Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0009/04/13

In the Matter of Hayes Point, Hayes Road, Sully, Vale of Glamorgan, CF64, 5YA.

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

APPLICANTS	Miss Sarah Gregory, Mr Martin Haven, Mr Peter Daughton, Mrs Jean West and others
RESPONDENT	Hayes Point (Sully) Ltd, Hayes Point Management Company Limited and Surelane Limited c/o TMS, Pembroke House, Torquay Road, Preston Paignton, Devon TQ3 2EZ.
TRIBUNAL	Richard Payne LLB M Phil Ruth Thomas MRICS Roger Baynham FRICS

Upon hearing Miss Gregory, Mr Daughton, Mr Haven, Mrs West, Miss Matthews, Mrs Cummings and Mrs Phillips for the Applicants and Mr Jonathan Holmes, Miss Yasmin Miles of TMS and Mr Michael Rowswell for the Respondent during a hearing at the Cardiff Civil Justice Centre between 17th – 20th February 2014 inclusive.

DECISION

1. The development at Hayes Point was the subject of a previous decision of the Leasehold Valuation Tribunal dated 20th of April 2012 in respect of case number LVT/CH/SC/32. This was a very detailed decision that dealt with a wide range of issues and related to the service charges for the years 2007, 2008, and 2009. Two members of the current panel sat upon the previous case, the decision in which we shall refer to as "HP 1". A copy of the HP 1 decision was included in the Applicants' bundle for this case. As a matter of law, this panel is not bound by the previous decision however it was apparent that a number of the issues in the application before us now and aired in the hearing directly related back to HP 1, and we have referred to and cited from HP 1 in italicised form where it is appropriate and convenient to do so.
2. By an application form dated 3 February 2011, the principal applicant Sarah Gregory applied for a determination for the service charges for the years 2010 and 2011 but following a directions hearing on December 5th 2013, it was decided that the current application would also deal with the year 2012. There were a large number of applicants and their names are attached at Appendix One to this decision.

3. Hayes Point is a large residential development on the site of the former Sully Hospital situated on the Vale of Glamorgan coast just outside Sully and within a couple of miles of the town of Barry. There are three residential blocks, Woodlands, Courtlands and Headlands. The development is set within extensive attractive grounds with striking views across the Bristol Channel from many of the Headlands apartments and from parts of the communal grounds. The site was developed by the freeholder Galliard Developments (Sully) Limited and the residential property management was initially carried out by Knights Lettings Ltd of Barry until the 31st December 2008. Since the 1st January 2009, the management of the site has been the responsibility of Torbay Management Services Ltd (TMS).

4. Galliard Developments (Sully) Limited changed its name to Hayes Point (Sully) Limited in August 2010 and as at the date of the application, the freeholder was Hayes Point (Sully) Limited. However at the date of the hearing the freeholder was Surelane Limited, the change of freehold ownership having taken place on the 19th December 2013. Although no documentary evidence of this was available at the date of the hearing, it was provided subsequently.

Inspection on the 17th February 2014 and descriptions of development

5. The following is the description of the development from HP1; "*Hayes Point is an exclusive large scale residential conversion and new build development located on the Bristol Channel coast at Sully in the Vale of Glamorgan. The scheme is constructed on the site of the former Sully Hospital and stands in substantial grounds of approximately 45 acres.*

6. *Hayes Point is approached from the main road via a private driveway through mature trees to the main entry to the development and security entry barriers. Allocated visitor parking is provided and a series of illuminated pathways and pavements lead through to the development.*

7. *The site is also shared with the local cricket club who have a clubhouse and green on the site. There is a former gatehouse to the main entrance which is now in separate ownership. Externally there is .....the former mortuary building which has not been developed.*

8. *Externally the scheme provides extensive allocated car parking areas which lie to the west and east of the main residential scheme, access to a cricket club house, tennis courts and large expanses of grassed and landscaped garden areas. Smaller landscaped garden areas are found*

around the main buildings and courtyard areas to the development. There is a substantial amount of natural woodland surrounding the site which is included within the freehold.

9. *The scheme is residential and provides a range of apartments. There are 236 apartments in total. Accommodation extends to 1,2 and 3 bed units of varying style and type over 3 and 4 floors plus a conversion of the former water tower to provide an unusual luxury duplex style penthouse unit. Facilities on site include full 24 hour concierge, indoor heated swimming pool, sauna, gymnasium and use of tennis courts and grounds.*

10. *The main new build sections are of traditional cavity construction with rendered elevations. The majority of roofs are flat fibre glass finish. Window units are double glazed predominantly.*

11. *The development is constructed in three main sections known as Woodlands, Courtlands and Headlands. The Courtlands scheme is the conversion from the former Sully Hospital building which is Grade II listed and lies central to the development. Woodlands is a new build section lying on the northern side of the development and Headlands which is also new build and lies on the southern coastal side of the site. All three buildings (a term which is used loosely for descriptive purposes only) interconnect via a central communal access and corridor. There are some apartments located outside of the main buildings, all single storey and constructed on a courtyard design either side of the central Courtlands Building.*

12. *The principal entrance to the scheme is from the northern elevation to Woodlands. An entrance foyer accesses the central reception corridor which links all 3 buildings and the concierge office where most of the building management staff are based. A further corridor leads to the communal meeting room and leisure suite.*

13. *The development can also be accessed from various door entry points around the scheme all operated on a security fob system issued to residents. There are lift facilities to all floors with the exception of one level within Courtlands.*

14. *The whole scheme offers individual residential accommodation of high specification within a fully managed scheme in extensive grounds and coastal position. It is unique in its physical context.*

15. *Each apartment is self contained and well specified in terms of kitchen and bathroom fitments. Most of the flats vary in terms of layout and design. There is no gas service to the apartments, heating and water is by electric systems. There is a single electricity and water supply to the development and recharges are made to individual leaseholders by the management company under the terms of the leases. Electricity sub meters are fitted to each apartment which are linked to a central control panel to monitor consumption."*

16. The Tribunal inspected the development on the 17th February 2014 accompanied by Mr Holmes and Miss Miles on behalf of the Respondents and by Sarah Gregory, Mrs Jean West, Miss Matthews, Mrs Phillips, Mr Daughton and Miss Cummings for the Applicants. The weather was cold and overcast and although not raining at the time of the inspection, there had previously been many weeks of particularly inclement and rainy weather.

17. The Tribunal inspected 203, Courtlands, the flat of Dr Margaret Heginbotham and our attention was drawn to nine panels that had been cut out of the living room wall, searching for the source of water ingress into the flat. There was evidence of water staining; various parts of the floor appeared damp, with some floor boards raised and warped. A panel had also been cut in the ceiling in the hallway to inspect the trace heater that goes through to the kitchen. We inspected the hallway outside 203 Courtlands and noted that there had been further inspections with panels previously having been cut away in the ceiling there.

18. There was evidence of damp on the stairwell in Courtlands at the Headlands end of the corridor and we noted that the lift was out of service. Indeed both lifts in the Courtlands corridor were out of service. In Headlands, there was water ingress in the corridor outside 212 and 213 Headlands which was leaking through a light fitting in to a bucket on the floor. There was a leak around the window at the end of the corridor looking out over the grounds and a towel had been placed on the window sill to collect this. Our attention was drawn to a couple of lights that were not on in this corridor since the bulbs were broken and had not been replaced. We found the lights to be on in the other communal areas that we inspected.

19. The Tribunal inspected a sample of apartments. In 305 Headlands, the property of Lindsay Kirby, which is also referred to as the Tower or the Penthouse apartment, there was evidence of water damage and ingress on the wood near the doors leading to the external terrace. On the top or third storey, there was a leak in the smaller bedroom above the window that faces out to the sea and damp above this window on the wall plaster. There had also been a leak to the

skylight above the internal stairs. The ceilings at every level in this apartment had been replaced owing to water damage.

20. We inspected the terrace and could observe that the astro turf style covering on the external area of Headlands 306 below, had lifted. This terrace looks down onto Headlands 304 and 306.

21. In the communal corridor at the junction of Courtlands and Headlands, there was a small piece of wooden flooring immediately outside the (non-functioning) lift to which our attention was drawn. We exited through doors in the direction of the cricket club and our attention was drawn to a recently fitted Aco drain (a slotted drain). We were also shown the downpipes on both Courtlands and Headlands and noted, for example on the downpipe outside Courtlands 20 that the pipes have been cut off some 12- 18 inches from the ground , whereas they previously went straight into the ground and directly into the drainage system.

22. The Tribunal also noted in this area that there was green mould growth/staining on extensive external parts of the Headlands and Courtlands render and that there was a difference in the colour of the render externally on Headlands at this point. The flat porch roof above the double doorway near the new Aco drain also had green mould growth evident. We returned through the double doors and exited on the other side of the communal corridor where Mrs West drew our attention to flower beds with raised earth that was said to be covering the damp proof course.

23. We inspected 208 Headlands and our attention was drawn to a leak above the bed in one of the bedrooms and to a separate leak in the master bedroom where there had been water dripping though a light fitting and that light had been removed at the time of our inspection. There was evidence of a second leak above the bed with water staining evident to the wall. We were then shown the external communal walkways outside Headlands on which there was ponding of water at various locations, which was particularly extensive outside Headlands 23. Sandbags were in evidence outside Headlands 18 and 20 to prevent water ingress. We noted that the gutters discharge directly onto the walkways and that there are also a number of communal planters at various points along the walkway.

24. We were shown the external entrance to the basement marked by two wooden doors and the CCTV camera that covers this area, as well as the external windows to the basement that had been boarded up. We also inspected the interior of the basement and Mr Holmes drew our attention to the area of cabling that includes the earth cable.

25. The Tribunal inspected the stairwell and corridor in Woodlands outside Mrs West's apartment at 15 Woodlands. There was a leak above the suspended light fitting at the top of the staircase, and consequently there were warning signs about using the staircase and from standing in the area that is in the centre of the spiral staircase above which the fitting hangs.

26. The swimming pool is situated off the communal corridor in Courtlands but at the time of our inspection it was closed and not available for use by residents. However it was warm and the area was being heated. There was a small amount of plaster on the pool surround at the far side of the pool but it was not apparent where this had come from. We were also shown the men's changing room and shower, and noted signs requesting that residents refrain from shaving in the sink. A similar sign adorned the exterior of the sauna.

27. We also inspected the concierge office where our attention was drawn to a spanner set, the alarm system, a white console, two cordless phones, the CCTV system and the lone worker monitor. There are 28 CCTV cameras, fourteen both externally and internally and camera 2 (described as the main camera) and camera 11 were not working at the time of our inspection. We noted that a camera in the corridor outside of the office was out of order. The button operating the entrance barrier to the development was said to be out of order at the time of inspection.

THE HEARING – PRELIMINARY ISSUES

28. At the outset there were three preliminary issues to be dealt with. Firstly to clarify the current identity of the freeholder of the Hayes Point development and the extent of TMS's instructions on behalf of the Respondent, secondly, addition of the current freeholder as a Respondent to this action, and thirdly Miss Gregory's application that the Respondent be debarred from submitting documentation filed and served in breach of the directions.

Background – directions.

29. There had been two pre-trial reviews on June 5th 2013 and December 4th 2013 at which directions had been given. At the first pre-trial review Miss Gregory explained that the Applicants were still waiting to meet with the Respondent's management company TMS and with the accountants for Hayes Point Sully Management Company, PKF of Cardiff. Mr Holmes had indicated that there would be a meeting set up in early July 2013 when access to all of the paperwork and receipts requested by the Applicants would be given. This meeting and the exchange of information was obviously of importance as the intention was to see if matters in

dispute could be narrowed down. This aim was also reflected in the directions that ordered the production of a Scott Schedule detailing what items and amounts were at issue and why, and giving the Respondent the opportunity to answer the Applicants' points. The original directions timetable was predicated on the date of this meeting and the steps to be undertaken and time required after that.

30. In the event, the meeting did not take place until 28th August 2013. Consequently the Applicants sought extensions to the directions timetable as to the date for completion of the Scott Schedule which were acceded to, allowing the Applicants until the 18th November 2014 to do so. However, the Respondent had not complied with the directions in that they had failed to provide a response to the Scott Schedule at all. At the second directions hearing on 4th December 2013 there was no appearance by or on behalf of the Respondent and no explanation as to the failure to comply with the directions save for a short letter from TMS that was faxed to the Tribunal during the hearing and read "Please accept our sincere apologies for the delay in a response to the Tribunal directions. We...are now in receipt of instructions from our client, received in the last few minutes..... Our client disputes all entries as detailed in the Claimants Scott Schedule on the grounds that insufficient clarity and reasoning has been given." It was apparent from the information given at the hearing on the 4th December 2013 by the Applicants, that there was considerable doubt about the identity of the freeholder since Hayes Point was for sale at auction but the Tribunal was of the view that the matter needed to be heard and gave directions to timetable the matter through to final hearing.

31. Further directions were given on the 4th December 2013 that related to the exchange of witness statements and statements of case, and the preparation of hearing bundles. A short extension was again requested by the Applicants and was granted in the light of the lack of information that they had received from the Respondent. The Applicants complied with the directions. However the Respondent remained substantially in default. Witness statements and statement of case were provided by the Applicants on 10th January 2014 as ordered. The Respondent failed to comply, to seek an extension of the timetable or provide a reason for default. On Thursday 30th January 2014, the Respondent had not yet provided any witness statements or statement of case which were due by 12 noon on 31st January 2014, and by letter emailed at 09.59 on 30th January TMS asked for an extension of time. The Tribunal granted a short extension until 4pm on Monday 3rd February 2014 given that agreed hearing bundles were to be filed with the Tribunal on Friday 7th February 2014. However on 4th

February 2014, TMS on behalf of the Respondent merely provided the Scott Schedule with the Respondent's answers rather than any witness statements or statement of case. The Respondent's answers to the Scott Schedule should have been filed on December 2nd 2013.

32. On 7th February 2014 both parties filed separate bundles with the LVT as allowed for by the directions of 4th December 2013 in the event that the parties could not agree on a single bundle. The Applicants' bundle was in three volumes (hereafter referred to as AB1, 2 or 3 as appropriate) and contained the witness statements and statement of case as well as the Scott Schedule, previous LVT decision on HP1, the lease and various other documents. The Respondents bundle (hereafter referred to as RB1) contained the Respondent's comments on the Applicants' statement of case, some further documents upon which the Respondent wished to rely, and the Scott Schedule

Identity of the current freeholder and TMS's instructions.

33. At the outset of the hearing clarification was sought by the Tribunal as to the ownership of the freehold and the source of Mr Holmes' instructions. Miss Gregory informed us that from documentation that she had seen, that Surelane Limited had purchased Hayes Point Management Company Limited and Hayes Point (Sully) Limited but there had been no change in the Directors of the latter two companies. Mr Holmes confirmed that he was instructed on behalf of Surelane Limited which is a company registered in the British Virgin Islands. He told us that there had been considerable confusion between the lawyers representing the vendor and the purchaser of the Hayes Point development and that to the best of TMS' knowledge, that Surelane Limited acquired the freehold title of Hayes Point but did not acquire Hayes Point Management Company Limited or Hayes Point (Sully) Limited. He believed that both of these companies remained in the ownership of subsidiary companies of Galliard Homes Limited, the original developer and freeholder of the Hayes Point site. He believed that the transfer of ownership of the freehold title to Hayes Point had occurred on the 19th December 2013 but he also noted that the purchaser had said that the transfer date was the 18th December 2013. However we note that in a letter from Miss Miles to leaseholders at Hayes Point dated 5th February 2014, it stated that Surelane had acquired Hayes Point Management Company Limited as well on the 19th December 2013.

34. Miss Gregory explained that the first indication that the leaseholders received about the change of freeholder came with the service of demands for ground rent on the 1st January 2014 in the name of Surelane Limited.

35. Mr Holmes confirmed that TMS' terms of appointment as the property managers of Hayes Point had transferred to Surelane Limited as part of that company's acquisition of the site and informed us that he assumed that the responsibility for past liabilities had been taken on by Surelane. He confirmed that TMS were acting on behalf of Surelane Limited the current freeholder but not on behalf of Hayes Point Management Company Limited or Hayes Point (Sully) Limited.

Addition of Surelane Limited as a Respondent to this case.

36. Miss Gregory applied for Surelane Limited to be joined as a Respondent to this case and Mr Holmes, having indicated that he was present to represent Surelane and that he assumed that Surelane would take responsibility for past liabilities at Hayes Point, agreed that Surelane Limited should be added as a Respondent and **the Tribunal therefore ruled that Surelane Limited should be added as a Respondent party to the application.**

Application to debar the Respondents from adducing evidence filed in breach of the directions orders.

37. Miss Gregory submitted that in the light of the Respondents' extensive failure to comply with the LVT's directions that TMS's Respondents' bundle should be disallowed and that the Respondents should not be allowed to rely upon any information or documentation that had been submitted in default of the directions and that the Respondents should be debarred from providing any responses to the Applicants' case. Miss Gregory submitted that the Applicants' had done everything required with very little response from TMS, and pointed out that the Respondents were not present at the hearing on the 4th December 2014, that the Responses to the Applicants Scott Schedule that were due in December 2013 had not been provided until 3rd February 2014 and that the first time she was aware that the Respondents had provided a bundle of documents was the 6th February (with the hearing scheduled for the 17th February 2014), which was the first time that she had seen the Respondents statement of case.

38. The Tribunal enquired as to whether the Applicants had suffered any prejudice by reason of the Respondents default and Miss Gregory submitted that since she did not know what points the

Respondents were going to make, she could have removed many items from the Scott Schedule had the response been received on time. She also pointed out that the Applicants' hearing bundles were larger than they would have been if the directions had been complied with and the Applicants had been aware of what was being disputed or not and on what grounds.

39. Miss Gregory referred the Tribunal to the case of Mitchell v Newsgroup Newspapers Ltd [2013]EWCA Civ 1624 in which the Court of Appeal rejected the Appellant's application for relief from sanction and stressed the need for compliance with directions. She referred the Tribunal to the case of Revenue and Customs Commissioners v McCarthy and Stone (Developments) Ltd a decision of the Upper Tribunal (Finance and Tax) of 10th January 2014. Miss Gregory did not provide a transcript of the decision but submitted an article dated 9th February 2014 from the Civil Litigation Brief blog written by Barrister Gordon Exall of Zenith Chambers, Leeds. Mr Exall is a well-known and long standing commentator on matters of civil procedure and the article was up to date and cited from the Upper Tribunal's judgement extensively. The case concerned HMRC's supplying a notice of appeal 56 days late. Without detailing the facts of that matter here, Miss Gregory, whilst acknowledging that the Civil Procedure Rules (CPR) do not apply to Tribunals, submitted that the case demonstrated the need to comply with the Tribunal's directions since HMRC's application to extend time for filing the notice of appeal was refused and the Upper Tribunal referred to the Mitchell case and the need for there to be compliance with Upper Tribunal rules. In essence, Miss Gregory urged the Tribunal to adopt the approach taken by the Court of Appeal in Mitchell and submitted that the RCC v McCarthy and Stone case supported her contentions.

40. Mr Holmes opposed Miss Gregory's application and referred to the back drop of the freehold title to the Hayes Point development being sold at auction and the purchasers having a short period of time to complete their purchase over the 2013 Christmas and New Year holiday period. He said that TMS were without instructions and in that situation the only document that they could submit was the Scott Schedule that provided a column for the managing agents' comments. He said that TMS only received instructions on the 4th February 2014 and submitted a defence as he called it, on the 6th February 2014. He also pointed out that the Applicants had not adhered to the directions because their bundle was supposed to be with the Respondents on the 7th February according to the directions and yet it was posted on the 8th February and not received by TMS until the 10th February 2014.

41. Mr Holmes submitted that it would be difficult for the LVT to demonstrate impartiality if the Tribunal were to rely only upon the documents and the submissions of the Claimants who have either no or limited knowledge of the material facts. Mr Holmes gave the example of an item in the Scott Schedule that had been described as a mobile phone but in fact was an alarm system for lone workers on the Hayes Point development. With regard to the delayed meeting with the Claimants in August 2013, he said that every effort had been made to honour the original meeting date but it proved to be very difficult to have all of the applicants available in the same room and time and that was a factor outside of TMS's control, but he added that the meeting had been very productive when it had taken place.

42. Prior to Surelane Limited's acquisition of Hayes Point, Mr Holmes said that TMS had received no instructions from Hayes Point (Sully) Limited or Hayes Point Management Company Limited until the morning of the second directions hearing, 4th December 2013, when instructions were received at 10.50am and he immediately faxed the letter to the Tribunal referred to at paragraph 30 above. Mr Holmes drew a distinction between TMS' instruction as property managers of Hayes Point, which they remained throughout this matter, and TMS's instruction to deal with the current LVT proceedings. He said that they had sought instructions from Mr Peter Black of Galliard Homes Limited but had no response. He indicated that TMS continued to receive no instructions to file a defence in accordance with the directions and despite TMS' "best efforts", received no instructions from Surelane Limited or their solicitor Mr Pittodrou until 4th February 2014.

Decision on the Application to debar the Respondents.

43. The Tribunal carefully considered the arguments of both parties and the article submitted by Miss Gregory and the commentary upon RCC v McCarthy and Stone. The Tribunal notes the decision of the Court of Appeal in Mitchell and the Upper Tribunal decision in RCC v McCarthy and Stone and the intention that litigants in Tribunals should comply with directions for the efficient administration of justice.

