receivers) to the Property under the Law of Property Act 1925. The Receivers appointed Touchstone Residential (Touchstone) to manage the Property which they proceeded to do until the 1st November 2012 when the Receivers sold the Property to the Applicants. During the period of the receivership, Touchstone incurred expenditure on the Property on behalf of the Receivers and submitted service charge demands to the lessees so that the Receivers could recover their outlay. However, by the time of completion of the sale, three lessees, including both Respondents, had not paid any of the amounts demanded. It was part of the agreement with the Receivers that the Applicants reimbursed the Receivers the amounts owed by the three defaulting lessees. This totalled £3,345.42 (£1,115.14 each). Since completion, one lessee has paid, but the two Respondents have not done so.

4 On the 8th November 2011, the first Applicant (Mr S Patel) wrote to both Respondents notifying them that he had now acquired the Property and that they each owed the sum of

£1,115.14 plus a "half yearly service charge in advance 01.11.12 to 30.04.2013: £425". In addition the letter demanded £60 in respect of a half year's ground rent in advance and interest of £55.76. Neither Respondent paid, and so in February or March 2013, Mr S Patel commenced proceedings in the County Court. Both Respondents filed defences and the case was transferred to the Swansea County Court and then to the Llanelli County Court under case numbers 3YK00711 and 3YK00728. On the 25th September 2013, Deputy District Judge Batcup ordered that the claim for service charges be transferred to this Tribunal and that both cases be heard together.

HEARING

5 On the 24th October 2013, we issued directions to which we shall refer later. Both matters were set down for hearing on the 10th and 11th February 2014 at the Selwyn Samuel Centre in Llanelli. Prior to the hearing we inspected the Property in the presence of Mr Lionel Jones, the Solicitor for the Applicants and Mr Shepherd. Ms Lewis did not attend.

6 The Property is a substantial stone built building in a square plot at the corner of Embankment Road and Clos Dewi, a short distance from the centre of Llanelli. There are two accesses, one on the south east side of the building serving the four leased flats (1-4) and the other on the north-west side serving the retained, tenanted flats. Access on the north-west side is through a porch. Flat one is on the ground floor opposite the south east entrance door. A staircase leads to the three upper floors where the other flats are situated, one on each floor. This arrangement is mirrored on the north-west side of the building. Each hall and stairway has lighting, smoke detectors and sounders. The doors and communal windows are upvc and the hall, landings and stairs are carpeted.

7 Although the flat conversion took place in about 2007, the Property has not been well maintained. The locking mechanism on the front door serving flats 1-4 is broken so that it blows open. There are leaves in the hall. The carpets are very dirty and some of the double glazing units have failed. A plastic bag was placed over one of the sounders apparently to deaden the noise when the fire alarm is activated.

8 Outside, each flat has one parking place and there is limited parking for visitors. The external area is mainly tarmacked with borders containing some shrubs. This area needs cleaning and the borders need attention. The whole vista is typified by the presence of innumerable rubbish bags which are dumped in a corner of the plot. There is clearly a lack of effective management and this is bound to impact on the prices attainable for the flats in the open market.

9 The Applicants did not attend the hearing, but were represented by Mr Jones. Mr Shepherd also attended. There was no appearance by Ms Lewis. The County Court had directed that the two cases be heard together. Mr Jones submitted that the case should proceed in the absence of Ms Lewis and that both cases should be heard together. Mr Shepherd had no objection. We were told that Ms Lewis had not attended the County Court hearings. We were satisfied that Ms Lewis had been notified of the time, date and place of the hearing. We were mindful of the County Court direction that the two cases should be heard together. The Applicants and Mr Shepherd were both ready to proceed. It would in our view be unreasonable to expect the Applicants to go to the expense of a further hearing requiring the Applicants to produce the same evidence, deal with the same issues and make the same arguments as in this hearing. Ms Lewis had set out her case in the Defence and in her letter of the 22nd May 2013 included in the papers. We would be able to take this into consideration and the Applicants could deal with the issues raised. There could be no certainty that Ms Lewis would attend an adjourned hearing. On balance, we concluded that it would be disproportionate and therefore not reasonable to postpone the two cases or Ms Lewis' case. In the one case, it would cause both parties inconvenience and expense; in the other it would cause the Applicants inconvenience and expense (see regulation 15 of The Leasehold Valuation Tribunals (Procedure)(Wales) Regulations 2004.