44. The Tribunal determined that the Respondents should not be debarred from continuing to defend the case nor should the Respondents be debarred from relying upon the documents that were submitted out of time, for the following reasons;

a. It is still necessary to look at all of the circumstances of each particular case. In this matter, it was common ground that the freehold was being sold and that this process

formed the backdrop to the directions given in this case. Mr Holmes told us, and we accept, that he was without instructions for considerable periods of time with regard to this LVT case, (without it seems ever being disintructed) and that he had difficulty in obtaining instructions despite requests. We accept that the sale of such a development to a company registered in the British Virgin Islands was a complicating factor with the identity and liability of the Respondent unclear, and there was therefore a good explanation for the delay.

b. The purpose of the time limits of the directions was to prepare the matter for hearing and to identify any areas of agreement or disagreement, to aid case management and to ensure that the public funds committed to a hearing are directed at the salient issues that remain in dispute. Miss Gregory correctly identified that, had the directions been complied with, then the Applicants could have reduced the bundles of documents and incurred less time and expense preparing for a hearing at which everything was said to be at issue. To that extent there has been prejudice caused to the Applicants and the Respondent's failure to comply has also hindered the Applicants preparations for the hearing. However, the Tribunal considers that these are matters that will be of relevance when the question of the section 20C application and costs come to be determined and were not matters that prevented the Applicants from putting their case. Indeed the Applicants did not at any stage contend that they could not put their case, but quite the contrary, wished to do so with very limited input on behalf of the Respondents whom they sought to disbar. There was no suggestion from either party that the hearing could not proceed by reason of the Respondents default. Accordingly, although the Applicants were inconvenienced and prejudiced to the extent mentioned above, the Respondents default did not prevent the matter being heard.

c. What would the consequences have been had the application been allowed? The Respondent would not have been able to rely on documents submitted in breach of the directions, and Mr Holmes and Miss Miles would have been reduced to questioning the Applicants and challenging them but without being able to amplify the reasons for such challenges. The Respondents would not have been able to make submissions to the Tribunal. The LVT's procedures are not as formal as the civil courts and in many respects particularly in a detailed service charge case such as this, the LVT will take an inquisitorial line. The Tribunal determined that, although there is no overriding objective explicitly stated in the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004, it must be the case that the LVT as a matter of practice, operates in

accordance with the overriding objective as set out in the Civil Procedure Rules 1999 (and indeed in the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012).("the RPT Wales Regulations"). Taking into account the principles embodied in the overriding objective, the Applicants' preliminary application was refused.

d. The overriding objective of dealing fairly and justly with applications under the Civil Procedure Rules includes dealing with it in ways which are proportionate to the complexity of the issues and the resources of the parties. The RPT Wales Regulations refer to the Tribunal ensuring so far as practicable that the parties are on an equal footing procedurally and are able to participate fully in the proceedings, and to using the Tribunal's special expertise effectively. Applying the overriding objective's principles (whilst acknowledging that these rules do not explicitly apply to the LVT), we determined that it would be of assistance to the Tribunal (and indeed the Applicants) to hear from Mr Holmes and Miss Miles as we considered that their knowledge of the development and the issues, and their input and representations, would enable us to deal with the application justly and fairly.

e. We noted that the RCC v McCarthy and Stone case involved an application for permission to appeal to the Upper Tribunal and that the Revenue and Customs Commissioners had already been heard in the Finance and Tax Tribunal, a position distinguishable from the case before us where the Respondents had not yet been heard substantively, and where the Upper Tribunal considered that the need for appeals to be conducted efficiently was a significant factor militating against extending time.

f. The Tribunal firmly rejects Mr Holmes submission that it would be difficult for the Tribunal to deal with matters impartially if the Respondents were to be debarred. It is an unattractive argument to admit substantial procedural default and then to suggest that the Tribunal would not be able to deal impartially as a possible consequence of that default. Miss Gregory was entitled to make her application and if it had succeeded, then the impartiality of the Tribunal would have remained unaffected, it would simply have had less material before it as a result of the Respondents admitted default.

THE HEARING: SUBSTANTIVE ISSUES

THE LEASE

45. We set out below an extract from HP1 in relation to the lease, commentary upon the same and the clauses that are of most relevance to the issues that we are to determine.

46. *"The specimen lease that was included with our documents was that between Galliard Developments (Sully) Ltd ("the Landlord") (1) and Sarah Jane Gregory (2) and Hayes Point Management Company Limited (3), dated 4 June 2007 in relation to apartment W223. This …….was for a term of 999 years from 1st January 2005. The lease contained a number of important definitions and clauses. We refer below to those parts of the lease most relevant to the issues that we have to determine. There was a letter from solicitors Howard Kennedy to TMS Ltd dated 8th October 2009 ……..confirming that as far as the solicitors were aware the leases for the apartments on the development had been granted on similar terms.*

47. *There are important distinctions drawn in the lease between the apartment, the building, the estate and the service charge payments for the building and the estate. The "apartment" is defined and is essentially the flat numbered in the lease and is further defined in the first schedule. The "building" is defined as*

> *"the building (together with any grounds forming part thereof) forming part of the Estate as shown edged blue on the Block Plan* ***Provided that the extent of the Building may from time to time be varied by the Landlord*** *by the exclusion of any part or parts thereof or the addition thereto of adjoining or neighbouring building" (our emphasis)*
>
> *It is therefore important to note that the Landlord has the discretion to vary or alter the extent of the "Building" in the lease.*

48. *There were copies of the block plans ..... showing Headlands, Courtlands and Woodlands respectively, outlined in blue. In other words there were three separate block plans for the three parts of the development and therefore the three blocks were each individually described as "the Building". The "Building Service Charge item" is defined as*

> *"an item of expenditure which is (or is intended) to be chargeable (in whole or in part) to the lessees of the Building".*
>
> *The Building Service Charge Proportion is*

"...such fair proportion as the Landlord acting reasonably shall from time to time determine".

Again, it will be noted that the Landlord has the discretion to determine the proportion of the Building Service Charge which shall be fair.

49. *The "Common Parts" means "(a) those parts of the Building and the Estate intended for the communal use by the Tenant with (or at the discretion of the Landlord without) other occupiers of the Building and the Estate; and (b) such parts of the Building and the Estate as are for the time being not comprised or intended in due course to be comprised in any lease granted or to be granted by the Landlord."*

50. *The "Estate" likewise is defined in the lease and by reference to the Estate Plan that is edged in red,..... Again there is discretion given to the Landlord because the definition of "Estate" includes the words "Provided that the extent of the Estate may from time to time be varied by the Landlord by the exclusion of any part or parts thereof or the addition thereto of adjoining or neighbouring land and buildings."*

51. *Similarly as with the Building Service Charge item, the Estate Service charge item means*

"an item of expenditure which is (or is intended) to be chargeable (in whole or in part) to the lessees of the Building together with lessees of other parts of the Estate."

and the "Estate Service Charge Proportion" means

"such fair proportion as the Landlord acting reasonably shall from time to time determine."

52. *There are also parking service charge items. This is defined in the Lease as*

"an item of expenditure which is (or is intended) to be chargeable (in whole or in part) to the lessees who have a right to use one or more parking spaces in the Parking Area."

and the "parking service charge proportion" means

53. *"the fraction of the costs charges and expenses referred to in paragraph 10(c) of the Fourth Schedule hereto of which the numerator is the number of parking spaces to be allocated to the tenant and the denominator is the total number of parking spaces in the Parking Area."*

54. *The **"Service Charges"** are defined in the lease as follows. Service Charges means*

> *"The Estate Service Charge and the Building Service Charge and the Parking Service Charge (or any one of them as appropriate or any combination of them as appropriate)."*

55. *Similarly "Service Charge Proportions" means*

> *"the Estate Service Charge Proportion and the Building Service Charge Proportion and the Parking Service Charge Proportion (or any one of them as appropriate or any combination of them as appropriate)".*

56. *Under Clause 3 of the Lease the tenant covenants with the Landlord and with the management company to perform and observe obligations set out in the Fourth Schedule to the Lease.*

THE FOURTH SCHEDULE – TENANTS COVENANTS WITH THE LANDLORD

57. *This Schedule contains numerous covenants upon the part of the tenants but which include at Clause 10 (a) to pay to the Landlord and or the company within 7 days of demand the Estate Service Charge Proportion of*

- *"such of the costs, charges and expenses which the Landlord shall incur in complying with its obligations set out in Part 1 of the Sixth Schedule hereto which the Landlord (acting reasonably) designates as being an Estate Service Charge item.*

- *The costs, charges and expenses which the Landlord and/or the company shall incur in doing any works or things to the Estate for the maintenance and/or improvement of the Estate and*

- *Any other costs, charges or expenses incurred by the Landlord or the company which the Landlord or the Company designates as an Estate Service Charge item."*

58. *Clause 10(b) of the Fourth Schedule relates to the Building Service Charge and contains precisely the same wording as Clause 10(a) save for substituting the words "Building Service Charge" for "Estate Service Charge". Clause 10(c) relates to the Parking Service Charge Proportion.*

59. *Clause 10(e)(i) provides an acknowledgement from the tenant that the Landlord and/or the Company in providing the services referred to in the Sixth Schedule is entitled to refer any Service Charge Demands to any relevant Tribunal for the purposes of assessing the reasonableness of the same*

> *"and the costs, charges and expenses incurred by the Landlord and/or the Company in connection therewith shall be deemed to be an expense incurred by the Landlord and/or the Company in respect of which the tenant shall be liable to make an appropriate contribution under the provisions contained in this Clause" [our emphasis].*
>
> *This Clause therefore clearly enables the freeholder and management company to charge the tenant an appropriate contribution for the costs, charges and expenses incurred by the Landlord in connection with these proceedings before the LVT.*

60. *We shall not detail every clause in the lease or the schedule however of note is the clause at 10(e)(iii) which states;*

> *"in the management of the Building and the Estate and the performance of the obligations of the Landlord or the Company herein set out the Landlord or the Company shall be entitled to employ or retain the services of any employee, agent, consultant, service company contractor, engineer or other advisers of whatever nature ….. and the expenses incurred by the Landlord or the Company in connection therewith shall be deemed to be an expense incurred ….. in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions contained in this Clause".*
>
> *This clearly therefore gives the Landlord the ability to employ agents or employees and for the tenant to make appropriate contributions to the expenses of the same.*

61. *There is a similar clause in relation to equipment at 10(e)(vii) which holds that the Tenant shall be liable to make an appropriate contribution in respect of;*

> *"… any costs, charges and expenses incurred by the Landlord or the Company in the supply, provision, hire or purchase of all such contractors, staff, supplied apparatus, tools, equipment, materials, vehicles and other things* ***reasonably necessary or appropriate*** *for the performance of the Landlords or the Company's obligations under this lease." [our emphasis]*

62. *Other noteworthy clauses from this Schedule are those under Clause 10(e)(viii) in which the Tenant shall be liable to make an appropriate contribution in respect of costs, charges and expenses incurred by the Landlord in the creation or maintenance of such capital reserves in respect of anticipated costs to be incurred by the Landlord or the Company to comply with its obligations as a prudent Landlord would consider reasonable. This is the tenant's obligation to contribute to a "sinking fund" of anticipated future costs and expenditure. At Clause 10(e)(ix) the tenant is liable to contribute to costs incurred in management and administration of the service charges as follows*

> *"(ix) The Tenant shall be liable to make an appropriate contribution … in respect of any costs, charges and expenses incurred by the Landlord or the Company in the management and administration of the service charges and the preparation and supply of statement of accounts in respect of the service charges".*

63. *Clause 10(f) is significant since it gives the Landlord and the Company reasonable discretion to designate whether items of expenditure incurred*

> *"… shall be treated as an Estate Service Charge item and/or a Building Service Charge item and/or a Parking Service Charge item".*

64. *Clause 11(a) is a covenant from the Tenant to pay, on the 1st January and 1st July in each year half of the amount prospectively payable by the Tenant of the estimated service charges for that year. The amounts are to be paid on account and credited against the amount eventually determined to be payable. Clause 11(a)(ii) confirms that the expression in the schedule "all costs, charges and expenses which the Company or the Landlord shall incur" includes not only costs, charges and expenses which the Company or the Landlord has actually incurred or made*

during the year but also includes a reasonable sum on account of items of expenditure which are of a periodically recurring nature.

65. *Clause 11(b) contains the obligation upon the part of the Tenant to pay any additional monies on demand if required to the Company, the Tenant's proportion of any expenditure by the Landlord or the Company in pursuing their obligations which is over and above that already collected from the Tenants in relation to the service charges.*

66. *Clause 11(c) confirms that the service charge year runs from the 1st January to the 31st December in each year and Clause 13 is a covenant upon the Tenants part to pay to the Company within 14 days after receipt of a copy of the certification provided for in the Sixth Schedule, the net amount due to the Landlord or the Company from the Tenant.*

67. *Clause 14 is the obligation upon the part of the Tenant to pay to the Company and the Landlord all costs, charges and expenses including legal costs and fees payable to a surveyor which may be incurred in or in contemplation of proceedings under Sections 146 and 147 of the Law of Property Act 1925, other court or arbitral proceedings and at Clause 14 (b) pay all proper and reasonable expenses including solicitors costs and surveyors fees incurred by the Company and/or the Landlord of and incidental to the service of all notices and schedules relating to wants of repair and Clause 14(c) states that the tenant covenants*

> *"to pay all reasonable expenses of the Company, the Landlord and the Landlords' or Company's solicitors and any managing agents appointed to manage the Building or the Estate in respect of any requests for information and/or enquiries made to such persons."*

SIXTH SCHEDULE – COMPANY'S COVENANTS

This Schedule relates to the covenants upon the part of the management company.

68. *This ..... included Clauses at 8(d) allowing the Landlord or the Company to retain any commission or other benefit it may receive in respect of arranging an insurance policy for the Estate and buildings. Insofar as the Tenants obligation to pay service charges were concerned then Clause 10 of the Sixth Schedule is relevant and this states that the [*Management Company] *covenants*

"To keep or cause to be kept proper books of account of all costs, charges and expenses incurred by the Company in carrying out its obligations under this Schedule or in otherwise managing and administering the Building and the Estate and in each year during the term to prepare a certificate of;

(a) the total amount of such costs, charges and expenses for the period to which the certificate relates and

(b) the proportionate amount due from the Tenant to the Landlord and/or the Company under the provisions set out in the Fourth Schedule hereto after taking into account payments made in advance under the provisions set out in the same schedule and to send a copy of the same to the Tenant."

It is to be noted that this relates back to Clause 13 of the Fourth Schedule ..... whereby the Tenant is obliged to pay to the Company after receipt of a copy of the certification provided for in the Sixth Schedule of the net amount owing to the Landlord from the Tenant. It is also worth noting that there is no provision that the certification should be from an accountant. The obligation in the lease is upon Hayes Point Management Company Limited to prepare a certificate of the costs, charges and expenses themselves.

THE SEVENTH SCHEDULE – LANDLORDS COVENANTS

69. *This contains the obligation upon the Landlord namely the freeholder at paragraph 2 to observe the covenants in relation to the unsold flats in the development which relates to the payment of the service charge, in other words that the freeholder will be responsible for paying the proportion of the service charges attributable to the unsold or void units or apartments.*

70. *Clause 5 of the Landlords covenants in the Seventh Schedule applies if the management company should go into liquidation or be unable to perform its obligations then*

"… the Landlord shall (subject to the payment by the Tenant of the service charge payment herein before mentioned) perform and observe the obligations on the part of the Company contained in the Sixth Schedule …"

71. Further in the HP1 decision the Tribunal referred to the relevant parts of the Management agreement between Torbay Management Services and Galliard Developments and Hayes Point

Management Company Limited. The relevant parts from HP1 on this matter and on the law are also reproduced below as they remain of relevance.

THE MANAGEMENT COMPANY AGREEMENT

MANAGEMENT AGREEMENT BETWEEN TORBAY MANAGEMENT SERVICES LIMITED AND GALLIARD DEVELOPMENTS AND HAYES POINT MANAGEMENT COMPANY LIMITED

72. *This document ..... was made on the 1st January 2009. The first clause of this agreement described the fixed term of the agreement as the management period commencing on the 1st January 2009 and ending 12 months after such a date but thereafter continuing until termination at any time by three months' notice in writing given by the client to the manager or vice versa. Clause 2(i) proposed a duty upon the manager to undertake an internal review of all existing contracts, agreements and practices and thereafter to advise the freeholder about matters and Clause 2(iii) made it a duty of the manager "to review, recommend and negotiate contracts on behalf of the client for the maintenance and supply of goods and services and to sign such contracts on behalf of the client provided such contracts have previously been approved by the client".*

73. *The duties also include at Clause 2(vi) the preparation of annual service charge estimates and to demand and collect service charges in accordance with the lease and at clause 2(xv) to pay and to discharge of the monies collected subject to the availability of adequate service charge funds on behalf of the client, all rates and taxes, insurance premiums, rent, wages etc for which the client is responsible. Clause 10 referred to the remuneration that the management company was entitled to for its services during the management period and these were in turn set out in appendix 1 to that agreement. ..... in essence the annual fee payable quarterly in advance was £37,760 with electricity metering charges separately at the annual rate of £9,440 payable monthly. A set up fee of £2,500 was said to be payable on the signing of the agreement and the issue of Section 20 notices was to be charged at £35 per leasehold or freehold unit with a minimum of £175 per Section 20 procedure plus photocopying charges and postage. The service of Section 20B Notices will be charged at £50 for each 20 units or part thereof and the service of Section 166 Notices for the collection of ground rents will be charged at £50 for each 20 units or part thereof.*

74. *Further charges set out in Appendix 1 were that attendances at any meeting after 8pm or at meetings in excess of four per annum then a charge per hour or a part thereof would be £60 and of particular relevance to this case was the clause that states*

"providing evidence to court, Leasehold Valuation Tribunal or similar in connection with unpaid ground rent, service charge, or compliance with lease or covenants will be charged at £110 per man hour."

Appendix 1 held that photocopying costs were to be charged at 11p per A4 sheet and colour copying would be at 17p per sheet. All the costs were to be subject to VAT at the prevailing rate and the charges were to be revised from time to time subject to three months notice. The Tribunal reminded itself that these terms of business were between TMS Limited and Galliard Developments (Sully) Limited."

75. Galliard Developments (Sully) Limited had changed its name to Hayes Point (Sully) Limited on 31st August 2010.

THE LAW

76. In HP1 the Tribunal set out the relevant law and that is reproduced below.

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

"18 (1) in the following provisions of this Act "Service Charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and

b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose-

1. "costs" includes overheads, and

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

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

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

a) only to the extent ***that they are reasonably incurred****, and*

b) where they are incurred on the provision of services or the carrying out of works, only if the services or works ***are of a reasonable standard****;*

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, ***no greater amount than is reasonable is so payable,*** *and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise." (Our emphasis).*

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

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

"If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

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

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

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

(2) the application shall be made …..

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

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

80. The Tribunal had a statement of case prepared by the Applicants with a corresponding statement of case from the Respondents and a Scott Schedule containing items in dispute, the reasons for the dispute and the landlord/agent's comments upon the same. The service charge years in dispute were 2010-1012. In addition Miss Gregory made a number of general submissions on the Applicants' behalf when opening their case, and reminded the Tribunal that there were different applicants from before in the HP1 hearing.

81. Miss Gregory, in opening and amplifying the statement of case submitted that;

a. There are many items that have been applied to the service charge that the Applicants do not believe are service charge items at all because they result from historic defects present at the time of completion and should be the responsibility of the developer/freeholder.

b. As a result of the LVT decision for 2007-2009, the obligation of the leaseholders to pay the service charges had not arisen (by reason of non-compliance with the lease machinery for certifying the amount and proportions due see AB1-108). Miss Gregory in effect submitted that the service charge payers had paid amounts earlier demanded, that the LVT subsequently found in the HP1 decision were not payable by reason of non-compliance with the lease. Therefore the service charge monies that had been paid by the leaseholders and should have been held on trust and not disbursed until properly demanded were instead used as working capital to pay for services in 2010-2012.

c. There is a company called Samuel Francis and Co that is run by a Mr Dan Watts, which deals with the tenants of a number of the apartments. Mr Watts obtains the rent from the tenants on behalf of the long leaseholders and ensures that the service charges are paid to TMS directly from this money. Therefore, there should be sufficient funds to cover the services that are currently required. It is the leaseholders' intention to take over the management of Hayes Point in due course under the Right to Manage provisions of the Landlord and Tenant Act 1987 and a company Hayes Point (RTM) Company Limited has been formed and registered at Companies House with Miss Gregory as Managing Director. This latter information was provided by way of background.

82. In essence it appeared to the Tribunal that the nub of the application goes to the service charge payers' uncertainty about what they are being asked to pay for and this has been made worse in view of the transition as a result of the outcome of the HP1 case.

83. Miss Gregory, with the consent of Mr Holmes handed in to the Tribunal a letter dated 5th February 2014 from Yasmin Miles addressed to "All Owners Hayes Point" and a letter dated 16th February 2014 from Hayes Point (RTM) Company Limited to Mr Holmes signed by Miss Gregory. The 5th February letter stated "...some services have already been temporarily suspended due to insufficient funds as a result of property owners withholding their service charge payments" and that furthermore if funds were not received within the next seven days the management company would be required to lay off all on-site staff and the systems operated by them (gym, vehicle barriers, door entry systems, lifts,) could not continue. This showed that there were no funds because the service charge payers had not been paying, and although that was clearly the current situation, it was clearly linked to the historic situation and the matters raised and dealt with in HP1. The 5th February letter concluded with a demand for payment of outstanding balances within seven days failing which court proceedings would be commenced. The letter from the RTM Company of the 16th February 2014 stated in response that "We are of the opinion that this amounts to nothing more than blackmail. The threat made is an illegitimate one and wholly unprofessional." It goes on to say that there was £37,817.88 in the service charge account as at 13th February 2014 and suggest that there was sufficient money to pay the staff for the next two months against a backdrop of the RTM company intending to take over management of the development in April 2014.

84. This exchange of letters on the eve of the Tribunal encapsulated the state of the relationship between the parties and the difficulties in running the development and its cash flow which formed the backdrop to this hearing.

85. Mrs Gill Phillips of the applicants had provided a witness statement dated 9th January 2014 which exhibited a statement of service charge account for each apartment within Hayes Point for the service charge year of 2013, obtained from solicitors Howard Kennedy FSI, who were acting for the freeholders in the sale of Hayes Point by auction. Mrs Phillips submitted orally (as does her statement) that in respect of the vacant unsold apartments that were owned by Hayes Point (Sully) Limited, that TMS had failed to collect any service charge contributions leading to a shortfall of an estimated £47,152.89 for the period of 1st January 2013 to 10th June 2013. Mrs Phillips pointed out that the Applicants had never seen the service charge accounts for the service charge years in question before the LVT and that until this information was disclosed in the context of the sale of the freehold, the Applicants were unaware of the huge shortfall in the service charge funds and the lack of a reserve fund. She pointed out that TMS have never acknowledged the shortfall or the lack of reserve fund and she considered this to be improper, deceitful and unreasonable.

86. Mrs Phillips submitted that if this had also happened in 2011 and 2012 then this would have led to an immense shortfall in the service charge revenue to the detriment of the leaseholders and residents of Hayes Point. Mrs Phillips submitted that the conclusion that she draws is that the Hayes Point Management Company has taken instructions from its sister company instead of acting in the interests of the leaseholders and in doing so has acted in breach of its fiduciary duty to the leaseholders. Mrs Phillips detailed the figures for twenty five apartments in her statement to calculate the shortfall figure of £47,152.89.

87. Miss Gregory submitted that if this practice had occurred in the years 2010-2012 then there would have been a higher number of unsold apartments for whom Hayes Point (Sully) Limited were responsible for paying the service charge and that if the service charges had been paid in respect of these apartments there should have been enough monies in the service charge trust accounts to provide the services at the development.

88. Mr Holmes explained that Hayes Point (Sully) Limited was funded by Irish banks which, following the credit and banking crisis, were subject to NAMA (the National Asset Management

Agency) of the Irish government that was dealing with banks that were in financial difficulty. He indicated that in practice this meant that the freeholder would put in a request for funding from the bank but it would take months to receive. He indicated that because of the financial state of the freeholder, then in the case of the 25 units referred to in Mrs Phillips statement, the freeholder was not in a position to pay the service charges when the demands were made. However, he stated that when the properties were sold, the proceeds of sale would be used to reimburse the service charge accounts for the individual apartments.

89. Mr Holmes stated that to begin with, in early 2008/09, the developer was paying service charges in respect of the unsold units on account, as were the leaseholders, but that with the advent of the banking crisis, the way that the developer was funded changed. He indicated that he believed that NAMA became involved in 2010-2011 although he did not know the precise dates. He asserted that as at 31st December 2012 that the developer's account was clear, that is, that the service charges had been paid. TMS subsequently produced statements of account for the properties owned by Hayes Point (Sully) Limited.

90. It was to be noted that in HP1, the Applicants case was set out year by year and the decision followed that format. In the instant case, the Applicants presented their case to the Tribunal as a series of issues which covered the different years. Therefore the case was not put on a year by year basis which may have been superficially easier to follow. Accordingly, this decision addresses the issues and the case in the manner and order in which it was presented by the Applicants. It is for the parties to undertake the relevant calculations that flow from this decision.

ISSUES

The Supplemental invoice dated 29th September 2010

91. The Tribunal was informed that by letter of 1st October 2010, a Supplementary service charge demand dated 29th September 2010 was sent to leaseholders (a specimen copy of the same relating to 16 The Woodlands was at AB1-243). This referred to a "Supplementary Service Charge Demand Sector 1" for £152.54 and a "Supplementary Service Charge Demand Sector 2" for £273.35, totalling £425.89. It was agreed by the parties that the document at AB 1-245 accompanied the letter, namely a summary of the cost headings in ten areas starting with "Tree Repairs" but including other headings such as "Legal and Professional" and "General Repairs". For example, Legal and Professional was £7,500 in the 2010 budget, the actual cost was said to

be £23,350 and the additional costs over budget incurred were therefore £15,850. General Repairs was budgeted for £20,000, the actual costs were £35,439 and the additional costs incurred were £15,439. The total additional costs incurred for these ten headings were £80,675.

92. The Applicants submit that the supplemental sum is not recoverable from them because;
    a. A section 20B Landlord and Tenant Act 1985 notice was not served with the additional demand.
    b. The amounts in the supplemental demand are in excess of 18 months of age.
    c. The accounts relating to the service charge year 2010 do not comply with the lease's requirements that give rise to the leaseholders' obligation to pay the service charges.
    d. It cannot be seen from the supplementary demand as to how the sums were derived or when the costs were incurred, for example the £152.54 for sector 1. The amount demanded is not expressed as a percentage or proportion of the costs incurred, and the Applicants should be able to know exactly when the costs were incurred and under what head. Since this was not a payment on account but a supplementary charge, it was incumbent on the Respondents to give a breakdown of what the charges related to and when they were actually incurred.

93. Mr Holmes disputed that section 20B applied. He referred to the letter accompanying the demand dated 1st of October 2010, (at page 5 of the RB) pointing out that it had a summary of the cost headings and that it referred to the supplementary charge and the current financial year. He indicated that this had been done mid-year because the managing agents could see that they were running over budget in some of those costs areas and a further interim charge would need to be made to cover costs. He referred to the further letter dated 11 October 2010 written by Miss Miles to leaseholders (at page 6 of the RB1) which enclosed an up-to-date statement of the leaseholders account and gave further details about the additional costs that had been incurred. Mr Holmes said that no section 20B notice was required, because such a notice was necessary for expenditure incurred in excess of 18 months before. Mr Holmes added that the full costs are not known until the end of the service charge year, that they undertake regular checks of expenditure against the budget and this was not a cash flow exercise nor was the motivation to receive cash. The Tribunal asked Mr Holmes to comment upon Miss Gregory's point that in the interests of transparency, that if the leaseholders want more information it is incumbent on the landlord to provide it. Mr Holmes reiterated the information that had

actually been provided to the lessees and if the leaseholders wanted more then they would have provided it.

94. Mr Holmes also referred to section 11 (a) (i) of the Fourth Schedule to the lease and relied upon this as authority for the payments. Miss Gregory submitted that clause 11 (a) (i) of the Fourth Schedule to the lease (at page 228 AB-1) refers to sums that are to be received by the Landlord or the Managing Agent company on account of service charges payable for the period after that date upon which the half yearly payments upon account are made, and that such payments are to be held on trust towards the expenses to be incurred by the company and this clause does not cover the supplementary demands.

95. The Tribunal asked Miss Gregory whether she considered that reviewing expenditure and making a supplementary demand were the actions of a responsible managing agent? Miss Gregory answered that she would expect the agent to review the expenditure throughout the year and that a number of the items would be put against the service charge and she accepted that whilst a number of items of increased expenditure would be unforeseen, there will be other items that could be foreseen, for example the increase in insurance given the amount of claims at the site.

96. The Tribunal also asked Miss Gregory for her views on clause 11(b) of the Fourth Schedule to the lease at page AB1-228 and whether she was contending that the lease did not allow for an interim charge? Miss Gregory accepted that the lease in this clause says that further sums can be demanded in a service charge year but it should be made clear to the service charge payers when the costs were incurred , which sector they applied to and the service payers proportion.

Decision

97. The Tribunal finds that any payments made in relation to the supplementary demand were not payments on account. A notice under section 20B was not required in relation to the supplementary demand of 29 September 2010. The case of **OM Property Management Ltd v Burr [2013] EWCA Civ 479** held that costs are incurred when the liability to pay has crystallised, either by payment or the presentation of an undisputed invoice, as opposed to being incurred when the service is provided to the landlord. The Tribunal accept Mr Holmes' evidence, backed up by the letter of 1st of October 2010 to leaseholders, that the additional expenditure had

been incurred in that financial year and that the amounts relating to the supplemental demand were not in excess of 18 months of age.

98. The Tribunal was provided with various invoices in the applicants bundle but at pages 16 to 38 of RB1 was the schedule of expenditure from the 1 January 2010 until 31 December 2010. To take just two examples from the costs heads which appear at AB1 – 245, the tree works budget for 2010 was £8000 and the actual cost was £13,780. It can be seen at the top of page 17 of RB1 that on 24th of February 2010 £9,282.50 was payable to Llynfi Valley Garden services for tree works, and there were further payments to the same company for £728.50 on 22 March 2010 and for £3,642.50 on 6 September 2010 (RB1 page 18). For the heading of "Additional camera" there was nothing in the budget but a cost of £4,534 was recorded on the 8th June 2010, evidenced at page 16 RB1. This is reported under the category of CCTV and the Tribunal notes that the total for the year under this category is £12,199.46 and that the latest of those costs was the 15th July 2010 and yet that figure is considerably higher than the amounts for CCTV and additional camera recorded at AB1– 245. Nevertheless the Tribunal finds on the evidence that those costs had been incurred in the service charge year of 2010.

99. The Fourth Schedule to the lease, namely the tenants' covenants with the landlord included (at page AB1 – 189) clause 11(b) which allows the Company to demand further money from the tenant if the cost of carrying out obligations or works exceeds those sums that have been collected from the tenants**. Therefore, as at the date of the supplemental demand, the monies were due and payable by the leaseholders.** Miss Gregory accepted that such demands could be made under this clause.

100. With regard to the other points made by Miss Gregory at paragraph 91 above, at (c) **is the non-compliance with the lease point. This argument is rejected because at the date of the supplemental demand, the amounts were payable because they were an interim charge demanded in the service charge year that they were incurred and were not the subject of a demand for a balancing payment.** The certification machinery under the lease, (Sixth Schedule clause 10 AB1-119) relates to the accounts, charges and expenses for the previous service charge year (the period to which the certificate relates). Therefore, since the supplemental demand was made within and relates to expenditure within the current service charge year, it is premature at the date of the payment request to expect a certificate under the lease. See further the commentary on accounts issues commencing at paragraph 112 below.

101. **The Tribunal further reject Miss Gregory's submission that the supplemental demand should have been presented with more supporting information and a breakdown of when the costs had been incurred and in what sector.** The Tribunal notes that a breakdown was provided and that the lease does not oblige the landlord to provide the level of detail contended for by Miss Gregory with such a supplemental demand. However, although not an obligation under the lease, it would have been more helpful in a practical sense if the headings and figures in the table had been allocated to the appropriate sector. The Tribunal note that the demand itself did break down the amounts per sector and that the covering letter referred to the amount being that individual leaseholder's proportion of the supplementary demand.

102. The Tribunal observe that if the table had listed the expenditure headings into the relevant sectors, then it would have enabled the service charge payers to calculate their proportion against the total supplemental expenditure for that sector. However, the fact that it did not do so does not invalidate the demand or its payability.

Reserve Funds.

103. The Applicants accepted that reserve funds may be collected under the lease, (Schedule Four clause 10 (e)(viii) page AB1-227) however there was concern that the reserve funds were "merely collected as a cash reserve for future works needed". This was the wording used in an email from Yasmin miles to Sarah Gregory on 10 August 2012 which appeared at page AB1 – 247 in response to a query from Miss Gregory as to whether the reserve fund money was allocated against any particular amount or anticipated future works or whether it was merely to build up a cash reserve. The Applicants submitted that any collection of reserve funds must be reasonable and collected in accordance with the RICS service charge management code to which the managing agents were subscribed and that simply collecting cash for some indeterminate future fund was not an appropriate way to collect money or to operate a reserve fund.

104. Miss Gregory stated that all funds collected under the budget for reserve funds had up until the end of 2013 been spent. She submitted that reserve funds that had been collected from leaseholders should be held on trust and it was unreasonable to use this money against the service charge account without providing the residents with a clear break down of what the money had been used for. She referred to the RICS code in relation to reserve funds which made it clear that the managing agents should be able to justify the use of reserve funds with regard to the works required and when such work should be carried out.

105. Miss Gregory indicated that at the end of 2009 the sector 1 reserve fund figures of £12,500 had been "wiped out" (AB2-7) and there was no reference as to where that money went in the 2010 accounts. She submitted that the money collected has just gone and she cannot see from the documentation where it has been used. She referred the Tribunal to the accounts for the year ended 31 December 2011 where the sector 1 residents reserve fund was £12,309 (AB2-21) and the sector 2 residents reserve fund was £31,000 (AB2-21). Miss Gregory stated that since they do not have the accounts for 2012 she again does not know where this money has been used. The Tribunal was referred to the budget for the estimated costs of services for sector 2 for the year ending 31st of December 2012 which appeared at AB3 – 375 and in which the reserve fund was £18,297. The sector 1 figure was £15,850 and the sector 3 figure was £5000. Miss Gregory submitted that the sums required for the reserve fund for 2012 were unreasonable because TMS did not say what the funds were for.

106. Mr Holmes indicated that a letter was sent to all owners on 24th of June 2011 and enclosed the accounts and financial report for 2010. This letter was not within either of the party's bundles and was not before the Tribunal. He said that the letter referred to page 4 of the report (AB2-7) which details a surplus in the sector 1 estate costs of £30,459. He said there was a deficit in the sector 2 building services costs of £21,763 (AB2-8) and a surplus in sector 3, the parking service charges, of £796. He said that the surplus against the reserves was refunded and the letter went on to say how the deficit in sector 2 was recovered. Mr Holmes said that the email of Yasmin Miles of 10th of August 2012 had been taken slightly out of context. He said that TMS had spoken openly to the owners and made it clear that their view was that the reserves were nowhere near enough to meet the demands of the development.

107. Mr Holmes indicated that the backdrop to this was that the developer was trying to sell properties and TMS were trying to undertake building management and the reserves were calculated as a cash amount. It was TMS's view that there ought to be a building management plan and that if this was the case then the reserve sums required would far exceed the sums collected. There was a difference of opinion between TMS and the freeholder about a building management plan. Miss Gregory submitted that the RICS code applies to managing agents and not to anybody else and she believes that they should have followed the code and as agents they should have a building plan. Mr Holmes said that the problem was that the provision of a building management plan was not something the management company would prepare themselves but was a job for an RICS surveyor. He recommended that a full building survey

should have been undertaken at Hayes Point in order to prepare the building management plan, but that the cost of undertaking that exercise would be substantial. Mr Holmes remains of the view that such a course of action is appropriate for the Hayes Point development but the freeholder took a different commercial view and was concerned about affordability as it was still trying to sell properties in the development. Mr Holmes explained that the budgets produced by TMS were subject to amendment by the freeholder and it was ultimately up to the freeholder to be comfortable with the estimate that was going to be given for future costs to the property owners.

108. Mrs Phillips for the Applicants pointed out that as the site had been redeveloped so recently by the freeholders she was surprised that the structural matters would not have been documented and suggested that the developers should have had the information necessary for a building management plan "at their fingertips".

109. Mr Holmes said that the 2010 reserve fund figures were represented by cash in the bank namely as per the balance sheet as at 31 December 2010 the cash in the bank was £71,500, (AB2-6). He said that the accounts were a snapshot of the finances at a particular time and that in this year the reserves and the surplus were represented by cash but in subsequent years this may have been very different and the reserves may have been spent. He accepted that these accounts do not show how matters from the reserve fund have been spent. He observed that if everybody paid their service charges that there would be reserve funds available and he believed that currently as the service charge debtors were significant the reserve fund figure was not represented by cash at the bank.

110. Mr Holmes indicated that the leaseholders have not paid reserve funds in the service charge for 2010 but Miss Gregory did not accept that the leaseholders had not been asked to pay towards the reserve fund for 2010.

111. **The Tribunal finds that although the email from Miss Miles of 10th of August 2012 was unambiguously expressed in general terms, that it was reasonable to collect contributions towards the reserve fund from leaseholders.** The Tribunal notes that the obligation under the lease is for the tenant to make such an appropriate contribution in respect of anticipated costs to be incurred by the landlord or the company in compliance with its obligations "as a prudent landlord would consider reasonable" (Schedule Four 10 (e)(viii) AB1-227) and notes the

difference of opinion between what TMS and Galliard Developments, the freeholder, considered reasonable. This had the effect of keeping the contributions to the reserve fund at a level lower than they would have been had TMS's recommendations for a building management plan been implemented.

112. The Tribunal further note that whilst the sums of £12,500, £25,000 and £2,500 were shown in the 2009 financial statements as allocations to Sector 1 - 3 costs respectively and the total amount shown as a Creditor in the notes to the 2010 accounts (item 7 AB2–10) these amounts were reversed in the subsequent 2010 financial statements thus indicating that the sums had not been retained for accountancy purposes at the year end. Whilst the allocations might be "ring fenced" for bookkeeping purposes during the relevant financial year, it would not be unreasonable for any service charges collected on account to be used for expenditure generally, subject to monitoring of the cash flow i.e. the amount in the bank on a day-to-day basis, but being mindful that the amounts collected on account for reserve funds are monies effectively owed to that 'pot'. This position is crystallised for bookkeeping purposes at the service charge year end. Some developments are able to physically separate and hold reserves in separate bank accounts. Nevertheless in Hayes Point, book keeping movements on the "ring fenced" reserve funds are accounted for between 2009-2010. The amounts collected and allocated for 2011 are also shown in the 2011 accounts, again effectively as items of expenditure/movement out the accounts and clearly shown as being owed to the reserve fund as a creditor in point 10 of the notes to the 2011 accounts AB2-24 (referred to as "Residents Funds"). As there are no separate entries, at 31 December 2011, those are the only reserves the development had. **The Tribunal must only concern itself with the reasonableness of the amounts collected year by year and the Tribunal finds that by no stretch of the imagination can the amounts collected as reserve funds for 2011 i.e. £12,309, £31,000, and £2000 be considered unreasonable for a development of this nature,** despite the fact that TMS did not demonstrate to us the background of how these amounts were calculated. Similarly the amounts shown in the budget for 2012 for allocations to reserves of £15,815 for Sector 1 and £18,297 for Sector 2 are not unreasonable. We were not provided with budgets for the car park sector for 2012 and therefore cannot comment on any amount that may have been collected. For clarity, the Tribunal finds that no sums were collected or allocated to the reserve funds in 2010.

Accounts issues.

113. The Applicants' position with regard to the accounts was that;

a. Firstly the accounts were not compliant with the requirements of the lease since they do not contain any certification from Hayes Point Management Company Limited, as per the 6th Schedule Part One clause 10 (a) and (b) (AB1-199 and paragraph 67 above) and

b. Secondly, the accountant's fees are excessive.

The service charge accounts for the year ended 31st of December 2010 were at AB2 pages 1 to 11 and the accounts for the year ended 31st of December 2011 were at AB2 12 to 25. There were no accounts for the service charge year ended 31st of December 2012.

Have the accounts been certified in accordance with the lease?

114. Miss Gregory referred to the Tribunal's previous decision on this matter and we reproduce the salient parts of HP1 below (that were originally paragraphs 305-308 of HP 1, AB1-108 and 109*). **"Our decision upon the certification issues**. The words of Clause 10 of the Sixth Schedule to the Lease are clear. These are the covenants upon the Company and it is the **Company** that is to prepare a certificate of two matters;*

*"(a) The total amount of such costs, charges and expenses for the period to which the certificate relates; **and***

(b) The proportionate amount due from the Tenant to the Landlord and/or the Company under the provisions set out in the Fourth Schedule hereto after taking into account payments made in advance under the provisions set out in the same Schedule and to send a copy of the same to the Tenant."

*"…….The certificate demanded by this clause is for a particular purpose. It is two fold as indicated above. The clause is clear; it is the Company which is to prepare the certificate, in this case Hayes Point Management Company Limited. With regard to the documents relied upon by TMS as complying with Clause 10(a), **we accept Miss Gregory's submissions that these documents prepared by PKF referred to above do not comply with the lease.** There is nowhere within the accountants' financial statements any reference to certification of the amount of such costs, charges and expenses for the period to which the certificate relates. There is no certificate. By definition, uncertified service charge accounts cannot comprise the certificate required by Clause 10 to have been prepared by the management company.*

115. *The second obligation in Clause 10(b) requires the management company to prepare a certificate of the proportionate amount due from the tenant and to send a copy of the same to the tenant. Again, the lease must be interpreted and the word "certificate" is plain. It requires certification. The certificate is essential to the mechanism of payment and recovery under the lease because under Clause 13 of the Fourth Schedule (the obligations upon the tenant/leaseholder) and the tenant's covenant with the Landlord ……. the tenant's obligation is to pay to the company or the Landlord the net amount to be due to the company or the Landlord from the tenant "within 14 days after a receipt of a copy of the certification (our emphasis) provided for in the Sixth Schedule".*

116. ***We accept Miss Gregory's submission that she and by definition the other tenants have not been provided with a certificate containing details of the proportionate amount that she as an individual tenant is due to pay. The Tribunal therefore determines on the evidence before it that the Applicants have not complied with Clause 10(a) or (b).*** *We note that it is not difficult to comply with this section; it requires the management company to certify the matters in 10(a) and (b).* ***The obligation on the tenant in Schedule 4 Clause 13 to pay the Company is not triggered until the tenant has a copy of the certification in accordance with the Sixth Schedule of the Lease."***

117. Miss Gregory submitted that certification of the accounts in accordance with the lease was required for the years 2010, 2011 and 2012 in order to give rise to the obligation to pay and that there has been no such certification by the management company. With regard to the 2010 accounts, there is a statement by the accountants PKF and there is an "Agents Certificate" signed by Mr Holmes *"In accordance with the engagement letter dated 16th of March 2009, we approve the accounts which comprise the income and expenditure account, the balance sheet and the related notes for the year ended 31 December 2010. We acknowledge our responsibility for the accounts, including the appropriateness of the applicable financial reporting framework, and for providing PKF (UK) LLP with all information and explanations necessary for their compilation."* Below Mr Holmes's signature it says *"For and behalf* (sic) *of TMS South West limited as agents for Hayes Point (Sully) Limited."* (AB2-3). This latter company, were of course the freeholder, not the management company under the lease who are Hayes Point Management Company Limited.

118. With regard to the 2011 accounts, there is a similarly worded "Agent's Certificate" (AB2-15) which states *"In accordance with the engagement letter dated 13th of June 2012, we approve*

the financial statements which comprise the income and expenditure account, the balance sheet and the related notes for the year ended 31 December 2011. We acknowledge our responsibility for the financial statements, including the appropriateness of the applicable financial reporting framework as set out in note 1.1, and for providing PKF (UK) LLP with all information and explanations necessary for their compilation." Underneath Mr Holmes's signature it says *"For and on behalf of TMS South West limited as agents for Hayes Point (Sully) Limited",* dated 22nd of June 2012. There is also a certificate signed by PKF (UK) LLP of the same date which says "*we certify that; a) in our opinion the service charge statement is a fair summary complying with the requirements of section 21 (5) of the Landlord and Tenant Act 1985. b) The summary is sufficiently supported by accounts, receipts and other documents which have been produced to us."* (AB2-17).