10 At the start of the hearing it was noted that the freehold of the Property was in the names of the two above named Applicants whereas the Claimant in the County Court Proceedings was only Mr S Patel. Mr Jones who represented both Applicants requested that we join Mr Deshan Sushi Patel as a second Applicant in these proceedings. There was no objection from Mr Shepherd and so we granted Mr Jones' application (regulation 6).

11 Mr Jones presented the Tribunal and Mr Shepherd with a paginated bundle of documents to which reference was made during the hearing. We shall refer to any such documents in this decision by reference to its page number. Other documents will be identified by its description and (if appropriate) date.

12 It was agreed by the parties that the Applicant's claim in the County Court related to two sets of service costs. On the 1st November 2011, Touchstone sent demands to the Respondents for £546.08 (pp41 and 42) on account of the service costs to be incurred between 1st November 2011 and 30th April 2012. At some point a further demand was sent, dated the 1st May 2012, for an additional £546.08 (pp43 and 44). We do not know how these amounts were made up. There was no breakdown provided. We had been given a copy of a ledger dated 31st August 2012 which showed each half year's demand to be £385.07 plus a single payment of £225.00 as the charge for removing Japanese Knotweed (of which more anon). With two half yearly payments of ground rent of £60.00, the total shown in the ledger as owed by each of the Respondents was £1.115.14. This tallies with the amount paid by the Applicants on completion of their purchase of the Property as shown in the completion statement (p77).

13 In the circumstances, the parties agreed that we should consider the actual costs. At some point, Touchstone prepared an income and expenditure account. It is not dated, but it appears at page 49 with a revised version, again undated, at page 50. A breakdown of the invoices is at page 54. The costs total £5,048.88 (p49) and the amended figure (p50) £5037.82. Neither figure tallies with the breakdown (p54). We considered that the most straightforward method of dealing with the application was to consider each head of charge and the relevant invoices as they appear in the breakdown (p54) and to consider the issues raised by the Respondents. The figures at the start of each section are the actual totals of the invoices and not the summary figures shown on that page. The figure for the Japanese Knotweed is the annual amount claimed.

14 On the 8th November 2012, Mr S Patel wrote to the three defaulting lessees demanding the outstanding balance which the Applicants had had to pay on completion (£1,115.14) and in addition a further sum of £425 representing one half of the estimated service costs for the period 1st November 2012 to 31st October 2013. Including the half year's ground rent (£60.00) and interest of £55.76, the total demanded was £1,655.90. A copy of an estimate was also sent showing how the sum of £425 was calculated. On the 31st January 2013, the Applicants sent out copies of an amended budget reducing the half yearly amount demanded to £240. Neither of these budgets appears in the hearing bundle although we were provided with copies. When asked which of these budgets the Applicants were proposing to rely on, Mr Jones informed us that it was the first. However, whilst it was the first estimate which formed the basis of the Applicants' claim (£425), in reality it was the second which was more closely aligned with the Applicants' case as presented. The figures are replicated in the summary document at page 75. We shall therefore deal with the items of estimated service costs on the basis of the summary (p75). We shall refer to the year ending 31st October 2012 as 2012 and that ending 31st October 2013 as 2013.

15 Mr Shepherd's general complaint was the substantial increase in the service costs from when the Receiver took over. Until that time, he had been paying £360 a year in arrear. The Respondents raised a number of particular issues which we shall now deal with in the order in which they appear in the Touchstone accounts.

INSURANCE

2012 - £3,641.18; 2013 - £1,620

16 The Applicants rely upon the information provided by Touchstone. At page 55 in the hearing bundle, there was a copy of the invoice from Willis Limited, a substantial and well known broker, which arranged insurance for "the first 12 month period of Insolvency Scheme Cover". The Schedule to the policy does not appear in the bundle, but we were provided with other documents relating to the policy, and there is a reference to the type of risk being "combined". It is also noted that although the start date of the policy is the 15th July 2011, the policy is not "signed" until the 26th September 2011.

17 We were also provided with some documents from Willis Ltd relating to insurance for the period 15th July 2012 to 14th July 2013. The premium for the second year is stated as £2,113.21. We were informed by Mr Jones that the Applicants were never asked to reimburse the Receivers this amount. When the Applicants exchanged contracts for the purchase of the Property, they wisely insured from that date - 15th October 2012. The amount of the premium was £1,107.70 as stated in the copy schedule which was also produced at the hearing. However, we were also provided with a document headed "Schedule of Service Charges…Expected Budget 1st November 2012 to 31st October 2013" on which is hand written "first sent out 08/11/2012". The Applicants have used the figure for the previous year, namely £3,640. The Applicants prepared their amended budget for 2013 on 31st January 2013, a copy of which we were also shown. They have amended the estimated figure for insurance to £1,620 which we were told was an oral estimate given them by a broker.