119. The notes to the financial statements are at AB2 – 20, and note 1.1 "Basis of preparation of financial statements" records as follows;

> "*The financial statements have been prepared under the historical cost convention.*
>
> *The financial statements have been prepared in a manner consistent with previous periods. They do not include adjustments for the decisions reached during the recent Tribunal hearing on the basis that detailed calculation of all relevant adjustments would not be available by the required certification date of 6 months after the balance sheet date. TMS South West Limited consider that the disallowed charges identified by the Tribunal should be adjusted in one financial period, however structural changes in respect of the allocation of water and electricity have been reflected within these accounts in accordance with the ruling of the Tribunal."*

120. Miss Gregory referred to the 2011 accounts certifications as an agent's certificate for Hayes Point (Sully) Ltd and an expanded note from the accountant. She again submitted that there was no certificate given by Hayes Point Management Company Limited nor was there any certificate as to the proportions of the service charge payable by the leaseholders given by Hayes Point Management Company Limited. Miss Gregory drew the Tribunal's attention to the Respondents' statement of case paragraph 15 (RB1) which states "The certificate referred to within individual leases is being prepared and will be issued shortly for the respective financial periods. The Landlord and Management Company are seeking to comply with this provision."

She submitted that the Respondents' choice of words indicated that they had not yet complied with the provision.

121. Mr Holmes accepted this, telling the Tribunal that in terms of providing a certificate, Hayes Point Management Company hasn't served a certificate yet for the previous historic years. However he submitted that there remained a requirement within the lease for the leaseholders to pay the amounts upon demand and this was at the Fourth Schedule, clause 11 (a) (AB1-227). He also submitted that in fact the wording in clause 10 of the 6th Schedule was ambiguous. This is the wording already referred to at paragraph 67 above, and in particular *"To keep or cause to be kept proper books of account of all costs charges and expenses incurred by the Company in carrying out its obligations under this schedule **or** in otherwise managing and administering the building and the estate and in each year during the term to prepare a certificate…"* (Our emphasis). Mr Holmes submitted that the use of the word "or" indicated separate and alternative obligations and told the Tribunal that the Company has kept proper books and records of the costs, charges and expenses incurred and therefore has complied with its obligations.

Determination on the certification issues.

122. Firstly the Tribunal rejects Mr Holmes submission that in effect the wording of clause 10 of the Sixth Schedule is disjunctive. Upon a proper reading of this clause it is clearly conjunctive and the plain meaning of the clause is that proper books of account are to be kept by the Company of all costs incurred in carrying out its obligations under the Sixth Schedule or in otherwise administering the building and the estate. Clause 10 (a) refers to the **total amount** of such costs charges and expenses **for the period** to which the certificate relates and there is no suggestion that this amount should be only for obligations under the Sixth Schedule or only for the costs incurred in otherwise managing and administering the estate.

123. Mr Holmes accepted orally and in writing that the certificates required under the lease from Hayes Point Management Company Ltd had not been provided either in relation to the total costs, charges and expenses for the year or in relation to the proportionate amount due from the individual tenant. This was the case for the years in question, 2010, 2011, and 2012. He indicated that Hayes Point Management Company Limited were seeking to comply but had not yet done so. **It follows that this Tribunal reaches the same conclusions as HP 1, expressed at paragraphs 114 and 115 above, namely that the obligation on the tenant in Schedule Four Clause 13 to pay the Company is not triggered until the tenant has a copy of the certification**

in accordance with the Sixth Schedule of the Lease. The Tribunal finds it surprising that such certification has not been complied with particularly since HP1 spelled out the straightforward steps necessary for compliance.

124. **Importantly it must be noted however that the obligation to pay any additional balancing payments that may be required from leaseholders following certification of the annual accounts is a separate obligation to the leaseholders' obligation to pay amounts upon account of prospective costs in accordance with Schedule Four clause 11 (a)** (AB1-227.) Lack of certification is therefore not relevant to the obligation to make the payments on account when demanded. These should be paid by the leaseholders on demand as contended for by Mr Holmes. The certification is a prerequisite to enable balancing payments demanded after the service charge accounts year and notwithstanding that it is to be produced for the totality of the year's expenditure.

Accounts charges.

125. Miss Gregory on behalf of the Applicants submitted that the accountancy fees were too high. She accepted that the accountants PKF previously had to undertake considerable amounts of work moving the accounts from a cash basis to accrual accounts in 2009, but having undertaken that work she expected to have seen some consistency in fees with the same accountants being employed. However the Applicants' case was that the accountancy costs had increased and were unreasonable in amount. Miss Gregory handed in a letter from Keith Wakley Associates Ltd, dated 19 February 2014 (and thus prepared during the hearing,) addressed to Ms P Matthews at Headlands 212 which provided a quotation for the preparation of accounts in the management of Hayes Point. This stated, *"We have made certain assumptions regarding the record keeping and would confirm that our charges would be within the region of £2000 to £2500 dependent solely on time taken to produce a set of non-audited accounts."*

126. Miss Gregory challenged PKF's invoice dated 30th of June 2011 in the sum of £5220, (£4,350 plus £870 vat) the fee for the preparation of the service charge accounts for the year ended 31 December 2010. This was further broken down on the invoice at AB2–87 as to £3,500 for the preparation of the service charge accounts and £850 for the additional accountancy services in connection with providing a detailed breakdown of income between sectors. PKF's invoice dated 29th of June 2012 (AB2-88) for £4,800 for the preparation of the service charge accounts for the year ended 31st of December 2011 comprised the fee of £3,600 for the preparation of

the service charge accounts and £400 for additional work incurred relating to the LVT. The total for this year therefore was £4,000 plus VAT at £800. Miss Gregory also noted that there had been references to additional payments to a company called Southern under the accountancy category in the sector 1 estate costs.

127. Miss Gregory also referred the Tribunal to the reference to PKF's fees dated 8 June 2010 in relation to the preparation of accounts for the year ending 31st of December 2009 in the sum of £3,936.25 which appeared on the printout of the property expenditure at AB2– 26. Miss Gregory submitted that since the accounts for the service charge year ending 31 December 2012 had still not been provided at the date of the hearing then PKF's costs in respect of those were unknown. However it was Miss Gregory's submission that, in the light of the finding in HP 1 that a reasonable figure for the accounts was £2000, then PKF's fees for the years 2010 to 2012 inclusive should be £2000 per year.

128. Mr Holmes clarified that PKF were the company accountants and that the invoices from Southern were in relation to payroll services for the on-site staff and dealing with returns to HMRC. Up to 5 April 2010 the fees payable to Southern were £934.13 and for the 2010 – 2011 tax year Southern's fees were around £1,000. Mr Holmes submitted that PKF's invoices were commensurate with the work that they had to undertake in any given financial year. With regard to the additional fees this related to splitting out the income to the appropriate charging levels. He stated that there was a lot of activity with regard to the costs of the development, there was more paperwork and there were more property owners. Mr Holmes stated that he could probably provide examples of blocks where £5,000 doesn't seem unreasonable for accountancy fees given the nature of the development. The Tribunal is bound to observe at this juncture that Mr Holmes had the opportunity to provide comparative evidence and did not do so. It is also the case that the Applicant's comparative evidence with regard to accountancy fees was not supplied in advance but produced during the hearing.

129. Miss Gregory indicated that she did not see the relevance of there being more owners as she did not consider this would have an impact on what was going through the service charge accounts. She submitted that the accounts produced in 2010 and 2011 were no more complex than those for 2009, and that the accounts for 2010 referred to the engagement letter of 16 March 2009 which the applicants have not seen, but she believed that the instructions to the accountant in 2010 were upon the same basis and same principles as previously. With regard to

the payments to Southern, she considered that TMS should deal with that and outsourcing the payroll function was an unnecessary and unreasonable expenditure.

130. Mr Holmes indicated that there were 8 or 9 members of staff upon the payroll and although TMS's role as agents was to administer the pay to staff the actual payroll function has always been outsourced. With regard to the accounts for 2012 he indicated that the intention was to produce these in the future but he could not advise the Tribunal as to when this would be. He stated that the situation was complicated by the reconciliation and the extra layer of adjustments to the accounts to be dealt with after the LVT decision in HP1. Miss Gregory said that Mr Holmes was talking about matters that were not awarded to the freeholders and yet they were still under an obligation to produce the accounts in every year and suggested that they were going to come back two, three or four years later to purportedly comply with that obligation. The accounts had been due by June 2013 for the year ended 31 December 2012 and they had still not been prepared at the date of the hearing in February 2014 and all the leaseholders were hearing were excuses.

131. Mr Holmes stated that the accountants had not been paid and there were insufficient funds to pay them. However Miss Gregory indicated that the applicants had made submissions to TMS in May 2013 that they had no idea what the reconciliation amounts were but they were prepared have a meeting in July to discuss this. In fact this meeting did not happen until late August 2013 and she believed that the reconciliations could have been dealt with in 2013 and there was nothing stopping PKF from producing the accounts. Miss Gregory submitted in response to Mr Holmes point that there was no money in the service charge funds to pay for the accounts that the trust monies had been used for things that the tenants were not obliged to pay for.

132. Miss Gregory also drew the Tribunal's attention to the 2011 income and expenditure account at AB2-18, where there was a reference to "Sector 4: Apartment water charges" and pointed out that there was no service charge item for water charges in the lease and she believed that the 2011 accounts accordingly incorporate a sector that is not recoverable. Miss Gregory did not dispute the amount of £15,788 but disputed the way that it had been allocated.

133. **The Tribunal determines that the reasonable fees for the preparation of service charge accounts for the year ended 31st of December 2010 are £3,000 plus vat and the reasonable fees for the preparation of service charge accounts for the year ended 31st of December 2011 are £3,500 plus vat.** Hayes Point is a large development whose service charge accounts

contained numerous entries and items of expenditure as the property expenditure sheets within AB2 demonstrate. The Tribunal is not bound to follow the sums that it found reasonable in the particular circumstances for 2009. The estimate from Keith Wakley Associates was calculated on a time –cost basis and was helpful to the Tribunal. Although the terms of engagement of PKF are not known to the Tribunal or the Applicants, there is no obligation on TMS to use the cheapest accountants. However, the Tribunal find that it was not reasonable to charge an extra £850 plus vat in 2010 for additional accountancy services in connection with providing a detailed breakdown of income between the sectors and there was no evidence before us to justify this. With regard to the 2011 accountancy fees, the Tribunal allow the basic fee of £3,000 and a small uplift on this figure from 2010 plus the amount referred to in the invoice as "additional work incurred relating to LVT" of £400 plus vat. The Tribunal accepts that it was reasonable for some additional work to be undertaken arising from the first decision, however the Tribunal notes that in the accounts for the year end 2011 which were produced in June 2012 and post-date the written decision of HP1, that not all reconciliations had been undertaken, a point that was accepted by Mr Holmes. With regard to the fees paid to Southern for the payroll, Mr Holmes indicated that TMS had been acquired in October 2012 by Estates and Management Limited who now undertake payroll functions. Previously he said that TMS administered the payments but the calculations for payroll were undertaken by Southern. He said that the administration of payroll services was previously over and above the standard terms of service but TMS now have the ability and resources to do this internally. Miss Gregory argued that provision was made in the management fee for the payroll work and the annual management fee should be reduced by the amount paid to Southern or such amount as is found to be reasonable for the provision of payroll fees. Indeed in the agreement of 1 January 2010 the between TMS South West Limited and Galliard Developments (Sully) Limited and Hayes Point Management Company Limited, clause 2 (IV) includes the words "*On behalf of the client to recruit engage dismiss supervise staff and contractors and pay the salaries and wages of such residential and non-residential staff including porters yardmen cleaners and others as the Client shall have previously agreed at such rates of remuneration as shall have previously been agreed by the Client….."* and at clause 2 (V) "*to deal with Pay-As-You-Earn Value Added Tax and National Insurance matters in relation to such staff."*

134. The Tribunal agrees with Miss Gregory's submission and that the aforementioned clauses in the management agreement clearly deal with the administration of the payroll matters for the staff. TMS had contracted to provide that service as part of their annual management fee. Appendix 1

to the management agreement contained a list of additional charges but the provision of payroll services was not amongst them. **Therefore, the fees paid to Southern for payroll services for the years 2010 – 2012 are not reasonably incurred by the service charge payers or reasonable in amount given that the management fee covers this service and are disallowed as against the service charge payers.**

135. **Management fee for calculation of monthly electricity invoices to leaseholders.** The Applicants contended that TMS were charging a fee of £944 plus £165.20 vat namely £1109.20 a month for this service between January 2010 and January 2011 inclusive, and £944 plus vat of £188.80 namely £1132.80 between February 2011 and April 2012 inclusive, and £536 plus vat of £107.20 namely £643.20 for May – December 2012 inclusive. A schedule of such charges calculated by the Applicants appeared at AB2-89 and totalled £9676.80 inclusive of vat which was supported by invoices in AB 2 and entries in the expenditure account.

136. Miss Gregory referred to the Tribunal's decision upon this matter in HP1 at paragraph 138 (AB1-54) in which the Tribunal considered that a reasonable fee for undertaking this work would be £300 plus vat and disbursements upon each occasion that it is undertaken whether that be monthly, six monthly or quarterly in the future. Miss Gregory said that the applicants had seen a credit following the meeting with the accountants last year reducing the fee for 2011 down to the newer figure of £643 inclusive of VAT and disbursements. She stated that in the latest invoices the Applicants were unable to determine if the figure was representative of the HP1 LVT decision and referred us to an invoice addressed to Hayes Point Management Company Limited from TMS at AB2-158 dated 31st of May 2012 which stated "Management charges for apportionment and recharge of electricity costs for May 2012" in the sum of £536 plus £107.20 VAT totalling £643.20. She pointed out that there was no breakdown of disbursements in any of these invoices and it could be the case that this is still an excessive charge. She submitted that Dan Watts of Samuel Francis and Co manages approximately 100 flats in the development and he receives one schedule from TMS and he gets somebody to break it down. She therefore submitted that almost 40% of this charge relates to information that is going to one person to break down himself and she believes that Mr Watts employs somebody to do this in any event.

137. Mr Holmes responded that the disbursements are calculated at £1 per unit or property and this covers the cost of the paper, postage, envelope and the photocopying. He said that the cost has not been reviewed and yet with increased postage costs it may well be an under collection. He said that now the charges comprise the £300 plus the £1 per property for disbursements to

arrive at the figure of £536 to which vat is then added. He said that the owners get a monthly schedule and everyone can see the calculation and the invoices being charged which detail the reading at the start and the end of the month. He said that the schedules are now split on a unit cost basis and the monthly charges are split out to detail the costs per property. If the letting agent Mr Watts is doing some further work then that is a matter for him but he referred the Tribunal to page 10 of R1 for an example of the schedule of electricity charges for the period from the first to 30 September 2011 provided by TMS.

138. **The Tribunal determines that the management fees and disbursements for the apportionment of electricity of £536 plus VAT calculated as described by Mr Holmes above is a reasonable fee** for the work involved and in the absence of any further submissions or evidence upon the part of the respondent as to increased costs and disbursements with the passage of time, determines that **£536 plus vat** is the appropriate monthly fee for the years of 2010, 2011 and 2012 inclusive of disbursements. The Tribunal observes in passing that £1 per property for disbursements is reasonable.

139. There was a cost of **£22.80** being the recharge cost of the same day CHAPS payment to SWALEC, which Ms Gregory said was the only time throughout the accounts that such a transaction occurs and the applicants assumed it was to avoid the risk of a late payment being made which would have incurred further charges. She felt that it was not a service charge item. Mr Holmes said that the company operates a business account and bank charges are not dealt with on an individual basis and explained how there was a cost to TMS and the bank and bank charges would be incurred because TMS operates a business account. He explained that Hayes Point Management Company Limited was dormant and not trading, that it would fail a credit search. He said that the payment may have been made by CHAPS to reduce the cost to property owners. The Tribunal determine that there was no clear evidence from Mr Holmes as to why this one off payment was a service charge and he was unable to rebut the applicants' submission that it related to a late payment. **Therefore this £22.80 is disallowed as against the service charge account as being both unreasonable in amount and unreasonably incurred.**

140. The next item upon the Scott Schedule that was challenged by the applicants was an invoice for CMB Maintenance Services Limited dated 24 January 2011 for £100 in relation to court costs for a claim. Mr Holmes believed that this related to a dispute between CMB and Galliard Construction and he accepted that it was not a service charge item. **This is therefore disallowed as against the service charge account.**

141. There were then a number of further invoices incurred by the TMS group relating to the costs of and connected with the attendance at the previous LVT hearing. At AB2 – 106 there was an invoice from TMS group to Hayes Point Management Company Limited dated 15 February 2011 for £5244.53 inclusive of VAT for the further costs of attendance at the LVT. This was accepted by the applicants at the hearing and no longer challenged. Likewise at AB2 – 109 an invoice inclusive of VAT of £3736.27 was also accepted, as was AB2-110 for £858.59 inclusive of VAT as were the invoices at AB2 – 111 for £7476.19 inclusive of VAT and the invoice at AB2 – 113 for £732.55 inclusive of VAT.

142. However Miss Gregory said that the invoice at AB2 – 114 which totalled £40.61 and was said to be related to the photocopying of the LVT bundles and postage was not in the costs bundle when the previous section 20C application was being determined and therefore was not recoverable now at all. Mr Holmes indicated that it should be dealt with on same basis as the other costs, namely payable on a 50-50 basis by the service charge payers and that it should be recoverable now even though he said that it was a 'late cost'. The Tribunal note that Mr Holmes accepted this invoice related to the costs arising out of the HP1 application. **Those costs and issues were dealt with during HP1 at paragraph 408 (AB1-137) and it is unreasonable to further include these costs within the 2011 service charges when TMS had every opportunity to claim for them previously. This invoice is therefore disallowed.** At AB2 – 107, there was a recharge of an invoice from The Shower Doctor for parts ordered on the TMS credit card to obtain a better price and the Applicants objected to the £10 and charge by TMS for dealing with the credit card transaction. Miss Gregory submitted that if the managing agents wish to use the company credit card then the costs should be absorbed by TMS not the service charge payers. Mr Holmes submitted that this related to the fact that Hayes Point Management Company Limited has no credit or bank history and so cannot hold a credit card. He said that sometimes TMS can obtain goods from the internet at cheaper prices and they order them on the TMS credit card in order to benefit from this. He said that the transaction comes into TMS's office account which they then have to reconcile. He said that such transactions were rare and TMS try to avoid them where they can but from time to time there are unusual bits of equipment that are purchased following use of the internet and this £10 handling fee reflects TMS's costs in processing the paperwork as a result. Miss Gregory pointed out that Hayes Point Management Company Limited had chosen to file dormant accounts and conduct their business in that fashion and if the arrangement between Hayes Point Management Company Limited and TMS was for a handling fee to be paid then that is not something that ought to be met by

the service charge payers. **The Tribunal accepts Mr Holmes submissions and find that this cost is reasonably incurred and reasonable in amount.**

143. At AB2 – 115 there was an invoice from J and E Hall International to TMS dated 27 April 2011 for £470.40 inclusive of VAT. Miss Gregory said that the accountants had filed this as unknown works and miscellaneous. Mr Holmes said that these were contractors for Daikin who supply the air conditioning. He postulated that this could be for the swimming pool but he said that they would call JE Hall to find out. In the event, since this is an item that should have been identified had the directions been complied with and **since there was no information before the Tribunal as to precisely what this invoice related to, the Tribunal is unable to find either that it was reasonably incurred or that it was reasonable in amount and it is therefore disallowed as against the service charge account.**

144. Mr Holmes accepted that the invoice at AB2 – 117 from Howard Kennedy solicitors for **£120 inclusive of VAT was not a service charge item.**

145. At AB2 – 119 there is an invoice dated 8th June 2011 for £507 inclusive of VAT said to be an administration fee for issuing section 166 notices re Ground Rent. Miss Gregory referred to the decision in HP1 at AB1 – 40 in which the Tribunal found as follows;

> ***"Administration fee for issuing ground rent notices"***
>
> *£115 was charged as an administration fee for issuing ground rent notices. Miss Gregory on behalf of the Respondents disputed this and submitted that these were new charges in response to TMS having taken over the administration and management of the development and were not costs that leaseholders had paid previously. She submitted therefore that it was not fair and reasonable and also submitted that ground rent was not a service charge but that this was a function that TMS had undertaken whereby they were acting for the Landlord and that this cannot be charged back to the tenants.*
>
> *Mr Holmes had indicated that this was recoverable under the Fourth Schedule, subsection 14 (b), ……However, the Tribunal found that this clause related to wants of repair and not to ground rent. Mr Holmes indicated that this would also be recoverable under …….. paragraph 10(a) at the third bullet point namely any other costs, charges or expenses incurred which the Landlord or the Company designates as a service charge item. He also relied upon …….. Fourth Schedule 10(e)(iii) which allowed the Landlord or the Company to*

employ or retain the services of any employee, agent …. or other advisers of whatever nature etc. Mr Holmes submitted that this was a legal requirement and a professional obligation to serve the ground rent which was a fixed fee for £100 plus VAT per set of notices, collected on the 1st January and the 1st July.

However, we find that the Fourth Schedule 10(e)(iii) relates to the management of the building and the estate and that the £115 is a charge in respect of levelling the ground rent for the freeholder. ***Accordingly, we agree with Miss Gregory that this is not a service charge and is not recoverable as against the leaseholders."***

146. Whereas Mr Holmes had indicated that TMS charge this fee to cover their administration costs, this Tribunal agrees with the reasoning above in HP1 and **accordingly disallows the £507 as against the service charge account.** The Tribunal further notes that under section 166 (7) of the Commonhold and Leasehold Reform Act 2002, "rent" does not include *"(a) a service charge (within the meaning of section 18 (1) of the 1985 Act),"* Therefore section 166 does not apply to service charges because section 18 of the 1985 Act defines service charges as an amount payable by a tenant as part of or in addition to the rent.

147. Miss Gregory drew the Tribunal's attention to further invoices in relation to administration charges for issuing s.166 notices for ground rent, at AB2-146, dated 21st November 2011 for £558, at AB2-161 dated 12th June 2012 for £600, at AB2-181 dated 30th June 2010 for £699.13, AB2-182 dated 5th July 2010 for £211.50 and AB2-183 dated 5th July 2010 for £490.56. It follows from the reasoning above that **all TMS' charges for issuing section 166 Ground rent notices are not service charge items and are not recoverable against the service charge payers.**

148. As an aside, Miss Gregory suggested that it would be reasonable for bills to be provided electronically and paperless to those leaseholders who wanted to receive them in this way to save costs, and Mr Holmes confirmed that property owners can elect to receive matters electronically and said that a couple of owners were already doing this.

149. The next issue was the charging to the service charge account of legal fees by solicitors Dutton Gregory for issuing letters before action in respect of those leaseholders who were allegedly in arrears with their service charge payments and in issuing debt proceedings and obtaining judgement against debtors. Miss Gregory drew the Tribunals' attention to items in AB2 at pages 120,121,128,130,133,134,136,137,140-143 as examples of such letters, charged at £50 plus vat

totalling £60 and 124,126,127,129 as examples of fees and disbursements for issuing debt proceedings and obtaining judgement of £278 and at page AB2-127 of £403.00. Miss Gregory submitted that the HP1 decision had determined that the liability to pay those service charges had not arisen owing to the failures to comply with the lease mechanism for certification and so forth. She submitted that the account and demands for 2010-2012 also did not comply (and we agree as indicated at paragraph 122 and 123 above.

150. Mr Holmes countered that there remained an obligation upon leaseholders to pay the estimated service charge demands on account as per the lease Fourth Schedule 11(a) at page AB1-227 and, having been demanded, it was these payments on account that were in arrears. He further confirmed that Dutton Gregory's charges were received into the service charge account and paid from there and were then recharged to each individual debtors account in accordance with their individual leases. Indeed the documents in the bundle were stamped "Recharge to tenant."

151. Miss Gregory accepted that the management company were entitled to chase leaseholders if the arrears related to the payments on account that had not been paid, but she argued that the invoices did not make it clear as to what was being chased. Further, she indicated that the managing agent should not use the trust monies to discharge the fees to Dutton Gregory and to then recharge the individual debtor. She could not be certain from the documents that any recharge to an individual leaseholder related to previous years payments made by that leaseholder in which case such previous years payments should not be taken to satisfy these liabilities that have subsequently arisen. She stated that these transactions should not be going through the service charge account and should be charged directly to the defaulting tenant. The Tribunal was told and it was upon the Respondents answer to the Scott Schedule that there were for example arrears of £13,769.58 owing for one apartment (3 Courtlands) and £8,202.61 for 303 Woodlands.

152. As a matter of law the landlord is entitled to take court proceedings in relation to unpaid interim service charges and to charge the costs to the tenants under the lease. Therefore, Miss Gregory's points about the failure to comply with the lease mechanism do not apply where that is the case. Although there was no further evidence before the Tribunal, it was noted (for example at AB2-127) that court proceedings were issued as court fees were incurred and the Tribunal presumes that the particulars of claim would have indicated the period and amounts that were being sought. These documents were not before the Tribunal. It could perhaps be

inferred that the amounts cited above for 3 Courtlands and 303 Woodlands were arrears that had been built up over a period of time and so may have comprised a series of properly demanded and thus payable interim amounts, as well as final service charge accounts that were not properly demanded under the lease and thus were not payable but the Tribunal did not have sufficient evidence to conclude this one way or the other.

153. The Tribunal accepts Mr Holmes evidence that the letters before action relate to the interim charges and so are reasonable as against the individual leaseholders. As indicated, if the court proceedings issued also relate to or include elements of the interim charges then they too are reasonable as against the individual leaseholders. With regard to the use of the service charge account and then recharging to individuals there is nothing preventing this in the lease. The managing agents are taking steps to recover outstanding service charge arrears for the benefit of the development, notwithstanding that the costs are ultimately recoverable from the individual service charge payers and indeed there is evidence of this recharging to individual debtors (see AB2-194).The tenant's covenants with the landlord include at the Fourth Schedule, Clause 10 (a), (b) and (c) (AB1-184/5) a general obligation to pay any other costs or expenses incurred which the landlord or the Company designates as an estate ,building or parking service charge item. Further at clause 14 (a) (ii) the tenant covenants to pay to the Company and/or the Landlord, expenses including legal costs which may be incurred in, or in contemplation of "other court or arbitral proceedings" and these costs are authorised under the lease. **The Tribunal accordingly considers these costs to be reasonably incurred and reasonable in amount.**

154. There were numerous internal TMS invoices at pages AB2-200 to 369 which related to various administration charges for individual leaseholders. These are largely matters for individual leaseholders and are not service charge items although we note that for example, that there are Land Registry fees and charges included as well that are dealt with later in this determination.

155. **The Residents Guide.** There were two invoices from Creative Services, for £388.68 at AB2-131 dated 29th July 2011, and £519.74 at AB2-153 dated 30th March 2012 that related to the re-print of the revised Hayes Point Residents Property Guide, a copy of which was also in the bundle. Miss Gregory submitted that this was produced by TMS, (she was not sure if this was on the instructions of Hayes Point Management Company Limited) but it was unnecessary and unreasonable expenditure because the legal requirements were all set out in the lease and this guide adds no further value over and above the lease. Further that copies of this were given to

short term tenants on site, such as those on assured shorthold tenancies who have sublet from the leaseholder and that cost should be met by the management company not the service charge payers. If there was any breach of the lease it would be the lease and not this document that would be of importance. She said that in the context of Mr Holmes asserting that the shortage of service charge funds at Hayes Point was an issue, then this was unnecessary expenditure.

156. Mr Holmes said that the guide was produced for good and proper estate management and that although it was not unusual for guides to be produced in electronic format, that for this estate there is a lot of information that is common to tenants, lessees and visitors and the guide contains a reminder of this. He said that it is a material cost for proper estate management and is covered under the Fourth Schedule, clause 10 (e) (VII) at AB1-226. He said that although the guide replicates some of the information under the lease such as the restrictive covenants, it also contains much information that is not part of the lease, for example health and safety requirements in relation to the gymnasium and sauna. He argued that (paragraph 19 of RB1), "Landlords consistently fail to provide their tenants with their obligations under individual leases. The production of a Residents Guide has been an invaluable management tool in reiterating development information to all residents."

157. Mrs Phillips for the Applicants added that when each owner completes their purchase, they are provided with a leather folder with all of the relevant information in it and it is incumbent on the owners to give that to their tenants and so the guide was unnecessary and that owner occupiers were aware of the information in the guide. She added that the other option was for the guide to be made available free of charge online.

158. Mr Holmes said that there is a PDF version of the guide that is made available to solicitors on pre-contract enquiries and that the cost of the guide is a little over £1 per booklet and that this is reasonable for the development. Miss Miles added that the concierge staff feel that it is a useful tool, not just for the restrictive covenants but for the other general information, examples of which are that barbecues and fireworks are not allowed in the grounds and so forth.

159. **The Tribunal determine that the costs of £388.68 and £519.74 are costs that are reasonably incurred under the service charge fund and are reasonable in amount.** The production of the guide is covered by the lease as submitted by Mr Holmes and it is by no means a simple replication of the lease obligations, but is intended to be much more immediate, portable and

user friendly than the lease and to cover other matters. The Tribunal accepts the Respondents submissions in relation to the practical utility of the guide. Long leases of the type in Hayes Point are legal documents couched in legal language that are not the easiest documents for even the articulate and intelligent leaseholder to immediately find their way around. The Guide does contain much information that is of use to leaseholders, tenants and visitors in an accessible format both in relation to legal obligations under the lease but also in relation to practical matters such as the concierge and management services at Hayes Point. It is clearly not intended to be a substitute for the lease and fulfils a different function. The Tribunal notes that the guide can be made available online and digitally and recommends that it should be where requested. However, even in the digital age, there remains a place for hard copies of useful information such as this and the fact that the Guide could be produced digitally, free of charge or cheaper than the printed version, does not make the expenditure on the printed guide unreasonable.

160. At AB2-149 there was an invoice for **TMS for £6.00** in relation to obtaining details of officers of Hayes Point (Sully) Limited from Companies House, objected to by Miss Gregory. Mr Holmes said that this was a part of managing the estate and dealing with the company but **the Tribunal determine that this charge is unreasonably incurred as against the service charge payers and disallow it.** Hayes Point (Sully) Limited are parties to the Management agreement with TMS and it is not reasonable that this cost should be borne from the service charge fund and there is no evidence as to how this relates to the service charges.

161. At AB2-150 was an invoice from TMS dated 21st December 2011 for the balance of management charges for the year ending 31st December 2011 for £1695.60 including vat. Mr Holmes said that this was simply a balancing charge to adjust the management fees to 2011 figures and that this related to the whole year and someone in TMS would have picked up that the invoices were at the old rate and that there needed to be an adjustment. Miss Gregory submitted that the Applicants had not seen any evidence of how this has been calculated and that it appeared to be over and above the amount in the management agreement, and so were challenging the entire amount. The Tribunal determine that, notwithstanding the directions given in this matter, there was insufficient evidence either documentary or oral to enable the Tribunal to see to what this charge relates and how it has been calculated. There has been every opportunity for the Respondents to produce such evidence or argument but they have failed to do so with the particularity required. **The Tribunal therefore determine that these fees were unreasonably incurred and are unreasonable in amount and disallow them.**

162. At AB2-156 and 157 (duplicated at 160) there are invoices from TMS for £36 including vat for obtaining a copy of the lease for Woodlands 16 and Headlands 304 from the Land Registry. Miss Gregory submits that these charges are unfair and unreasonable against the service charge account as these are documents that should already be in the possession or control of the Respondents. Mr Holmes said that although the leases are generic in content, they can be different in relation to the demised area as some properties may, for example have patios or balconies demised to them and that they need to know for building management purposes when maintaining the building, whether an item is demised to a particular lease, and that this is a reasonable cost. He added that as management agents TMS do not have copies of all the leases. The Tribunal accept that Mr Holmes will need to be sure of a particular demise on occasions for management purposes and **determine that the costs of obtaining the copy leases from the Land Registry are reasonably incurred against the service charge fund and are allowed.** The freeholder, who instruct TMS, may or may not have copies of the leases or access to them but there was no evidence as to this either way and it is reasonable in the circumstances for these costs to be charged to the service charge account. It is not unreasonable for the managing agent to need to have access to an individual lease and to obtain this in the most expeditious way. This principle is established but the Tribunal note that in fact there are further invoices on this issue (see AB2 178 and 179) and also note that there is a miscellaneous item on the Scott Schedule for £11.25 in relation to Land Registry searches. The searches are part of the debt collection process and should be rechargeable to the individual lessees but are initially reasonable costs for the service charge fund.

163. The next item in dispute was the invoice at AB2-162 dated 29th June 2012 from TMS for £839.98 inclusive of vat in respect of their fees for photocopying and distributing the financial report of 31st December 2011 and the Welsh Summary of Rights and Obligations. Miss Gregory submitted that this was excessive for photocopying costs and noted that at page AB2-122 there was an invoice dated 30th June 2011 for £217.80 from TMS for photocopying and distributing the accounts for the year ended 31st December 2010. She was also concerned that TMS "send the summary of rights with everything". Mr Holmes noted that there were over 5,000 pages copied and that the financial reports need to be sent with the accounts and that the bundles sent out were 21 pages per property.

164. The Tribunal understands that TMS have photocopied the statutory instrument that includes the summary of rights (which results in more information being copied than is required) and

notes the disparity between the copying fees for the year ended 2012 and the year ended 2011 and accordingly determines that some of the fees for copying in the 29th June 2012 invoice are unreasonably incurred. Accordingly the **Tribunal determines that the fee of £550 plus vat is a reasonable sum for photocopying (which equates to 5,000 sheets of copying at 0.11p per copy.)**

165. **TMS fees for handling LVT determination calculations.** AB2-172 was TMS' invoice dated 21st December 2012 for £6,000 inclusive of vat for dealing with the reconciliations to the accounts following HP1. The Applicants submitted that such charges were unreasonable because if the Respondents had kept proper books of account and issued fair and reasonable service charges in the first place then this work would not have been necessary. Miss Gregory pointed out that the Applicants had remained willing to meet with the Respondents at any time to discuss matters and negotiate on the matters in dispute (in relation to both HP1 and this case) yet the approach taken by the agents TMS, was, she alleged, to tell the leaseholders that "you will pay, you will pay for everything" and that everything was to be charged to the service charge account unless the LVT determined otherwise. Miss Gregory indicated that the amount was not challenged in its entirely and suggested that a reasonable figure for this would be no more than £1,000- £1,500 maximum. Miss Gregory said that most of this work related to reconciliations where it was found that the invoices or service charge demands were not valid, that the previous agents Knights had retained management funds and much related to the 2007/08 period when many of the decisions in HP1 were in the Applicants favour where amounts were ordered to be refunded. She also said that there were many errors in the reconciliation work that was done and that these had to be subsequently pointed out by the Applicants who themselves had spent many hours on these matters, although she said that the Applicants did not receive the reconciliation spreadsheets and information until post May 2013.

166. Mr Holmes said that the fees were for the work undertaken by the Property Manager Yasmin Miles and by Nigel Scholey who was TMS' financial director at the time. He said that the invoice was for ten days work at £500 a day plus vat and that the work took place over several months. The work was extremely time consuming and the spreadsheets and necessary calculations were complex. Mr Holmes said that the hourly rates for this work in accordance with TMS' terms of business were £110 plus vat per hour for Mr Scholey as a Director of the business and £60 per hour for Miss Miles as a Property Manager. He said that the hourly rate for them combined would therefore be £170 and the daily fees would be over £1,000 and so there had already been a built in reduction. He submitted that following HP1 there were adjustments on both

sides and that the Applicants had not succeeded on everything with many of the steps undertaken by TMS having been found to be reasonable. Therefore this was not a straightforward case of saying that everything in HP1 was in the Applicants favour. He maintained that the full sum charged was reasonable.

167. The Tribunal determine that the amount of time taken by Mr Scholey and Miss Miles was reasonable to deal with the issues and the paperwork (indeed Miss Gregory accepted that it may well have taken them the amount of time claimed). However **the Tribunal determine that it is not reasonable for all of this time to be charged to the service charge account.** Where adjustments were made owing for example to defectively served demands for service charges or owing to charges that had been found unreasonable in HP1, then it is not reasonable for the leaseholders to be charged for the cost of putting that right in the accounts. Therefore, and recognising the points made by Mr Holmes, **the Tribunal determine that four days' work at £500 plus vat, namely £2,000 plus £400 or £2,400 is a reasonable amount for this work.**

168. The Applicants withdrew any challenges to the invoices at AB2-180 and 175 dated 30th June 2010 and 17th August 2010 for £174.75 (namely TMS' photocopying and collating of the accounts for year ended 31st December 2009) , and £6194.13 (for preparing LVT submission bundle relating to costs awarded as part of HP1) and accepted that these were reasonable.

169. At AB2-173 there was an invoice from TMS dated 11th February 2010 for £528.75 in relation to TMS' charges for issuing section 20B (2) notices for the year ending 31st December 2009. Miss Gregory submitted that the only section 20B notice served was in relation to the supplemental invoice for 2008 (dated 2nd June 2009) and that was at AB1-242. She submitted that this was the subject of considerable comment in HP1 and was dealt with by the Tribunal in HP1 from paragraph 344 of that decision that was included at AB1-119. The relevant HP1 comments are reproduced below:

> ***" The Tribunal's decision upon the section 20 B notice issue.***
>
> *We do not consider that the letter of 9 April 2009 and its enclosures is sufficient to satisfy the requirements of section 20B(2) ..... The letter is in extremely general terms and does not give details of the costs that had been incurred. Subsection (2) has a number of disparate elements. The first is that there needs to be a date when the relevant costs in question were incurred. The second is that those costs were incurred; the third is that the tenant was notified in writing that those costs had been incurred, and the fourth is that the tenant would*

subsequently be required under the terms of his lease to contribute to them by the payment of the service charge.

It stands to reason that costs will be incurred upon different dates. "For the purposes of section 20 B, a relevant cost is incurred by the Landlord when he pays the said cost, or when he becomes legally liable to do so" (Service Charges and Management: Law and Practice, Second Edition 2009 Tanfield Chambers, Loveday and others, p.167). In any given service charge year therefore, different costs will be incurred on different dates.

Mr Holmes and Mr Scholey admitted in evidence that they did not know when the costs for 2008 had been incurred. The Tribunal recognises the difficult position into which TMS were placed and we make no criticism of them at all in this regard because they could not know when the costs had been incurred until they had been provided with all of the relevant financial information and we recognise that they were seeking to act responsibly and in good faith. The Tribunal would expect with an efficiently managed development that there would be financial information readily available which would enable managing agents to identify with precision what costs had been incurred and when. TMS were not in a position to do this through no fault of their own.

The letter of 9 April 2009 is in extremely general terms, it does not identify what costs had been incurred nor the date that they had been incurred. It does not inform the leaseholder of his requirement under the terms of his lease to contribute to those costs by the payment of a service charge. It is not possible to calculate the period of 18 months referred to in subsection (2) because no dates when the costs were said to have been incurred are given.

Does the letter of 2 June 2009 and its enclosures comply with section 20 B (2)? The Tribunal determines that it does not. *Although the accounts for 2008 are included and these are relied upon by TMS as demonstrating all of the items of expenditure that have been incurred, it is not possible for the tenant to divine what costs were incurred and when. There is no relation between the service charge payments made to Knights and the calculations upon which the leaseholders' original service charges for 2008 were demanded, and the supplemental service charge demanded by TMS to cover the deficit in 2008. There is no detail upon the calculation of the proportion of the accounting deficit that is being claimed from the leaseholder. There is no reference to the requirements of the lease for the tenant to contribute to the service charge.*

The Tribunal has considered the Holding and Management (Solitaire) Limited Case. This does not assist TMS. Paragraphs 22 and 27 of that determination in particular deal with the treatment of balancing payments demanded. In that case the balancing payments reflected

the costs incurred after the amounts of the advance payments received by the Landlord for the year in question had been used up. It is clear from paragraph 27 of that judgement however that there were schedules of expenditure demonstrating with precision the date upon which the amount received as advance payments were used up. It was clearly possible therefore to calculate the time limits precisely with reference to the actual date when costs were incurred. That case is clearly distinguishable from the present one where there are, upon TMS's admission, no reliable details about the dates when the costs for 2008 were incurred."

170. Miss Gregory submitted that in the light of the Tribunal's comments in HP1 above that the section 20B notices did not comply with the Act's requirements then TMS ought not to be able to recover these sums against the service charge payers. Mr Holmes stated that this demand was dated 11th February 2010 and was not the demand referred to by Miss Gregory. He said that this related to the year ending 31st December 2009 and the fees charged by TMS were in accordance with their terms of business at £50 for each 20 units or part thereof.

171. The Tribunal however did not have a copy of the section 20B notice under discussion nor did it have any evidence before it as to what this notice related. In the circumstances, and given that the Respondents have had ample time to provide this information, **the Tribunal cannot be satisfied that this cost has been reasonably incurred and therefore disallows it as against the service charge fund.**

172. At AB2-53 on the Property expenditure printout, was an entry dated 14th April 2011 for £192 to TMS for Land registry administration fees. Miss Gregory said that the Applicants had not seen any invoices in relation to this item and repeated the submission that she had previously made in relation to these matters namely that the freeholder should have this information and it was not reasonable to charge the service charge fund. Mr Holmes did not know to what this related and was to make enquiries during the hearing, but ultimately the Tribunal were not satisfied on the lack of evidence before, it that this was a reasonable cost as against the service charge fund **and accordingly disallow this cost as being unreasonably incurred against the service charge payers.**

173. At AB2-174 was a TMS invoice dated 17th August 2010 for £125.24 for photocopying for preparation of the LVT pack of 969 pages. Miss Gregory said that it would not be reasonable to recover this against the service charge and that the agent would need to demonstrate that

there have been refunds in accordance with the LVT HP1 decision in 2012 as there had been no credits in relation to this in the accounts received to date. Mr Holmes said that these relate to costs awarded as part of the LVT decision in HP1. **The Tribunal determine therefore that as this cost relates to the previous HP1 decision and it follows that only 50% of this amount is determined as reasonable against the service charge fund.**

174. AB2-176 was an invoice from TMS for £218.55 being a recharge of events cover insurance relating to a charity tea party that took place at Hayes Point on the 12th July 2010. Miss Gregory objected to any costs relating to the tea party being charged to the service charge fund at a time when she said that the agents were continually cancelling services owing to lack of funds and submitted that any costs associated with the tea party were not service charges under section 18 of the 1985 Act. Mr Holmes indicated that this was an event put on to raise money for Marie Curie Cancer Care and that the developer sponsored this event and all costs incurred were put through the service charge account and then recharged to the developer. It was therefore agreed on behalf of the Respondent that these were not service charges and no determination was necessary from the LVT on this issue. For the avoidance of doubt however, the Tribunal determine that all costs relating to the charity tea party (of which there are many in the Scott Schedule) are disallowed as they are not service charges.

175. At AB-2 there was an invoice from Wotton Printers to Galliard Developments (Sully) Limited dated 19th August 2010 for £319.60 in relation to wire bound books. Mr Holmes did not know for certain but thought that these related to the HP1 LVT hearing and would already have been taken into account in HP1's determination on costs. **Therefore it is important that these are subject to the earlier decision on costs and are not double charged as against the service charge payers.**

176. At AB2-185 was reference to a credit card payment to Jones and Son for £45.48 dated 4th November 2011 in relation to cat repellent but annotated in hand it stated "Debit card payment £50.48." Mr Holmes said that there was a complaint from an owner about nuisance from cats and this was purchased to try and keep cats off the communal areas. Miss Gregory pointed out that pets were there with the consent of the freeholder. Mr Holmes said that the historic position had been not to provide consent but Miss Gregory disputed this and pointed out that she had been given permission in June 2007 to keep a dog. Mr Steele, a resident present at the hearing (although not one of the applicants) indicated that he had paid and been given permission for a pet in the past.

177. Given that permission for pets has been given by the freeholder and the difficulty of controlling the movements of cats in particular in such a large development, **the Tribunal finds that this is not reasonably incurred expenditure against the service charge fund and is a cost to be met by the freeholder.** There is a further item under petty cash in the Scott Schedule (17th February 2010, for £15.28 to Wilkinson for pet jelly to stop cats using the grounds as a toilet) that is similarly disallowed against the service charge fund.