18 Mr Jones initially conceded that the 2012 figure (£3,641.18) was significantly out of step with the 2013 figure from Willis (£2,113.21) and the oral estimate of £1,620 obtained by the Applicants and the actual sum paid (£1,107.70). He could offer no explanation for this. However, in closing he said that the Receivers had taken out the insurance through reputable brokers for the risks required by them. The amount of £3,641.18 was therefore reasonably incurred. For 2013, the Applicants are seeking payment on account of £1,620 as shown in the amended budget, despite the fact that they had only paid £1,107.70. Mr Jones argued that it was a reasonable sum to ask for on account.

19 Mr Shepherd's concern is that he has been requesting a copy of the insurance policy as his mortgagees are charging him £24 per month for buildings insurance. The mortgagees are not satisfied that the Property is properly covered.

DETERMINATION

20 No explanation was provided as to why the insurance premium for the buildings insurance for 2012 was three times that actually paid the following year. We accept that premiums can and do vary according to claims and the market, but in general not as much as in this case. Mr Jones' initial observations were that the 2012 premium was significantly out of step although he had moderated that view by the time he gave his closing remarks. Without a credible explanation for the wide disparity in the premiums for 2012 and 2013, we cannot accept the 2012 amount as being reasonably incurred. It may be, as Mr Jones suggested, that it covered the risks required by the Receivers. It appears to have been back dated to cover risks from the start of the receivership. It may be that receivers require a specialist policy. Whatever the actual reason, it does not seem reasonable to us that the lessees should have to pay more for insurance cover because the lessor's property is in the hands of receivers than they would in the ordinary course of events. Any specialist requirements are matters for the receivership and not for the lessees.

21 Without more information, we can only consider the evidence provided, namely the amount paid by the Receivers in July 2012 and the estimate and actual cost for 2013. We appreciate that these amounts are all substantially less than the Applicants were required to reimburse the

Receivers, but that was part of the deal. After all, even ascribing no value to the four flats on long leases, the Applicants have acquired the other four "in hand" for £40,000 each, well below vacant possession market value, as Mr Jones conceded. The possibility that the Applicants might not be able to recover all the service costs paid by the Receivers from the lessees was a risk which the Applicants will have had to factor in to the price they were willing to pay.

22 Bearing in mind the Receivers' payment of £2,112.21 in July 2012, the 2013 estimate of £1620 and the actual payment of £1,107.70, and without evidence explaining the disparity between those figures and the amount paid by the Receivers WE DETERMINE that the cost of £3,641.18 was not reasonably incurred. The premium does not have to be the cheapest available, but it has to be reasonable incurred. The 2013 figure from Willis was £2,112.21. The oral estimate given to the Applicants was £1,620. We must take into account that the market does fluctuate. However, the former figure will reflect the receivership issue, whilst it may have been reasonable to pay a little more than the latter. Doing the best we can on the basis of the information provided, we consider that it would have been reasonable to have obtained insurance for the Property for 2012 in the sum of £1,820.59 and so WE DETERMINE that the sum of £1,820.59 would have been reasonably incurred. The Respondents are each entitled to an appropriate credit for their respective 1/8th shares. We should perhaps record that no issue was taken by the Respondents as to when the premiums was paid. It may well be that although the insurance ran from the 15th July 2011, the document (p55) dated 26th September 2011 states that the premium is now due. The date of payment could therefore have been made in the financial year commencing 1st November 2011. It is shown as "expenditure" for 2012 in the account (p49).

23 We accept that the Applicants contacted a broker who provided them with the figure orally of £1,620. We have no evidence as to when this was done. It is feasible that the Applicants could have placed cover without being told the premium. It is also possible that the Applicants were given an oral estimate of £1,620 at that time. It is not credible that the Applicants would not have known the actual amount of the premium when the second estimate was sent out on 31st January 2013. Mr Jones' argument is that the sum of £1,620 was a reasonable estimate when the initial budget was prepared and that the necessary adjustment would be made in the final accounts.

24 We can accept that viewed from a date prior to completion on the 1st November, 2012, when the actual amount of the premium may not have been known, a figure of £1,620 might have been considered reasonable. We would certainly not have considered £3,640 as reasonable as stated in the first budget for reasons already expressed, but if we are intended to read the amended budget as being effective from the 1st November 2012 or shortly prior to that date, we can accept that it would have been reasonable to include that figure in the budget. We appreciate that by the time the amended budget was prepared, the correct figure was known and that many responsible lessors would have included the known figure, possibly including a contingency in case of additional insurance being necessary. However, viewed from October/November 2012, WE DETERMINE that the sum of £1,620 was reasonable.

ALARM MAINTENANCE & CALL OUT

2012 - £321.60; 2013 - £340.00

25 There are two alarm systems at the Property, one each side of the building. The costs comprised two half yearly payments of £50.00 plus VAT for each of the alarm systems (pp56, 57, 59 and 60). Mr Shepherd had no issue with these costs. He also accepted the charge of £39.60 for changing the batteries (p61) although he commented that the alarm had gone off 18 times since January. One consequence of the faulty door locking mechanism is that the wind sets the alarm off daily. However, his complaint was in connection with a charge for £35.00 plus VAT (£42.00)(p58) for investigating a fault on the fire alarm system in March 2012. The alarm had gone off and the engineer was called out. He came early evening at about 4 or 5 o'clock. Mr Shepherd was there

when the engineer looked at the alarm. He did not reset the alarm or diagnose the problem. He simply silenced the alarm. When the alarm was reset, it went off again. The engineer did not investigate the problem. Mr Shepherd accepted that if the alarm had been put right, the charge would have been reasonable. However, as the engineer did nothing more than silence the alarm the lessees were not receiving value for money. The lessees now silenced the alarm themselves and reset it. If it did not reset the first time, someone would go back to it later and try again. It would reset eventually.

26 Mr Jones told us that the engineer had not charged for rectification of the problem. The charge for the call out was not unreasonable.

DETERMINATION

27 The only issue between the parties relates to the bill for £42.00 (p58). We accept that the engineer attended and that Mr Shepherd was present at the time. We are also satisfied that the engineer merely silenced the alarm after failing to correct the problem. That does not mean that the lessees have not had value for money. As Mr Jones pointed out, the lessees were not being asked to pay for rectification. We are satisfied on the evidence that what the engineer did was temporary and that is all that was charged for. The invoice (p58) refers to an engineer's report. Unfortunately we do not have this. The fact that the repair was never carried out is down to poor management. That does not mean that it was unreasonable to call out an engineer to see to the fault. Nor does it mean that the charge of £42.00 inclusive of VAT was unreasonable for what was done, however basic or temporary. We accept Mr Jones submission that the charge is reasonable for the attendance and for silencing of the alarm. Therefore WE DETERMINE that these costs were reasonably incurred.

28 The estimated cost for 2013 of £340.00 is based upon the 2012 actual figure. There was no issue raised by Mr Shepherd. In the absence of a provision for exceptional items, it appears to us to be a sensible approach by the Applicants and so WE DETERMINE that the estimated costs of £340.00 for 2013 are reasonable.

CLEANING

2012 - £750; 2013 - £780.00

29 The invoices for 2012 are to be found on pages 62-66. They total £750 (including an invoice for cleaning on the 1st November 2012). The Schedule of Service Charges for 2013 which formed part of the County Court proceedings, includes the sum of £1,720 for cleaning, although this was subsequently amended to £780. Mr Shepherd's criticisms of the cleaning costs are:

(a) That the cleaners did not always turn up. This was something he had raised with Touchstone, the Receivers' managing agent. The Respondents lived at the Property and knew that the cleaners did not always turn up. Sometimes Mr Shepherd would leave his door open all day to check. There was no sheet on the wall for the cleaners to sign. Once the lessees had set a trap and had left papers on the floor in the access to flats 1-4. It remained there notwithstanding 2 cleaning dates in October 2012.

(b) The quality of the work. Each access takes an hour. The cleaners just sweep. There is no hoovering or dusting. The cleaners do not wash the windows. On the 31st October 2012 (Halloween) an egg was thrown at the glass beside the front door. It is still there. If the cleaning had been done properly, Mr Shepherd would not have objected to the cost. He had told Mr Patel that he was not receiving value for money from the cleaners. Since October 2013, Mr Shepherd has been responsible for the cleaning by arrangement with Mr Patel.

30 Mr Jones explained that Mr Patel paid £30 per fortnight until Mr Shepherd took over the cleaning. Mr Patel had paid the Receivers £30 for the 1st November 2012 even though it was technically an expense for 2013.