178. At AB2-188 a payment of £346.66 had been made by credit card to British Bins using a personal credit card evidenced by e mails dated 23rd November 2012, and although this amount was not challenged, there was a £15 handling fee charged by TMS to deal with the paperwork and administration involved in processing this matter. The Applicants objected to the £15 handling fee. **The Tribunal determine that the £15 handling fee is reasonable in amount and reasonably incurred. This does relate to extra work that has been generated as the management company does not have its own bank accounts or credit card and so additional time will be taken dealing with the paperwork and invoices concerned. However the purchase and the associated work are for the benefit of the leaseholders and** accordingly is allowed as against the service charge fund.

179. **British Telecom charges.** Invoices to BT appeared at AB2-443 to 485. The amount challenged by the Applicants was £1,074.50 comprising £9 payment charge x 73, the £13.50 late payment charge x 5 and the charge of £350 for over usage. Miss Gregory explained that the main concerns were the £9 payment charges, and she said that there should be no need to incur this expenditure on every invoice. Mr Holmes explained that the £350 over use payment was in respect of the broadband line and that the internet usage was over the monthly broadband allowance. He explained that the broadband line was used for the door entry systems and the electricity metering system and that if there are faults with these then the technical support is delivered remotely by means of the line. Mr Holmes said that with regard to phone charges, the scheme is not in a position to pay by direct debit and so BT have a standard ten day payment term and make the £9 payment charge.

180. The Tribunal asked whether the overuse of the broadband allowance could be due to staff using services unconnected to work, (purely as an example, such as the BBC Iplayer)? Mr Rowswell the Hayes Point Building Manager strongly asserted that this was not the case. He confirmed that they rely on support from an engineer based in Edinburgh and that the TMS log in sometimes does not run smoothly and that too requires IT support. There is also

broadband support to maintain the electronic access systems and Mr Rowswell confirmed that each lift has a dedicated line, of which there are fourteen in all and there are four phone lines including for the concierge office and a broadband line for the meeting room. He described BT as being a nightmare to work with and that they could make enquiries about having the charges put on one bill but he also commented that each line having its own bill gives transparency to the costs.

181. **The Tribunal determined in the light of the evidence of Mr Holmes and Mr Rowswell that the BT costs are reasonable in amount and reasonably incurred.** The £9 is a processing fee that is applied by BT and it was argued on behalf of the Respondents that the bills were paid in this way because they were not able to pay by direct debit. BT have not been easy to deal with and efforts will be made to see if the bills can be consolidated but as the external telecom company is providing and billing the matter in this fashion then, although there may be cheaper and alternative ways of doing things (equally there may not be) the costs incurred are reasonable. There are clearly considerable demands on the broadband service and usage and the overpayment is reasonably incurred in the service of the development for support needs. It is a matter for the managing agents to see if the broadband allowance is at the correct level or whether a larger download allowance should be purchased but the Tribunal did not have the evidence to comment on such matters.

182. **Cleaning.** Miss Gregory referred to the attention given to this issue in HP1 and in particular to the evidence given by Mr Holmes and TMS previously that they were going to bring services such as cleaning, concierge, gardening and grounds maintenance in- house following a costs benefit analysis. Miss Gregory referred to HP1's decision on this which was at AB1-76 – 88. We reproduce below the relevant paragraphs in relation to cleaning in 2009 to which Miss Gregory referred.

"205. Mr Holmes indicated that there was a management review in early 2009. A cleaner was previously provided for eight hours on Monday and Friday and other ad hoc hours as directed which equated to between 16 to 20 hours cleaning a week. This was on an annual contract at a value of just over £40,000. Mr Holmes stated that TMS believed that they would be able to provide a better service by bringing the cleaning in-house. He acknowledged that there would be costs associated with the employment, for example the payroll, employment obligations and materials, but stated that they had sought a full-time cleaner for 40 hours per week and a part-time cleaner for 20 hours per week. He said that by achieving a small cost saving TMS were able to provide 60 hours cleaning on-site as opposed

to 20 hours cleaning per week on the contract. He explained that the owners had high expectations of cleaning, the leisure facilities are cleaned several times during the day and there were advantages of cleaners being on site so they can be sent to the appropriate area. He said that there are many day-to-day needs generated by a development of this size in terms of the cleaning tasks. TMS felt there was a need to improve and provide a significant increase in the amount of cleaning in order to fulfil the cleaning expectations. He said that the building manager can send the cleaners to the appropriate places and gave the example of the gym being cleaned both pre-and post working hours and the leisure facilities being cleaned frequently.

206. Mr Steele, a leaseholder commented that things are better now and 60 hours cleaning was fine. The Tribunal asked if anyone disputed the need for 60 hours cleaning per week. Nobody did dispute this. Mr Holmes however explained that they had had to let the part-time cleaner go because they did not have funds at present because of the service charge dispute. He also confirmed, in answer to a point raised by Dr. Heginbotham, that the cleaning of the void units was not put through the service charge. ***The figure of £33,639 for cleaning in 2009 was agreed as a reasonable figure by the Respondents and accordingly we find it to be so."***

183. The Applicants submitted that although Mr Holmes had indicated in HP1 and before, that two in –house cleaners would provide a better service and that consequently there would be better value achieved for the service charge payers, that in fact despite now having cleaners employed at Hayes Point, there are also contract cleaners paid to come in as well. The Applicants consider that it is unreasonable to have both employed and contract cleaners and that the initial cost analysis undertaken by TMS on this point was flawed since it simply compared very basic wage costs for two individuals without taking into account employer or HR requirements, holiday and absence cover, training etc. Miss Gregory referred to the invoice for external cleaners from Encompass Cleaning Services that were at AB2-371-374 and 378, being invoices dated 31st July 2012 for £1,351.53 for the period 9th -31st July, dated 31st August 2012 for £1861.76, 31st October 2012 for £2480.85, 30th November 2012 for £2538.96 and 31st September (sic) 2012 for £1662.84.

184. Miss Gregory confirmed that the Applicants were challenging all of the outsourced cleaning costs and the invoices referred to in the preceding paragraph. She said that the cost of the out sourced cleaning kept on increasing and referred the Tribunal to AB2-487, a table prepared by the Applicants containing information on the costs of cleaners and outsourced (also referred to

as external) cleaners. This had the costs of the in-house cleaners as being £16,206.19 for 2010, £16,919.94 for 2011 and £17,403.19 for 2012 and the costs of the outsourced cleaners as being £4369.50 for 2010, £11,345.90 for 2011 and £21,235.31 for 2012 an increase of approximately £10,000 from 2011 to 2012 on outsourced cleaners. The annual totals for cleaning were, according to the Applicants, £20,575.69 for 2010, £28265.84 for 2011 and £38,638.50 for 2012.

185. Mrs Jean West gave evidence and referred to her written statement in which she had carefully exhibited the weekly schedules of work that she considered to be necessary to clean to a high standard. She also provided a comparative example of the daily requirements of a council cleaner in a school, working five hours a day in two shifts, a workload that she described as massive compared to the cleaning needs at Hayes Point. She concluded from what she termed her 'feasibility study' that a self-employed domestic cleaner at a reasonable rate of £10 per hour for 35 hours per week could undertake all of the work required and that this would cost £18,200 per annum as opposed to the estimated cost for 2013 of £35,000 or what she described as the actual costs for 2013 as stated by PKF accountants of £33,319. (The Tribunal bears in mind that it is not determining the reasonableness of costs for 2013.)

186. Mrs West further referred to exhibits to her statement, including her enclosure number 5 which was her record of the time taken by the cleaner at Hayes Point, Sam, to undertake certain tasks on 24th July 2013. Mrs West concluded that the cleaner had taken 19 minutes to work on a block of eight flats, or approximately 2.4 minutes each. Mrs West makes the point that most residents are rental tenants who are out at work during the day and that she if one of the few resident owners who are present during the day and in a good position to judge the cleaning service being provided. The Tribunal bear in mind that this evidence relates to a year that is not under consideration however Mrs West made it clear that her general observations do apply to the years under consideration.

187. Mrs West also provided at enclosure 7 to her statement, a quotation from Ladybirds Cleaning Services Ltd of Pentyrch dated 9th January 2014. This detailed weekly cleaning of: entrance areas, stairwells, landing corridors and lifts, daily cleaning of: leisure facilities pool, gym, sauna, toilets, showers, locker room, changing areas, concierge, main spine of the complex and lift, and twice weekly cleaning of the meeting room and kitchen. The daily total was 5 hours cleaning, weekly of 25 hours at £11 an hour totalling £14,300 annually. She said that Ladybird would also supply the sundry cleaning items required.

188. In their written representations at RB page 2, paragraph 25, the Respondents *said "Services are subject to payment by the lessee. The Landlord and Management Company are entitled to vary such services which can be provided to the extent that funds are held."* At the hearing Mr Holmes explained that a member of staff had left and cleaning provision was reviewed which coincided with increased occupancy at the end of 2011 and beginning of 2012. They placed the first contract with Encompass in 2012 after having gone to competitive tender to quote for thirty hours per week with three companies (the others being Cardiff and District Cleaning Company and AQS). Mr Holmes said that this was to provide support to the employed staff so that there was a mixture of in house and external contractors. He said that this enabled them to cover a greater area in terms of internal cleaning and that the in house cleaners could concentrate on the high use areas such as the lift, the gym and leisure facilities. He said that Encompass were the cheapest of the three companies to tender. He added that with all the apartments having been sold there is a greater area to clean and in the case of the gym, this needs to be deep cleaned and sanitised once a month. In addition he said that the Hayes Point staff line manage the external cleaning contractors when on site. Mr Holmes e-mailed the Tribunal and Miss Gregory on the 20th February with a monthly cleaning quote obtained on 3rd July 2013 from Cardiff and District Cleaning Company for £4983.33 plus vat (that is £5979.99 per calendar month). The Tribunal notes that this is not for the years that are under consideration but that it still provides some comparative evidence.

189. Mr Rowswell referred to Mrs West drawing on her own experience and pointed out that he had been a manager of four star hotels in the past and had considerable experience of what was required to keep cleaning to a high standard. He praised the work of the in house cleaner at Hayes Point, Sam, saying that she had "done an outstanding job" and said that attention to detail was of paramount importance, particularly in the gym and the changing room areas which were used more with increased occupancy. He referred to some tenants having a "couldn't care less" attitude which contributed to the cleaning workload.

190. Mrs Phillips for the Applicants compared the footfall at her college of around 4,500 students and said that they have one cleaner in the morning who checks the toilets and so forth and two cleaners in the evening and felt that by comparison with the college the cleaning costs at Hayes Point were unreasonable.

191. **Decision on cleaning costs.** The Tribunal reminds itself that it is charged with determining the reasonableness of the costs incurred, namely that the landlord will need to satisfy the LVT that

the decision to incur any particular costs was reasonable in accordance with the lease and the 1985 Act, and secondly that the actual costs incurred were reasonable in the light of the evidence before the LVT including any evidence as to the market rate for such work. The Applicants contend that, TMS having previously undertaken the cost benefit analysis and determined that it would be cheaper and better value for money to bring matters in house, it was unreasonable for TMS to now change this policy and to rely upon a mixture of in house and external staff. Was it reasonable for TMS to supplement the in house staff with external contractors in all of the circumstances? The Tribunal are satisfied that TMS are able to employ both in house staff and contractors under the lease (Fourth Schedule clause 10 (e) (iii) AB1-225). Given the circumstances outlined on behalf of the Respondents of a member of staff leaving and there being increased cleaning owing to full occupancy, were TMS entitled to review the situation or were they bound by their earlier approach? The Tribunal determine that TMS were not bound to follow the approach that they had taken earlier as plainly circumstances change and they are entitled to react to that.

192. **Therefore, in the practical circumstances of the increased workload and being allowed by the lease, it was reasonable to deal with the cleaning as a mixture of in-house and contractors and by so doing, to provide a service that is appropriate to the needs of the development. The LVT is unable to find that a step expressly allowed for by the lease would be unreasonable per se.** Were the costs themselves reasonable in the light of the evidence? The Tribunal refers to HP1 and notes that, as per paragraph 181 above £33,639 was agreed as a reasonable figure for cleaning for 2009 by the Applicants in this case (described as the Respondents in HP1). The Tribunal also note the written representations of the Respondents in the instant case at paragraph 187 above. They contend that they can vary the services to be provided in accordance with the funds that are held. This seems to the Tribunal to be an argument that when service charge funds are low or less than expected, that services or the costs of services should be reduced rather than increased expenditure being incurred as the Applicants contend has happened here. Although the lease allows it, it is nevertheless curious that TMS, having advocated with such enthusiasm for in house services in 2009 and in HP1, should now argue for a combination of in house and contractors. TMS did not explain why, once a member of staff had left, that they did not engage a direct replacement.

193. There is force in Miss Gregory's submission that in house services have additional costs of employers tax and National Insurance, holiday pay and so forth, that are not concerns with

external contractors and in the light of Mrs West's evidence on the cost of alternative cleaners, the Tribunal is satisfied that it would be possible to engage contract cleaners to undertake the work for less than the amounts that have been spent by TMS in 2010-2012. It may well be that, for example, the quotation from Ladybird would not be like for like in terms of the amount of cleaning required, for example, on the evidence, the gym areas and changing rooms are likely to need attention more than once daily and therefore the quotation should be revised upwards, but nevertheless it is of assistance. The fact that there is a cheaper service available does not mean of course that TMS are obliged to use it, nor that the costs incurred are necessarily unreasonable.

194. There was a dispute on the facts as to the standard of cleaning which was said by the Applicants to be relevant to the costs. Mr Rowswell in particular refuted that the cleaning was substandard and argued the contrary and the Tribunal, upon the evidence, is not in a position to determine the quality of the service either way. However, taking the foregoing observations and findings into account and noting the agreed cleaning fee for 2009, the Tribunal determine that the increase of the external cleaning costs in 2012 by almost £10,000 over 2011 is unreasonable in amount and that the same service could be provided, on the evidence, for a lesser sum.

195. The Tribunal noted that Mrs West's analysis of the hours needed for cleaning was realistic. She thought initially this would cost about £25,000 but later found a cleaner to provide a service at about £14,000. TMS obtained prices for 80 hours a week, comprising 60 hours for weekdays and 20 hours at weekends. These prices were coming in about £55K - £60K which the Tribunal consider to be too much. However TMS settled for 30 hours of contract work (two operatives at 15 hours each) in addition to the in-house cleaner. This is about £9.00 per hour (30 hours x 52 =1560, divide by 12 = 130 hours per month and monthly rate of £1162) but Hayes Point were providing the chemicals. The yearly cost is £13,944 plus the in house cleaner's wages of £16,206 in 2010 is just short of £40,000 but excluding supplies. Pristine Cleaning had quoted £14.00 per hour plus VAT but excluding supplies. Cardiff Cleaners quoted £14.37 plus VAT per hour but inclusive of chemicals.

196. The Tribunal consider that on the evidence, the number of hours of cleaning per week should be about 35 - 40 irrespective of paid staff or contract staff and at £14.00 per hour plus VAT (inclusive of supplies) this equates to about £34,000. [35 x 52 = 1820 @ £14.00 per hour = £25,480 plus VAT = £30, 576. The balance is for ad hoc additional cleaning and contingency, or 40 x 52 = 2080 @ £14.00 = £29,120 plus vat = £34,994. These figures are similar to the figures

that had been agreed in 2009. The Tribunal consider that these are reasonable subject to a year on year increase of 5%. The figures per year are therefore as follows; 2009, £33,639**. The Tribunal determine that applying the annual increase of 5% to cover increased costs gives a reasonable figure for cleaning of £35,320.95 for 2010, £37,087 for 2011 and £38,941.35 for 2012.**

197. **Miscellaneous receipts for cleaning and other items**. There were invoices at pages AB2-375-377 and examples of the same were £9.05 for carpet spot cleaner but since they related to 2013 they are not within the Tribunal's jurisdiction. There were numerous further invoices for items purchased from petty cash, including cleaning items at pages AB2-488 to 537. It will not be proportionate or reasonable to deal with all of those items in this already lengthy determination and the Tribunal observes that some of those documents relate to expenses incurred in 2013 that are not under consideration.

198. Mr Rowswell explained that the concierge office have a petty cash float but that often he will have to purchase things personally and will be reimbursed on production of a receipt. He indicated that toothpaste had been purchased to deal with a stainless steel scratch and blades were purchased to remove chewing gum. He said that the concierge is often asked for items such as a kettle or a spare heater. He explained that they do not currently have nominated suppliers or contractors for things and that they are currently on stop with the janitorial supplier. Therefore, if items are required on an ad-hoc basis then if he sees such an item he will purchase it from his own money and then be reimbursed on production of a receipt. He explained that if the petty cash reconciliation is down, then he has to make it up himself.

199. Mr Rowswell further told the Tribunal that in his four years at Hayes Point he has used his own vacuum cleaner, his father's tools, and provided his own tyre pressure pump and extension leads. He confirmed that there was a petty cash box and he is the only one with access to it and that other members of staff cannot buy things without his authorisation. He said that owing to the position with cash flow, they have not been able to buy things on contract with suppliers and so have had to purchase certain items on an "as and when" basis. Mrs Phillips observed that this does not seem to be either a common or a good business practice, that is to expect Mr Rowswell to purchase things from his own resources and to seek reimbursement later.

200. The Tribunal were impressed with Mr Rowswell's demeanour and evidence and were satisfied that he undoubtedly took pride in attempting to deliver a good service to the leaseholders and

residents of Hayes Point in sometimes trying circumstances**. The Tribunal accept his evidence and in respect of the cleaning items purchased from petty cash for the years in question and those with invoice numbers 21, 22, 69, 70 and 75 find that the costs were both reasonably incurred and reasonable in amount.** Please note however that these are examples of cleaning items and that with regard to the other cleaning items within the miscellaneous and petty cash categories of the Scott Schedule, that these are all included in the global cleaning figures that we have determined above, rather than being in addition to them.

201. **Skyguard.** There were numerous invoices in relation to this company from AB2-381 onwards. The Applicants had initially opposed these on the basis that they attributed them to mobile phone costs, but TMS explained that they related to a lone working monitoring device linked to a manned call centre. **The Applicants then accepted that all of the Skyguard costs were reasonable as were the Ofcom licence fees** at AB2-438 and 439. **The Applicants also accepted as reasonable the Waverley Fire and Security invoice dated 16th June 2010 for £1,028.13 for installing a wireless transmitter and receiver** at AB2-383.

202. **The Applicants also accepted as reasonable the invoice dated 2nd July 2010 from Ceaton Security Services Limited for £1031.80** at AB2-384 **and the invoices from Waverley dated 24th May 2011 for £106.80** at AB2-400 **and 3rd August 2011 for £71.40** at AB2-405.

203. At AB2-404 there was a TMS invoice dated 15/07/2011 for £170.35 inclusive of vat relating to a recharge of a payment made to BT using the TMS credit card. The Applicants objected to the handling fee of £10 within that total on the basis that this is not service charge expenditure. Mr Holmes said that it related to the lift line and it was important to pay this quickly and the credit card was used as the Hayes Point Management Company Limited account is dormant and unable to obtain credit. He said that this is recoverable under the lease, Fourth Schedule 10 (e) (iii) and 10 (b). **The Tribunal determine that this is a cost reasonably incurred against the service charge fund for the reasons given in paragraph 177 above.**

204. At AB2-406 was an invoice from Waverley dated 5th August 2011 for £5,064 plus £1,012.80 vat totalling £6,076.80. These costs all related to the engineers attendance on the 10th May 2011 following a lightning strike. The Applicants contended that this relates to an insurable risk and put the Respondent to strict proof that the cost has been recovered from the insurers and credited to the service charge account. It was then established and indeed evidenced at AB2-49 in the expenditure record for 2011, that the sum of £4,964 had been recovered from AXA insurance and credited to the service charge account in relation to this incident. Mr Holmes

indicated that this was subject to a £100 excess and so the insurance company had in effect assessed the amount of £5,064 less the excess to leave £4,964. This was the amount of the claim less excess and vat. Mr Holmes at the hearing thought that the building may have been vat registered and that is why the vat was not reimbursed but he subsequently, in written representations dated 25th February 2014, confirmed that Hayes Point is not vat registered as it is a residential building. He said that the broker had been asked to contact the insurer to establish whether the insurer would meet the full cost and vat element less the £100 excess.

205. Miss Gregory in final written submissions dated 7th March 2014 submits that all insurance payments should have been paid gross and not net of vat since the building is not vat registered. She also submitted that whilst TMS are seeking reimbursement of the vat element, that this should have been done a long time ago and that a competent managing agent should have resolved this position in 2009 when insurance claims were being put forward for reimbursement. Miss Gregory submits that in fact TMS should be seeking to recover all non-payments of vat on insurance receipts since 2009.

206. The result of TMS enquiries with the broker is not known, but in the light of that information and the submissions, **the LVT determine that it is not reasonable that the vat element of these fees should be met by the service charge payers. The Tribunal agree with Miss Gregory that this is a point that should have been realised and pursued by the agents before now, and the vat element is not reasonably incurred against the service charge payers.**

207. **Concierge costs.** The Scott Schedule contained many different items of expenditure referenced by miscellaneous invoices from AB2-488 to 587. Some of these related to 2013. Miss Gregory stated that the previous LVT had spent some time dealing with the concierge office and its set up costs although it had been in place since 2007/08. The desks, chairs and computers that had been there before had been recycled. She stated that year on year there was continuous expenditure on similar things. Again, with regard to this category, the Tribunal observes that it is most regrettable, and a possible indication of the relationship between the parties, that there remained dispute over so many individual items, many of a trivial nature, that required a determination from the LVT and expresses the hope that there will be more co-operation and exchange of information in future.

208. At AB2-488, there was reference in the petty cash ledger to decorations for the concierge desk at a cost of £16.00. Mr Holmes suggested that these were for Christmas decorations for the

front desk although since the purchase was 23rd February 2010, the Tribunal doubts that this was an example of festive foresight and since there was no evidence as to what this related and we have been asked to determine this issue**, the Tribunal finds the expenditure is unreasonably incurred against the service charge fund and it is disallowed.**

209. At AB2-489 there was an invoice reflecting the purchase of a BT Freestyle phone for £89.99 on 4th March 2010. Miss Gregory suggested that as the concierge office was already set up the Applicants questioned the reasonableness of further phone purchases. The Respondents written submissions indicated that a hands free telephone was required for the concierge staff to move around the office areas whilst on the phone to owners and residents. Mr Rowswell said that there are two desks in the main office and there is also a need for a phone in the back office. He said that this phone is still in use. **The Tribunal accept the evidence on behalf of the Respondents on this matter and find that the expenditure was reasonably incurred and reasonable in amount.**

210. At AB2-491 was an invoice from Marks and Spencer dated 13th May 2010 for £29.50 in relation to a super lightweight item of clothing for uniform for the staff. The Applicants contend that this is not a service charge item and queried in any event why a purchase was made from Marks and Spencer. Mr Rowswell explained that this purchase had been made because of costs. He stated that previously uniform was purchased from Simon Jersey whose costs he described as "astronomical". He said that a colleague had spilt chlorine on his trousers and he needed a replacement pair. He said that staff were not given a clothing allowance but that they had many duties that involved trips to the basement to read meters, deal with flooding etc. and that clothes would often get snagged and so forth. He pointed out that in the course of his duties he had lost a pair of shoes and trousers and had made no claim. **The Tribunal accept Mr Rowswell's evidence and determine that this uniform purchase was reasonably incurred and reasonable in amount and is properly applied to the service charge account.** It is reasonable to provide work clothing/uniform to staff at Hayes Point in view of the size of the development and the need to deal with the many tasks that may arise.

211. Having originally challenged the door wedges purchased on 1st October 2010 for £4.00 (AB2-493), the Applicants accepted that these were a proper and reasonable service charge item after Mr Rowswell explained that they are used to keep the doors open for the numerous deliveries that are received and are also used by the cleaners.

212. At AB2-495, the purchase of a kettle from Asda on 1st June 2010 for £11.96 was challenged by the Applicants on the basis that six kettles had been purchased between 2010-12 which was excessive and additionally that this was not a service charge item. Miss Gregory referred to the large tea urn that had been discussed in HP1. Mr Rowswell said that the £11.96 kettle was the cheapest that could be found and that the cheap items don't last very long. He said that there was a kettle in the concierge office and in the meeting room. He said that the tea urn was still at Hayes Point but health and safety issues had been identified with filling it up and should it boil dry it could be dangerous for children's parties. Mrs Cummings said that at meetings she organises on the first Wednesday of every month she brings her own kettle if more than one is needed. Mr Holmes suggested that this shows that if residents are asking the concierge to provide facilities then you have to expect a cost for that. Mr Rowswell said that when people move in they have requested fan heaters and kettles and he likes to be able to provide this, for the concierge to be a "one stop shop."

213. **Upon consideration of the evidence, the Tribunal are satisfied that the purchase of this particular kettle is a service charge item that is reasonably incurred and reasonable in price.**

214. At AB2– 499 there were examples of receipts for taxi fares and although many of the receipts related to 2013, there are also some fares in relation to 2012. Miss Gregory submitted that these fares were not service charge items of expenditure and that if Hayes Point Management Company Limited wished to provide taxis for employees then that was their prerogative, but it should not be picked up by the service charge payers. Mr Rowswell suggested that the invoice was in relation to holiday cover when he was on holiday and it was to cover the early shift and was better than using an agency for members of staff which would have resulted in a bigger cost. Mr Holmes said that Sam was employed as a cleaner but she had flexibility to do other duties outside of her contracted hours of 8 am to 4 pm. Mr Holmes also said that some of the shifts are during unsociable hours and public transport does not always operate during these times (an assertion that was disputed by the applicants).

215. The Tribunal agree with Miss Gregory and determine that if the management company wish to pay for employees to travel to and from Hayes Point then that is a matter for them and they or the freeholder should meet the costs of such taxi fares. **The Tribunal determine that the cost of travelling to or from one's place of employment is not a cost that is reasonably incurred against the service charge account.**

216. At page AB2-53, included in the expenditure account was an item of the 21st January 2011, an administration fee to TMS for £16.80 for a same day transfer, the invoice for which appeared at AB2-539 and the Applicants contend that this is not a reasonable service charge item. The Respondents indicate that this related to bank charges for a CHAPS payment to pay for the electricity. The Applicants contend that whilst this may have been convenient for the Hayes Point Management Company Limited, it is unreasonable to incur these costs which would not have been incurred had the bill been paid timeously. The Tribunal is unable to determine from the information available to it whether there were sufficient funds in the service charge account to discharge the bill to SWALEC when it became due in good time or whether the funds became available later necessitating a same day payment. If it was the former, then the same day payment and charges would be unreasonably incurred. However since we do not have the evidence to determine this, on this occasion we shall give the benefit of the doubt to the Respondent and **on the balance of probabilities determine that the charges were reasonably incurred and are reasonable in amount.**

FLAT WORKS.

217. The Applicants' statement of case puts this simply; namely that charges levied against the service charge account in respect of flat works, relate to ongoing issues with the property since its development and the Applicants have been in dispute with the landlord for the repair of these defects by the developer or at the landlords own costs. The Applicants opinion is that the agent on behalf of the Respondents has failed to protect the service charge account from incurring these repairs which should be resolved between the landlord and/or the developer rather than being charged as expenses to the service charge. It is the Applicants' case that it is not fair or reasonable to charge these costs against the service charge account and they should not ultimately be recoverable against the leaseholders. The Applicants also put the respondents to strict proof that any of the works involved did not give rise to any consultation requirements.

218. Further, Miss Gregory provided a considerable amount of information in order to "set the scene". She pointed out that when members of the Tribunal visited the site and looked at the suspended light fixtures outside Woodlands 318 there was a constant leak and there were numerous other problems, for example Woodlands 123 was suffering water ingress. In Headlands, the block eight stairwell, there was mould and damp on the ground floor and within the stairwell itself. There was water damage in Headlands 208 and there were leaks and defects in the penthouse where the ceilings had come down. In Headlands 302 and 309 there were

issues with the patio doors and leaks, and outside Headlands 309 the terrace was damaged and there was standing water. In the corridor outside Headlands 212 there was water coming through a light fitting collecting in a bucket. In Headlands 17 there was damage to the external patio windows and in Headlands 20 there was a leak under the wooden floors which had caused damage to the floors and the leak was still under investigation. There was damage to the terrace areas in front of Headlands and there was flooding. New owners were finding that there were issues on the circuit boards and issues with window fittings. She stated that the Applicants' belief was that there was something systemically wrong with the building and the service charge was being asked to fund the cures whereas recourse should have been taken against the landlord or the developer.

219. Mr Haven asked how much the freeholder had spent upon the maintenance of the building and upon repairs on its own and without recharging to the service charge fund as it seemed to him that everything had been put on the service charge for these matters. Mr Holmes stated that under the landlord and tenant relationship, the tenant was responsible for the repairs. The Tribunal asked Mr Holmes to clarify whether or not the freeholder had spent any money itself upon repairs in addition to the service charge monies. Mr Holmes indicated that the freeholder had not spent any such money and this was the answer to Mr Haven's question. Mr Haven observed that he wished he could have properties with no obligation to fund repairs. The Applicants also referred the Tribunal to the witness statements of Lindsay Kirby, Maggie Heginbotham, Penny Matthews, Mr Daughton and Miss Gregory which also dealt with some of these these issues.

220. Miss Gregory then referred the Tribunal to a number of specific matters under this heading. With regard to the problems in Dr Heginbotham's apartment, a bundle of correspondence from solicitors Darwin Gray to TMS was produced and provided to the Tribunal and the Respondents. Whilst the correspondence was dated 10 July 2013 it referred to reports from Cornerstone. Two Cornerstone technical reports in respect of visits to 203 Courtlands on 22 November 2012 and 28 February 2013 were exhibited to Dr Heginbotham's witness statement. Whilst this Tribunal is not concerned with 2013 Dr Heginbotham's witness statement said as follows *"In January 2010 I also complained to TMS about ingress of water into my flat, the water was coming in through an outside wall, and running under and across the floorboards and lifting the wooden boarding. As always with TMS, the problem was found to be mine and not theirs, and eventually due to the bully boy tactics of TMS I had no option other than to appoint a solicitor to act on my behalf…… The heating to my flat is inadequate, and because of inadequate insulation the trace heater*

fitted to my water pipes does not work correctly and so does not offer Legionella control, my flat is damp and cold because of the water ingress. I have paid all of my electricity and maintenance bills in full to date, and yet neither TMS nor Galliards are willing to sort this out."

221. The Cornerstone Technical Report of 28 February 2013 observed that the external render was cracked and blown in several places under the window and that the concrete sill was severely cracked and in the opinion of the Surveyor is not protruding sufficiently to enable a drip bead to be cut to the underside. It also noted, having removed seven panels in the internal wall that "*… it would appear that voids have been infilled with brickwork by others and the mortar bed joints are all a composite which could not be identified. The mortar bed joints are porous and therefore saturated."* It recommended remedial works at an estimated cost of £11,967.99 to include removing the voids bricked up by others and to re-brick using a waterproof mortar, removing the old concrete sill and reinstalling a new sill and reinstating an external render with a waterproof additive. Whilst this report was dated 2013 it referred to the earlier complaints made by Dr Heginbotham and the defects that it highlighted were plainly present in 2010 to 2012.

222. Mr Holmes indicated that Zürich insurance had taken over the claims dealing with this and he subsequently submitted some correspondence from loss adjusters Cunningham Lindsey, including a letter to TMS dated 22 August 2012 which stated that "*as the landlord is effectively the developer, they are excluded from being a beneficiary of Zürich's building guarantee. As such they are not able to recover the cost of remedial repairs that are required to the external envelope of the building that will prevent the water ingress into apartment 203 The Courtlands."* He also provided a further letter from Cunningham Lindsey to TMS dated 12 September 2012 re 203 The Courtlands which stated that Zürich had advised Cunningham Lindsey that they considered that it is possible for a leaseholder to hold sufficient insurable interest in non-demised property for the leaseholder to be able to claim for damage/defects suffered to non-demised property. The letter stated *"In this case we are advised that where a leaseholder will incur a charge for the carrying out of repairs to common parts/external envelope of the building by the landlord or their agent, Zürich's guarantee will provide financial assistance to the leaseholder against the incurring of such charges that are required as a result of Major Physical Damage being caused by a failure of the developer to construct the property in accordance with Zürich's requirements, subject to the terms and conditions of the policy."*

223. The letter of 12th September 2012 also explained that under this version of the insurance policy there were no separate common parts insurance certificates issued, but claims on the common parts are dealt with by the individual certificates issued to the apartments and there is no ability of one apartment owner to make a claim on behalf of all of the owners within the block/building. The letter stated that each individual apartment would be proportionately responsible for common parts under the terms of their lease, Zürich's guarantee operates in the same way, namely that it is aligned to the individuals proportionate share or responsibility for the common parts. The letter says *"**this effectively would require all owners within the block to submit a claim for the repairs that are required to the common parts** to resolve the water ingress to the single apartment, with each then being subject to the excess that applies per policy. The ultimate effect of this is that Zürich's guarantee can only respond to valid claims of Major Physical Damage being caused by a defect in construction when the cost of the remedial repairs exceeds the sum of the excess multiplied by the number of apartments within the building that have a proportionate responsibility under the terms of their lease agreements for the common parts."* (Our emphasis).

224. Mr Holmes also supplied a letter to Yasmin Miles of the TMS group dated 16 December 2011 from Cunningham Lindsey which clarified the situation with the Zürich building guarantee. Mr Holmes described this as the "briese soleil" rejection letter. This explained that the cover provided by the "Standard 10 New Homes Structural Defects Insurance Policy" is for the reasonable cost of rectifying or repairing major physical damage which is caused by a failure by the developer to comply with the requirements in the construction of the new home. This letter referred to **the definition of major physical damage** as "*a material difference in the physical condition of a load-bearing element of the New Home from its intended physical condition which adversely affects its structural stability or resistance to camp and water penetration."* The letter also explained that the insurance cover was aligned to the interest that an individual or a company may have in the property and subject to an excess of £1,146 per defect which was applicable to the freehold, leasehold, commonhold or tenancy interests alike. The letter explained that the Zürich guarantee can only respond if the damage suffered to the demised property exceeds the value of the excess and the purchaser of the leasehold interest was unaware of the issue being claimed for prior to the completion of their purchase. The letter then gave as an example that a claim in relation to number 302 Headlands cannot succeed because the cost of the repairs to the ceiling and window board are likely to fall in the value of

the policy excess and also because the owner knew about the water ingress prior to purchasing the property.

225. The above letter also stated *"In the current situation affecting* Hayes *point, the inability of the envelope of the building to prevent water ingress is occurring to a part/parts of the building that are not demised under the terms of the lease and is instead the responsibility of Hayes Point Management Company Limited as per the repairing covenant agreed by them under the Sixth Schedule."* The letter points out that whilst the insurance policy can respond to both freehold and leasehold interests alike, that in this instance, the freeholder Hayes Point (Sully) Limited are not able to benefit from the warranty as they are effectively the developer and as such are excluded from benefiting from the policy.

226. Mr Holmes also sent a copy of a letter from Cunningham Lindsey to Mr and Mrs Steele at 301 Woodlands dated 12 December 2011. This related to a claim about water ingress affecting the lounge ceiling. The letter repeated the information about the operation of the insurance policy and pointed out that the specific cause of the water ingress had not yet been determined although the issue had been present for approximately 11 months. It described how the success of the most recent and previous repair attempts have remained inconclusive and that it would be reasonable to consider a replacement of the membrane roof covering. The letter indicated that "whilst internal water damage is clearly being suffered and is affecting property that has been devised to you, the cost of rectifying or repairing the damage suffered to your property will not exceed the policy excess. As a result, we are unable to accept that Zürich's policy can be called upon to assist with the redecoration works required within the lounge area." The letter continued *"The inability of the envelope of the building to prevent water ingress is occurring to a part/parts of the building that are not demised to you under the terms of the lease and is instead the responsibility of Hayes Point Management Company Limited…".*

227. Mr Holmes sent this information upon the insurance policies and numerous other emails to the Tribunal and to Miss Gregory during the lunch hour of the final hearing day on 20 February 2014. Again, it is self-evident that this documentation should have been supplied to the Tribunal and the Applicants well before that time and the Tribunal was stretching the limits of its tolerance in agreeing to receive and consider the documentation in this fashion.

228. There were numerous items in the Scott Schedule under the heading "Flat Works" and the Tribunal will deal with them in turn. However the Tribunal reminds Mr Holmes and the

Respondents of the covenants of Hayes Point Management Company Limited in the Sixth Schedule to the lease in particular paragraph 3 of Part One of the schedule of the covenants to keep in good repair and decorative condition amongst other things the foundations and structural parts of the building and the exterior of the building. It is noted that this covenant is without prejudice to the rights of the landlord to recover from the tenant or any other person the amount or value of any loss or damage caused by the negligent or other wrongful act or default of the tenant or such other person.

229. The Tribunal also notes that there is litigation in existence or pending between Dr Heginbotham and the freeholder or former freeholder. This Tribunal has obviously not heard evidence or submissions upon the issues that are likely to be dealt with in that correspondence/litigation save as to in the most general fashion in relation to the matters that are under consideration with regard to the reasonableness of the service charge. This Tribunal has not heard any expert evidence from any surveyor or structural engineer. Therefore, any decisions that this Tribunal reaches must be recognised as being made upon only the material and representations that were before us and only in relation to the service charge issues that we are to determine.

230. Miss Gregory addressed this new information provided on 20 February 2014 in written submissions dated 7 March 2014. With regard to the correspondence from Cunningham Lindsey, Miss Gregory stated that the Applicants now understand that they may be able to bring a claim in respect of the common areas of Hayes Point but that it would have to exceed £98,000 in the Headlands alone in order to bring a claim under the policy. *"This therefore leaves in the applicant's view the freeholder should be responsible for his building and have a vested interest in making it sound. This does not therefore, follow through that the leaseholders would be responsible for everything, but regrettably, concerning these respondents appears to be a point ignored and all sums put to the service charge account. This new information provided by the respondents does not change the original position of the Applicants historically, that it has simply been the practice of the respondents to charge the service charge and subsequently the leaseholders and responsibilities may lie with other parties. Clearly there are defects at Hayes Point, the leaseholders are not the cause of these and should not be the persons required to remedy them."*

231. The Tribunal finds upon the totality of this evidence including Mr Holmes' admissions, that the Applicants are correct when they say that it has been the policy of the Respondent to put all the costs of remedial work through the service charge account. The letters from Cunningham

Lindsey make it clear that there are matters that they consider to be the responsibility of the developer/previous freeholder and so claims are being turned down upon that basis, and there are other matters such as that of Mr and Mrs Steele, where the claim has been turned down, notwithstanding that it was not the responsibility or fault of the leaseholder, owing to the fact that the remedial costs would be less than the excess. Mr Holmes did give evidence that TMS were assisting owners in making claims via Zurich and initially these were being refused. He also gave evidence that TMS were making claims via the buildings all risks policy where appropriate. The Tribunal conclude that someone had to bear the costs of repairs even if these were ultimately negated by insurance payouts and that it was appropriate for the service charge fund to be used and the costs were reasonably incurred against the service charge.

Flat Works – General Points

232. The Applicants' arguments that there were numerous faults within the development that should have been the responsibility of the freeholder and the developer rather than the service charge payers, has been a cause of considerable and ongoing dispute. It is therefore appropriate for the Tribunal to make some general points about these issues here. The first, but very important point to make is to understand that the management company and therefore the managing agents are tasked with managing the development in the condition that it is when the management company took over. Hayes Point Management Company Limited appointed TMS as managing agents with effect from the 1st January 2009. The agents are obliged to manage the property and to deal with matters as they arise and to deal with the property as they find it.

233. For example, if there are problems with the roof resulting in water ingress (as there have been in this case), the task of the managing agents is to attend to the maintenance and repair of this. They are obliged to deal with the development as it is and their responsibility is to arrange for works to be done to deal with the problem. If the managing agents were to take no action on the basis that they considered the fault to be the responsibility of the freeholder, then the problems would worsen and they would be failing in their duties.

234. In our simple example, the managing agents are presented with water ingress and roof problems. They quite properly decide that they must take the appropriate remedial action. Such action costs money. The action required comes within the definition under the lease of the service charge and, (there being no other money available to cover the works in any event if the developer/freeholder do not consider themselves responsible), the costs are charged to the

service charge fund. The Tribunal consider that this is entirely proper and appropriate management and use of the service charge monies (subject to the caveats on reasonableness of course).

235. The Applicants' case here has elements of the historic neglect argument that is often advanced by leaseholders, namely, that the failure of the landlord to carry out necessary works at an earlier date has resulted in the problem worsening and the costs increasing, and it therefore being unreasonable to pass on such increased costs to the leaseholder. In fact, the Applicants contend that the initial development was not properly completed to the requisite standard in the first place and therefore, they contend broadly that there were faults present at the outset that were not remedied at that time and that such faults have continued, rather than arguing that the faults have arisen as a result of neglect. This argument has been raised in principle for a number of items at Hayes Point, including for example, the lighting and problems with water ingress at various points, and this argument underlies all of the works categorised by the Applicants as 'Flat Works.'

236. There is a blurring with the historic neglect reasoning because the Applicants contend that there are problems, present since 2007, that were the fault of the developer, that continue to the present and continued to and throughout the service charge years 2010-12, and that unreasonable costs have been incurred to the service charge payers because these issues have not been dealt with. It has previously been held that costs that are incurred as a result of past neglect on the part of the landlord cannot be 'reasonably incurred' under section 19 of the Act (see Wandsworth v Griffin [2000] 2EGLR 106 at p.110G).However that approach was rejected by the President of the Lands Tribunal (as was) in **Continental Property Ventures Inc v White [2007 L&TR 4],** where it was said that *"The question of what the costs of repairs is does not depend on whether the repairs ought to have been allowed to accrue. The reasonableness of incurring costs for their remedy cannot, as a matter of natural meaning, depend upon how the need for remedy arose."*

237. In the instant case, albeit in response to points made by the Applicants about electricity, the Respondents' Statement of case at paragraphs 56 and 57 (RB1-3) says "*There is no contract between Hayes Point Management Company Limited and the developer. The communal areas fall outside of any developers warranty which expired several years ago. There was no recourse between the landlord or Management Company to the developer."* Earlier at paragraph 43 of RB1-3, it says, in answer to an insurance point made by the Applicants *that " The Zurich*

warranty relates to construction and latent defects cover which is not linked to Building's Insurance. It is a separate policy provided by the developer to individual purchasers" This policy has been referred to earlier in this determination. The Respondents also make the point (45 at RB1-3) that "*The Landlord and Management Company are required to manage and maintain the roof and building structure in accordance with individual leases and subject to payment of the service charge as it has been provided by the developer.* [The syntax is clumsy but the meaning is clear]*This includes replacement and renewal if costs cannot be recovered from a third party and which fall to the service charge under individual leases."*

238. The Respondents are arguing that the management company and managing agents can only deal with the building in its current state and with any problems that arise. We agree with the Respondent and the Tribunal is concerned that the Applicants approach misunderstands the role and responsibilities of the managing agents. Therefore, the approach that we take to these issues, and bearing in mind the reasoning in Continental Property Ventures Inc v White, is that where there is evidence of a problem that needs remedy (maintenance and repair), and that problem comes within the service charge definitions under the lease, then prima facie, it will be reasonable for the managing agents to react to that problem and to incur costs in dealing with the problem. There is simply not the evidence before the Tribunal to enable us to conclude that the costs have been incurred because of original developer fault or historic neglect. However, even where the costs are reasonably incurred, when dealing with a problem, the actual costs themselves must also be reasonable and we bear this in mind throughout.

239. **This Tribunal is making it clear that we do not have the evidence to determine that there has been developer fault or historic neglect.** It may be the case that these elements are both present to a significant degree and equally it may not. To reach a safe conclusion on those issues would require expert surveyors' evidence and reports, oral evidence and cross-examination of such experts as a minimum. None of these things were before this LVT. It may well be that there is a proper case to be brought against the developer and/ or freeholder. Such a case could be for damages for breach of the landlord's covenant to repair for example, but it would require particularisation of the claim and issue within the County Court. It may be possible to argue before the civil courts that there have been increased service charges as a result of alleged breaches of covenant by the landlord and a set off could be claimed. Such claims and arguments would all require cogent evidence. In those circumstances and if there was the supporting evidence, it may be possible to argue before the LVT that service charge

costs are not payable under section 27A of the Act because of the claim for damages by way of set off.