DETERMINATION

31 Unfortunately our inspection did not show the Property in its best light. It is definitely in need of robust management. However, it is difficult for us to gauge the quality of the cleaning that took place in the period from 1st November 2011 to 31st October 2012. We have no specification as to what the cleaners were supposed to do. Certainly in our experience £30 per visit for the two accesses is well within the bounds of reasonableness. As Mr Shepherd said, he would have accepted the charge if the job had been done properly.

32 We do not have sufficient evidence for us to say that the quality of the work was not of a reasonable quality. Nor is there sufficient for us to find that there were instances of absenteeism of the frequency suggested by Mr Shepherd. We do however accept Mr Shepherd's account of the trap set by the lessees in October 2012 and that there were two occasions when the cleaners did not attend and which were charged for. This is also supported by the invoice on page 66 for the 1st November which reads "final clean as requested". Why would this have been necessary if the cleaning had been carried out properly in the weeks before? We do not consider it reasonable for the Respondents to pay the Cleaning4me invoices for £30 on two visits in October 2012.

33 The accounts appear to us to have been prepared upon a cash basis as opposed to an accrual basis. On a cash basis, the invoice at p66 dated the 26th November 2012 falls in the 2013 service charge year. However, the Applicants paid the amount the costs incurred on completion and in the circumstances, we consider it reasonable to have included the costs in the 2012 figures. However, on the evidence we are not satisfied that the two cleans in October were carried out satisfactorily or at all and so WE DETERMINE that the costs of £750 were not reasonably incurred, but that costs of £690 were reasonably incurred.

34 The original budget figure of £1,720 was amended to £780. This is much more in line with the costs incurred the previous year and so WE DETERMINE that the amended estimate of £780 for cleaning costs for 2013 was reasonable.

UTILITIES

2012 - £378.46; 2013 - £1,100

35 The individual invoices for 2012 are listed in the Schedule of invoices at page 54 and they appear at pages 67 to 72. They total £378.46. There was no issue with regard to the rates charged and no issue that the rates charged were not reasonably incurred. There were two concerns:

(a) The invoice for £105.48 (p 68) states that it relates to flat 6 Dock Chapel. It does not refer to the "Lobby Supply" as do the other invoices. Clearly the invoice has been wrongly posted. WE DETERMINE that these costs were not reasonably incurred. The correct total is £272.98.

(b) There were also two invoices which largely covered the same period (p53). The invoice dated 1st November for £52.06 is for the period 3rd August 2012 to 25th October 2013. The second invoice for £56.53 is stated to be for the period 26th October 2012 to 1st November 2012. As Mr Jones acknowledged it was unlikely that the common parts used over £50 over the course of a week when it only used that amount in a quarter normally. The 1st November invoice is not listed in the Schedule. We have taken the view, not challenged by Mr Jones, that the second invoice was intended to cover the period from the 3rd August 2012 to the 1st November 2012, superseding the earlier invoice. In the income and expenditure account (p 50), the utilities costs are stated as

being £325.04. This includes the duplicated invoice of £52.06 which WE DETERMINE was not reasonably incurred. Again the correct total is £272.98. WE DETERMINE that sum to be reasonably incurred.

36 Mr Jones explained that when the Applicants had prepared the budget for 2013, they had based their estimate on the amount of electricity a house would use (p 75). Mr Jones agreed that this was an over estimate. Both he and Mr Shepherd agreed that a reasonable amount to have included for 2013 would have been £325. WE DETERMINE that the amount of £1,100 was not reasonable but that the amount of £325 was reasonable.

JAPANESE KNOTWEED

2012 - £1,800 (stated as being £900).

37 We had sight of a copy of the management ledger which recorded an amount of £225 payable by each lessee for the cost of treatment for Japanese Knotweed and Mare's Tail. We were also provided with a report from Kaim Environmental a company from Llandysul which specialises in weed control. The report, which is undated and addressed to the Receivers, refers to Google Earth pictures and notes the presence of Japanese Knotweed and Mare's Tail at the Property. It recommended a three year course of treatment costing £1,500 for each year in respect of the Japanese Knotweed and a further £300 for each year for the Mare's Tail. There is a note on the estimate indicating that the treatments began in January 2012. We do not have evidence to verify this, but in an e-mail dated 27th June 2012, Glen Parrington of Kaim Environmental reported on the success of the first treatment and referring to the "second dose of herbicide to finalise the job." An invoice dated 16th September 2012 for £900 refers to "executing final treatment 2012 of Japanese Knotweed and other weeds as per our proposal…"

38 Mr Shepherd did not accept that there was in fact Japanese Knotweed at the Property. He felt that the suggestion had been made in order to obtain work. He did not know that there had been a report. He had seen the pictures sent by Kaim Environmental. Ms Lewis had these; he did not. He only saw them when he went to Court in October 2013. Kaim had put red markings indicating the location of the Knotweed. As soon as Touchstone took over management, in about July or August 2011, they informed him that the service charge was just under £1,200. He then received a letter from them about the Knotweed. They had told him that further investigations would be carried out. Touchstone had said that treatment would cost about £280. When Touchstone had informed the lessees about the Knotweed the Respondents had queried this; they had lots of queries. They were going to take the Receivers to Court. There had been correspondence but Ms Lewis has the letter. He instructed a gardener who said that there was no Japanese Knotweed at the Property. Mr Shepherd understood that the gardener had sent Touchstone a report, but nothing more was heard. He had not seen the report. It was not clear from the evidence when this had taken place

39 He disputed that any treatment had been carried out: no-one came and sprayed. If there had been Japanese Knotweed there he would have seen it, although he conceded that he had no experience of Japanese Knotweed. He had taken a photograph which he told us was on the 12th November 2012. There was in Mr Shepherd's view, no evidence of the first bill for treatment. He had taken over as building manager in November 2013. He instructed an independent gardener. He had spoken to Mr Patel then and told him that there was no Japanese Knotweed present. The gardener had applied a weed treatment at a cost of £120. Mr Jones pointed out that by June 2012 the first treatment had proved effective. This was why the gardener found no evidence of Japanese Knotweed.

40 We raised with Mr Jones the issue of whether the contract with Kaim Environmental was for three years and as such would require consultation under the Service Charges (Consultation Requirements) (Wales) Regulations / Rheoliadau Taliadau Gwasanaeth (Gofynion Ymgynghori)

(Cymru) 2004 (SI 2004/684 (W.72)) as amended by the Service Charges (Consultation Requirements)(Amendment) (Wales)Regulations / Rheoliadau Taliadau Gwasanaeth (Gofynion Ymgynghori) (Diwygio) (Cymru) 2005 (SI 2005/1357 (W.105))(Regulations). No consultation had been carried out. Touchstone had taken the view that there had been a single contract for only one year. The cost of £1,800 was £225 per flat and therefore below the threshold of £250 under the Regulations. Mr Jones submitted that whilst the report recommended treatment for three years, there was no evidence that that the agreement had been for all three years. He doubted whether a Receiver, whose main interest was to dispose of the Property, would have been willing to enter into a three year commitment. Mr Patel was not tied into the contract. Knotweed is not cut down; it has to be sprayed. It had been eradicated by the time Mr Shepherd's gardener was instructed. The invoice was genuine, referring to the final treatment - "50% contract price".

DETERMINATION

41 The Kaim Environmental report states clearly that there were both Japanese Knotweed and Mare's Tail present at the Property. The evidence of the commissioning of the report is sparse, but the Receivers must have been alerted to the possibility of the presence of the weeds as otherwise they would not have embarked upon a programme of eradication. Receivers do not generally spend money without good reason as to do so would reduce the mortgagee's recovery. We can understand that Mr Shepherd is concerned about the cost, but having received the report it was not unreasonable for the Receivers to authorise work to be carried out.

42 Mr Shepherd raises some very serious allegations - there was no Knotweed present, there was no treatment carried out and there was only one invoice for £900 and not two. Such allegations are not supported by the evidence. The pictures, the gardener's report and the letter were not available. We are not saying that they did not exist, but we cannot be satisfied as to what they illustrated or contained without seeing them. Regrettably Mr Shepherd became a little confused during the course of his evidence and, even allowing for the fact that he was not used to being involved in proceedings of this nature, we did not find him to be reliable on this issue. He was not clear about the timing of the first gardener's visit. As Mr Jones rightly pointed out, if it was after June 2012, or indeed after the first treatment, which were led to believe was in January 2012, there may not have been any evidence of Japanese Knotweed as the first treatment had been successful.

43 We consider it extremely unlikely that the Receivers would have contracted with a firm without being satisfied with its credentials. Further it would have been an audacious act of criminality to prepare a report indicating the presence of Knotweed and Mare's Tail when there was no such thing. It is simply not credible that, having prepared a bogus report, Kaim Environmental would simply send two bills to the Receiver each for £900 without even having made the pretence of carrying out the contract. We are satisfied on the evidence that the report was genuine and that the two treatments were carried out. We accept that Mr Shepherd may not have seen the spraying on either occasion, but he may have been out on both occasions, and the effect of the spraying would not have been as noticeable immediately in the same way as digging or cutting back.

44 We are also satisfied that there were two invoices. That dated 16th September 2012 refers to "final treatment 2012" and "50% contract price". The report from Mr Parrington states that 50% of the cost was to be at the start of the contract with the remaining 50% due on the 1st September. His e-mail dated 27th June 2012 refers to the knotweed being "treated on the first visit" and at some time "the second dose of herbicide" being administered "to finish the job". If the invoice dated 16th September 2012 had been the only one, it would have been worded differently, omitting the word "final" and any reference to 50% of the contract price. The report refers to the contract price for Knotweed and Mare's Tail as £1,800. 50% of that is £900. Mr Parrington's e-mail would not have been written - it clearly shows that two treatments were envisaged.

45 We also accept Mr Jones' argument that although the report referred to a course of treatment over a three year period, it is unlikely that a Receiver would want to become involved in

any long term agreement. It is possible that such an agreement could have been assigned as part of the sale, but that would be an unnecessary complication. It appears to us more probable that the Receiver only contracted for a single year's treatment. After all that is what has happened and there is no suggestion from either party - or indeed in any of the documents - that Zaim Environmental has sought to carry out further treatment. Touchstone is a professional manager and from its e-mail to Mr Jones (p 48) it is apparent that it too regarded the contract as a one-off treatment.

46 We have considered whether the cost of £1,800 is reasonable. The work is specialised, with skilled employees using controlled poisons and if the treatment had been followed through, Zaim Environmental would have been required to provide a certificate of eradication which would be relied upon by future purchasers. It is unlikely that the Receivers would have simply picked a name out of the telephone book and accepted a price without checking the market as they had a duty to the mortgagees. The Respondents did not provide any evidence to raise a prima facie case that the costs were unreasonable. We have considered the evidence and the arguments, and WE DETERMINE that the costs of £1,800 were reasonably incurred.

MS LEWIS' DEFENCE

47 In Ms Lewis' absence, we invited Mr Jones to deal with any matters raised by her in the proceedings. She referred to the following:

- the lack of maintenance in respect of the front door;
- the lack of light in the communal area causing her to fall and break her leg;
- falling stonework;
- part of double glazing has fallen from 2 flats;
- refuse mounting up;
- land not maintained;
- the value of her flat had depreciated.

Mr Jones responded on the basis that there had been no charges for maintenance, that the refuse was being dealt with and that depreciation was beyond the Applicants' control.

48 Sadly, most of Ms Lewis' complaints are merely indicative of bad management and not relating to the costs of particular services. Bad management (and high service charges) can affect the saleability of a flat and therefore its price. However, we do not see that these matters relate to the quality or cost of the services charged for and they do not affect the amounts determined.

SUMMARY

49 The amounts of the 2012 invoices and the amounts originally budgeted (and as amended) for 2013 and the amounts determined are as follows:

2012	CHARGED		DETERMINED	
Insurance	£3,641.18		£1,820.59	
Alarm maintenance	£321.60		£321.60	
Cleaning	£750.00		£690.00	
Utilities	£378.46	£5,091.24	£272.98	£3,105.17
Japanese Knotweed		£1,800.00		£1,800.00
2013				
Insurance	£3,640.00 (£1,620)		£1,620.00	
Alarm	£340.00		£340.00	

Cleaning	£1,720.00 (£780)	£780.00	
Utilities	£1,100.00	£325.00	
	£6,800.00 (£3,840)	£3,065.00	
One half	£3,400.00 (£1,920)		£1,532.50
	£10,291.24 (£8,811.24)		£6,437.67
	÷ 8 = £1,279.73 (£1,101.40)		£804.71

50 WE DETERMINE that each Respondent's proportion of the service costs reasonably incurred in respect of 2012 and the proportion of reasonable service costs as estimated for the first half yearly payment for 2013 is £804.71. We consider the payability of this amount below.

SERVICE CHARGES (SUMMARY OF RIGHTS AND OBLIGATIONS, AND TRANSITIONAL PROVISIONS) (WALES) REGULATIONS / RHEOLIADAU TALIADAU GWASANAETH (CRYNODEB O HAWLIAU A RHWYMEDIGAETHAU, A DARPARIAETHAU TROSIANNOL) (CYMRU) 2007 (SI 2007/3160 (Cyf/W.271))

51 Section 21B of the Act requires a demand for a service charge to be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The above regulations (the Regulations) made by the Welsh Ministers prescribe the form and content of the summary in relation to properties in Wales. The Regulations require that the summary must be provided in Welsh and English. If the summary is not provided as prescribed, the tenant may withhold payment (section 21B(3) of the Act) and any provisions in the tenant's lease relating to non-payment (eg interest and costs) will have no effect (section 21B(4)).

52 Mr Jones conceded that when the proceedings were commenced by the Applicants in February or March 2013, the notice had not been served on the Respondents in the prescribed form. It follows that at that time, the Respondents were under no obligation to pay anything to the Applicants as nothing was due and payable.

53 On the second day of the hearing, Mr Jones handed to Mr Shepherd a document which purported to be a notice in the prescribed form. We have not considered that notice. It may well be valid in which case the amount determined may now be payable. However, it was not payable when the proceedings were issued or referred to us or, indeed, at the start of the hearing. WE DETERMINE therefore, that the amount of service charge payable by each Respondent in connection with these proceedings at the time when these proceedings were commenced was NIL.

OTHER ISSUES

54 The issues of interest and the Ground Rent were retained by the County Court, the latter not being within our jurisdiction anyway. However, we respectfully draw the attention of the learned Judge to section 21B(4) of the Act on the matter of interest and the Landlord and Tenant (Notice of Rent)(Wales) Regulations 2005(2005 No 1355 (W.103) which prescribe the form of notice to be given to a tenant under section 166 of the Commonhold and Leasehold Reform Act 2002.

COSTS

55 Mr Jones applied for costs against both Ms Lewis and Mr Shepherd. He submitted that the Respondents had acted frivolously, vexatiously, abusively, disruptively and unreasonably. Ms Lewis had failed to attend, failed to notify him or the Tribunal that she was not going to attend, failed to comply with the Tribunal's directions. Although Mr Shepherd had attended he had failed to comply with the directions. If the Respondents had contacted him, they could have negotiated a deal. If directions had been complied with, a fully contested hearing might have been avoided.

56 Mr Shepherd told us that he did not have any documents. He had had nothing to add to what he had already written. Mr Jones had everything he had. Ms Lewis had told him she would attend.

DETERMINATION

57 The expression used in paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 is that a party must have had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably before an order for costs can be made. Even then the maximum amount we can award against a party is limited to £500. The words used denote a serious act or course of conduct which materially affects the way the proceedings are conducted. Not attending can be such conduct where it causes delay or prejudice. In this case, Mr Jones was able to present his clients' case even though the Applicants themselves did not turn up. If they had we may have received the benefit of more direct evidence on certain issues. It was, after all, their application. They had to present their case or have someone do it on their behalf. They were not prejudiced by Ms Lewis' absence, an absence which may well have been occasioned by a family issue to which we were referred at the hearing. If anything, it was the Respondents who were prejudiced by her absence. It was Ms Lewis who had the photographs and correspondence and she may have been able to assist Mr Shepherd in putting forward the Respondents' case and by providing corroborative evidence.

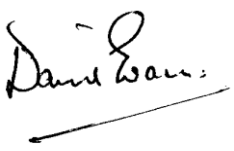
58 Directions are provided by the Tribunal to assist the parties so that the issues and evidence are able to be fairly and fully aired at the hearing. Failure to comply with the directions can be disruptive. However, as Mr Shepherd said, Mr Jones had everything. There were not many issues to be considered. The nature of the dispute was self-evident. Mr Jones did not indicate any particular thing which caused him prejudice.

59 Whilst an application for costs is not the same as an application in the old Courts of Equity requiring the parties to come with clean hands, nonetheless a party should not be too ready to point the finger of culpability at an opposing party when its own conduct is open to question. After all, the Court proceedings were issued to recover the reasonable cost of services provided to the Respondents by the Receivers and the Applicants. The Applicants have persisted in claiming the estimated charges for 2012 when they were aware on the basis of Touchstone's figures that the Respondents were entitled to a credit of £140.42 against the amount of £770.14. They also continued to claim £425 for the first half year's instalment for 2013 when in January 2013 they had prepared their amended budget which reduced the Respondents' contributions to £240.

60 Taking all things into consideration, we do not consider that the Respondents conduct of these proceedings was frivolous, vexatious, abusive disruptive or otherwise unreasonable and therefore the Applicants' application for costs is refused.

61 No application has been made under section 20C of the Act.

DATED the 3rd day of April 2014



CADEIRYDD/CHAIRMAN