240. We discuss the matters in the foregoing paragraphs to air the issues and to demonstrate our **decision that we do not have the evidence in the circumstances of this hearing and case to make any findings with regard to developer fault or historic neglect**.

241. With regard to **individual items on the Scott Schedule**, at AB2 – 541 was an invoice from CMB maintenance dated 5 July 2010 for £201.98. Mr Holmes explained that this related to a hot water expansion vessel for the swimming pool and this was then accepted as reasonable by the Applicants.

242. At AB2 – 542 was an invoice from Evans Electrical Ltd received on 1 June 2010 for £216.20 in relation to fitting a replacement sub meter to apartment W126 and testing various other flats. Mr Holmes pointed out that the sub meters are in the individual's demise but are part of the landlord's electrical feed and go to the logs in the basement. He asked the Tribunal to examine if that should be recharged to individual property owners and accepted that there are numerous meter faults at Hayes Point. He referred to the description of "The Apartment" in the First Schedule to the lease at AB1 – 215/216 and in particular clause *"(e) all conduits which are laid in any part of the Building or the Estate and serve exclusively the Apartment and (f) all fixtures and fittings in or about the apartment and not hereafter expressly excluded from this Demise."*

243. The Tribunal asked who would be responsible for replacing the system? It is clear that as the individual meters lead in to a central logging system, that the individual meters are not stand alone and are part of a bigger system that the individual leaseholder has no control over. The Tribunal further notes that the description of the apartment in the First Schedule excludes *"(i) any conduits in the building or the estate which do not serve the apartment exclusively."(*AB1-216). Also that the Management Company's covenants in the Sixth Schedule include at clause 3 *"To keep in good repair and decorative condition: – ….(c) the communal service media serving the building".* Service media is not defined in the lease. The Tribunal also note the wording of clause 10 (e)(v) of the Fourth Schedule (Tenants Covenants with the Landlord) at AB1-226 , namely *"the Landlord and/or the Company is (at its sole discretion) entitled and authorised (but not obliged) to rent a video entry phone system for the Building (**and any other equipment for the provision of any other facilities to the Building**) and the costs charges and expenses*

incurred by the Landlord or the Company in connection therewith (including but not limited to maintenance costs) shall be deemed to be an expense incurred by the Landlord or the Company in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions contained in this clause". (Our emphasis).

244. It could be argued that the sub meters do serve the apartments to which they relate exclusively. However in the Tribunal's opinion this would be a simplified and inaccurate way to consider the sub meters. Indeed their very appellation indicates that they are part of a larger system. The Tribunal find that the sub meters do not serve only and exclusively the individual apartments because they relate to a central logging system from which the electricity consumption for the development and the common parts are calculated, notwithstanding that the individual sub meter will record the consumption for a particular apartment. Should faults with the sub metering system (of which Mr Holmes conceded there were many) be charged to the individual leaseholder, to the freeholder or to the service charge account? Upon the Tribunal's analysis it is not considered that the sub meters and the conduits supplying them should be viewed as exclusively the preserve of an individual apartment, particularly where the individual leaseholder has no control over the replacement or maintenance of that individual sub meter which is a constituent part of a larger and more complex system. **The Tribunal is satisfied that the management company are responsible for the maintenance and repair of the sub meters and that in accordance with the lease (Fourth Schedule clause 10 (b) AB1-223) such costs are service charge items and are reasonably incurred against the service charge fund.** If there was damage to a sub meter within an individual apartment which was the fault of an individual tenant then plainly it would be appropriate to recharge it to that individual. However where there continue to be numerous faults that develop with the overall system then these are service charge items. Accordingly, since there was no challenge to the reasonableness of the amount of the Evans Electrical invoice, the **£216.20 is allowed against the service charge account**.

245. At AB2-563 was an invoice from Walker and Hutton Electrical Services in relation to installing mains electric meters in W217 and W121 at a total cost of £130. We did not hear direct evidence on these matters and therefore find the costs to be reasonable and reasonably incurred (there being no evidence to support a contrary conclusion) and have referred to this invoice in the Scott Schedule.

246. At AB2-546 was an invoice from "Engrave a Sign" of Torquay dated 22nd of September 2010 to supply A4 signs saying "Property Occupied" for £60.90. The Applicants contended that these were not a service charge item. Mr Holmes disputed this saying that these were purchased at the request of property owners as other people looking in to their properties. **The Tribunal agree with the Applicants** and consider that if individual owners want to display such signs then they should be responsible for meeting the cost of the same individually and these are not items that are reasonably incurred against the service charge fund.

247. At AB2-544 was an invoice from "Hire a Hubby Property Maintenance" dated 3 September 2010 for £650 in relation to blocking up the basement windows to secure the same. The Applicants contested whether this was a service charge item and considered that this was an issue for the landlord following a break-in and theft. Mr Holmes indicated that four or five of these were bedroom windows amongst a set of windows that were blocked up and he stated that Hayes Point Management Company Limited were obliged to manage and maintain the property and had instructed that work should be undertaken to block this area up following a break-in. He said that copper wiring had been stolen and the insurance company confirmed that the windows had been blocked up to try to prevent further theft. Mr Holmes referred to the clause at 10 (e) (ii) of the Fourth Schedule at page AB1-225 which reads as follows; *"If any damage occurs to the Demised Premises or to any other part of the Building or to any other part of the Estate or to any of the common parts for which the Landlord or the Company is obliged or required to contribute towards the repair and which is not covered by any insurance then in existence the costs charges and expenses incurred by the Landlord or the Company in connection therewith shall be deemed to be an expense incurred by the Landlord or the Company in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions contained in this clause".* Miss Gregory stated that this referred to the Company's covenants under the Sixth Schedule but the Tribunal find that this work would come within the Company's obligations under that schedule.

248. **The Tribunal determine that the £650 invoice was a reasonably incurred cost in the circumstances and was reasonable in amount and is therefore allowable against the service charge fund.** The Tribunal noted during inspection that the basement area contained electrical cabling and trunking that benefited the entire development and also served as a storage area for other items that relates to the whole development rather than to individual apartments. It

was reasonable to take steps to secure the area and the costs in this invoice for the work involved are reasonable.

249. At AB2 – 625 was an invoice from GM Plumbing and Heating received on 15 February 2011 for supplying and fitting a Santon electric water heater for £280. Mr Rowswell explained that this was a replacement of the water heater in the meeting room which heats up the water for the hot tap and this amount was therefore accepted by the Applicants as being reasonable.

250. Also at AB2-633 was an invoice dated 29 February 2012 from Concept Balustrades for £576. Mr Holmes explained that this related to an external landing on a communal walk rather than being demised to individual property and the Applicants therefore accepted this invoice as being reasonable. Likewise the invoice from the same company dated 22nd of December 2011 for £1,596 was also accepted as being reasonable by the Applicants further to Mr Holmes's explanation that the repair was to the collars of the gates and was an escape route for the people from Headlands.

251. At AB2– 596 was an invoice dated 21st of August 2012 from Treforest Glass in relation to replacing damaged glass to the first floor window/skylight for £1,281.60. Mr Holmes explained that this related to a skylight in the communal corridor made of toughened safety glass outside Courtlands 23. He said that seals had blown on the reinforced pane but this required the replacement of the whole glass unit rather than just the seals. He explained that it also forms part of the roof structure and submitted that the insurance policy does not cover dilapidations and wear and tear that would cover consequential damage. He said that if there had been consequential damage to the communal corridor and this was significant there would have been an insurance claim but the actual repairs to the skylight would not be covered. **The Tribunal was satisfied upon the evidence that this related to a communal area and that the costs were reasonably incurred and were reasonable in amount and are therefore recoverable against the service charge. Miss Gregory in any event accepted this after the explanation given by Mr Holmes.**

252. The matters described as "Flat Works" remained the subject of evidence and submissions at the conclusion of the third day of the hearing. It is necessary to deal with matters in the chronological order in which the hearing dealt with them because of an unusual development on the morning of the fourth and final day of the hearing, 20 February 2014. Mr Holmes had sent an email to the Tribunal chair at 19:03 on the 19th of February 2014 indicating that Mr

Andrew Conway, of Lawrence Stephens solicitors had been appointed to act on behalf of Surelane Ltd in this matter and was happy to arrange a telephone call with the Chairman to clarify that company's position. The email was not seen by the Tribunal members until the morning of 20 February 2014.

253. The Tribunal dealt with these procedural developments first thing on 20 February. Mr Holmes repeated Mr Conway's wish to speak with the Tribunal Chairman in a telephone conference at a time to suit Mr Conway who had other business interests to attend to that morning. The Tribunal explained to Mr Holmes that this hearing had been listed for a considerable period of time, it was not a case conference and that the Tribunal would not be interrupting the proceedings for the convenience of a solicitor of whom it had not heard before that morning. Mr Holmes explained that he himself had had no contact with Mr Conway before the previous evening when he had received an urgent telephone message to contact him and had duly done so. He explained that another solicitor Mr Pittodrou had acted for Surelane Limited in the conveyance for the freehold purchase of Hayes Point and that his instructions have previously come from a Mr Stavrakis who was believed to be a director of Surelane Limited. Mr Holmes indicated that he was in a difficult position and needed to clarify whether or not he was instructed to remain involved in the hearing. The Tribunal, whilst recognising that Mr Holmes was personally in a difficult position made it clear that the matter would proceed whether or not Mr Holmes was present. At 10:30 a.m. on 20 February 2014 Mr Holmes said that he was not currently disinstructed, but at 10:35 a.m., following contact with Mr Conway he informed the Tribunal that he and Miss Miles were not instructed to remain and so they left the hearing. At 12:25 p.m., Mr Holmes and Miss Miles reappeared in the hearing room indicating that they had been instructed to step back in and to continue representing the Respondents. The Tribunal, after the conclusion of the hearing, subsequently became aware of an email that had been sent to it at 14:16 during the afternoon hearing session by Mr Conway of Lawrence Stephens solicitors which stated "To clarify, we are advising Surelane Ltd generally. We are not instructed to represent Surelane Ltd in relation to the current proceedings."

254. This farcical state of affairs upon the part of the Respondents and TMS meant that not only had more than an hour of hearing time been lost, greatly inconveniencing both the Tribunal and the Applicants, but that for most of the remainder of the morning hearing session, the Tribunal heard only from the Applicants.

Matters dealt with in the absence of the Respondents representatives.

255. There was further amplification from Miss Gregory of the Applicants' concerns that the freeholder and TMS were putting all matters through the service charge account, including items of maintenance and or repair that should, in the Applicants' view, be the responsibility of the freeholder. There has been discussion earlier in this determination of the Zurich buildings guarantee and the fact that the developer could not benefit from it. Whilst Miss Gregory was addressing the Tribunal on these matters in the absence of anyone on behalf of the Respondents, she had not at that stage seen a copy of the guarantee (which was supplied later by Mr Holmes and was referred to in Miss Gregory's final written submissions.)

256. Miss Gregory drew the Tribunal's attention to the invoice at AB2-543, dated 23rd July 2010 from Galliard Development (Sully) Limited to Hayes Point Management Company Limited, care of TMS for £352.50 for two days site maintenance works. Miss Gregory submitted that if there were faults of the developer then it should be for the developer to rectify the same at their own expense without putting matters through the service charge. She gave the example of moving into her own apartment in June 2007 and described how she had experienced a leak there and that this had recurred notwithstanding that she had the ceiling replaced two or three times. She pointed out that during the Tribunal's inspection of Hayes Point on Monday 17th February 2014, that the corridors up to Dr Heginbotham's flat were damp on the wall but one couldn't see the damp in the communal areas because the walls had been dry lined. Miss Gregory did not say that the developer should automatically pick up the costs of all these works but she did say that they ought to have investigated whether a third party contractor was responsible for the faults rather than just automatically putting the costs through the service charge account.

257. Miss Gregory was concerned at a potential conflict of interest between the management company and the freeholder and felt that it was incumbent on the management company to investigate whether a third party or the developer was at fault. She gave further detail on the problem of the leak in her own apartment, saying that the problem related to the ceiling which was not within her demise and that she believed that it was connected with the balcony above. She said that she had written to Madeleine Flower of the developer setting out the issues but the developer did not accept this and told her that it was for Hayes Point (Management) Company Limited to sort out and to do it via the service charge. Miss Gregory's view was that this was unacceptable and that the costs should have been met by the freeholder.

258. Miss Gregory readily accepted that the costs of the management company investigating the cause of defects would be a recoverable service charge item since the company was obliged to do this under the lease but she again repeated that Mr Holmes had said that the approach was that the service charge payers would be charged for everything unless and until a court or Tribunal decided otherwise. However, the point that the Applicants wished to emphasise was that there had been problems from the outset and since the earliest leaseholders commenced their occupation in 2007, well before all of the units were sold. She said that the water ingress from the beginning indicated that there was something wrong and that despite asking for reports on the building from Mr Holmes, he had replied with a "one line response" that there was an impermeable render applied to the whole building. This clearly did not satisfy Miss Gregory or the Applicants whose personal experience of water ingress understandably led to their scepticism about the building's impermeability. Miss Gregory further commented that in her own apartment (Woodlands 223, the lease of which was dated 4th June 2007 and is at AB1-204) there was a ceiling leak every year and that it had now happened six times.

259. Miss Gregory considered that the management company and TMS's approach was to put all matters through the service charge or else to try an insurance claim just as long as costs were not referred back to the developer, and that there did not appear to be any consideration of reasonableness. She referred to the insurance policy and being told by TMS that they are to try and claim on the individual policies. However in her own case, since the demise ended at the ceilings and the problem was coming from above, she could not claim on her individual policy and felt that the whole building guarantee policy should cover it. She described the situation as "bizarre" whereby the developer could not claim on the building policy because the developer was excluded. She said that with the numerous incidents of water ingress that the management company would "put dehumidifiers in, dry line the walls and then walk away" without considering that there was something wrong with the building. Miss Gregory said that they are not repairing but are "just cleaning up" and that this was now happening year after year, for example her ceiling had been repaired every year. She also submitted that the leaseholders as individuals could not go to Zurich for assistance under the policy because the excess was too great.

260. Mr Steele of Woodlands 301, a top floor apartment, referred to the visit from the Cunningham Lindsey building surveyor (Paul Gilson, whose letter to Mr and Mrs Steele of 12th December 2011 has been referred to earlier in this decision). Mr Steele said that the surveyor commented

on the sub-standard works and that there had been two years of patch and sub-standard repairs. Mr Steele further commented that at the time, the developer had not sold all of the apartments and they remained within the developer's ownership and Cunningham Lindsey rejected the claim as the developer could not benefit from the insurance policy where the developer had signed off on their own work.

261. Whilst Mr and Mrs Steele and Miss Gregory were early purchasers of their properties in 2007, Ms Matthews stated that she had purchased her apartment in August 2011 and said that a plug socket had caught fire and the wire in the oven had caught fire because the circuit board had been incorrectly labelled. Ms Matthews made the point that these were faults of the developer that should never have been signed off. She confirmed that she had bought her property through the on-site sales office and that the office took photos of the faults and the supervisor of the company who had installed it apparently said that it should never have been signed off. Miss Gregory reiterated that these matters that the Applicants complained of were not isolated to just one flat.

262. Miss Gregory said that there had been a number of instances of flooding at the development, once sometime between 2007-2009 when a water main broke and both Woodlands and Courtlands were affected, and then a flood in 2012 that affected the basement and undercroft area of Headlands. There was an invoice at AB2-578 for APMS (Associated Property Maintenance Services) dated 10th April 2012 for £8,216.40 for works carried out by three men on site over a period of three days for clearing out rubble and debris in the 50 metre undercroft/ access tunnel and removing sewerage and contaminated materials, washing and disinfecting the area.

263. Miss Gregory also referred to the invoices for the drain down of ten apartments on Headlands affected by a flood. She said that she had asked a workman what had happened and been told that when investigating the cause of the flood, the workmen had pulled down a wall in Headlands 307 (the apartment adjacent to Mr Haven) and found that there was a screwdriver stabbed into the pipework and that this was the cause of the flood that affected the lower floors. Miss Gregory said that the sales office had subsequently instructed the workmen to check and drain down all of the void units. The invoices in relation to this were at AB2-620, dated 21st October 2010 from CMB Maintenance for £697.95 inclusive of vat, which stated "Drained down apartments as instructed". She stated that whilst this invoice has handwritten on its face "Please scan back to me insurance claim" that there is no evidence in the accounts

that this has been claimed back from insurance and that it has been wrongly attributed to the service charge account.

264. In respect of this invoice at AB2-620, the **Tribunal has no reason to doubt the information given to it by Miss Gregory and does not consider that this invoice is reasonably incurred as against the service charge account and determines accordingly.**

265. Miss Gregory drew the Tribunal's attention to the invoice at AB2-595, from Floorcraft dated 9th August 2012 relating to 19 Courtlands for £2167.80 which stated "Replace water damaged carpet as per quote." She said that it was not just the carpet that was damaged, that the claim incorporated other damage to the apartment and that in fact the water was coming from elsewhere. The invoice at AB2-601 from Paul Murphy Carpentry and Joinery received on 16th September 2012 for £350 also related to maintenance and decorating work to the same property as a result of water ingress.

266. At AB2-603 was an invoice dated 19th October 2012 for £3216 inclusive of vat from Classic Decorators (UK) Limited for decoration to Headlands, £1790 and decoration to the swimming pool, £890. Miss Gregory said that the leak that caused damage to the swimming pool area had come from a communal area.

267. **In respect of these other invoices and matters under flat works that the Applicants attribute to developer faults, then, we refer to paragraphs 231-239 above. The Tribunal do not have the evidence to make such determinations and consider that the managing agents are obliged to deal with the problems as and when they occur.** Therefore, in respect of those costs referred to us (save for those specifically mentioned otherwise in the body of this judgement or in the Scott Schedule spreadsheet,) then, **upon the evidence, we find them to be reasonably incurred and reasonable in amount and allow them against the service charge fund.** With regard to those items headed "Flat Works" within the Scott Schedule extract at Appendix Two to this decision, then where those amounts have been found to be reasonably incurred and in amount, it is on the basis and principles set out above after consideration by the Tribunal of the evidence relating to each item.

Gardening.

268. In essence the Applicants contended that gardening was another area that TMS had previously brought in-house following their cost benefit analysis, resulting in the leaseholders paying service charges in this area that were neither fair nor reasonable by approximately 30%. Mrs

West gave further evidence and made further submissions on behalf of the Applicants in addition to her witness statement dated the 10th January 2014 which also dealt with gardening matters. Mrs West disputed that there was a need for two full time in-house gardeners at Hayes Point (particularly in the winter months) with the associated national insurance, sickness and holiday pay costs, and the additional costs regarding the purchase and maintenance of machinery and tools. All of these matters could be dealt with by external contractors (who would supply and maintain their own equipment) at a cheaper cost. Mrs West said that an 80 hour working week in the winter is not justifiable when it is dark at the 7.30am start time, the earth is too cold and hard for planting and weeding and the grass is lying fallow. Mrs West submitted that according to PKF, the estimated costs for groundsmen and sundries for 2012 were £59,500 although the actual costs were not available. Mrs West submitted an alternative fully costed quotation from LJPS for £23,700 plus ad hoc services such as snow cleaning.

269. Mrs West also criticised that workmanship of the ground staff. Her statement refers to assurances given at the HP1 hearing by Mr Scholey of TMS to the effect that the gardeners held qualifications to justify their salaries. Mrs West disputed this and drew attention to the service charge paying for both gardeners to obtain qualifications in weed control and whereas one gardener had done so, the other had not. She expected the individual to either refund the course fee or to retake it, but this had not happened. Mrs West also presented various photographs that she said indicated poor gardening practices in a number of respects. She suggested that the ground staff were behaving in a "well-orchestrated" way when the Tribunal visited, one was jet washing a step , but she said that jet washing sand based patios undermines the same and is detrimental to it and she criticised the gardeners for trimming ferns at this time of year.

270. Mrs West was also disparaging in her remarks about the standard and conscientiousness of the staff at Hayes Point. In support of her complaint, she produced, with a flourish, a bag of dust and dirt that she said she had collected from the patio area outside her flat after the area was supposed to have been swept and jet washed. Mrs West invited the Tribunal to consider and retain this bag as an exhibit and proof of the poor standards of work, but this invitation was declined as being unnecessary, her point having already been made with sufficient force and relating to 2014.

271. Mrs West exhibited to her statement at AB3-383, a copy of the list of tasks that the gardeners/ground staff were expected to undertake and further exhibited an opinion dated 16th

September 2013 from a Mr Richard Knighton, a head gardener of Sheepdrove Organic Farm, Lambourn, Berkshire, with thirty years' experience. Mr Knighton had spent two hours at Hayes Point inspecting the grounds (but not the machinery) on the 15th August 2013 and amongst comments relating to poor groundsmanship in a number of different ways, he believed that to keep the grounds in a good condition would require one man full time at a wage of between £24,000- £27,000 per annum excluding the budget for machinery. At AB2-487 was the Applicants' summary of the gardeners' salaries, being £37,390.91 for 2010, £39,649.43 for 2011 and £39,255.31 for 2012.

272. The Respondents were unrepresented during this part of the hearing and so the Tribunal noted the written responses in the statement of case and the Scott Schedule on these matters before determining the issue.

273. **Decision on gardening.** The Tribunal, as with the cleaning arguments above, note that the lease allows TMS to use in house staff and or contractors. That being the case, the Tribunal does not feel that it is for us to determine the question of whether it is reasonable to have in-house gardeners or external contractors since both options could be utilised under the lease and both or either option could be reasonable – as with the cleaning arrangements. But the costs have to be reasonable. The Tribunal agree with Mrs West that the number of man hours is too great especially through the winter months. Therefore we cap the total expenditure on gardening and grounds maintenance to £40,000 inclusive of VAT, sundries, renewals, fuel and repairs. Undertaking a similar exercise as for our decision on Cleaning, by applying a 5% year on year increase to take account of increases in prices and costs, we calculate the following figures which should be applied as a cap on allowed gardening costs for the relevant year. **For 2010, £40,000, for 2011 £42,000 and for 2012 £44,100. The Tribunal accordingly determine that these are the reasonable costs, reasonably incurred for this category for these years.** With regard to those items under the gardening heading in the Scott Schedule, then again those items are found reasonable and are to be included in the yearly reasonable figures above.

274. **The Respondent's return.** At 12.25pm on the 20th February, Mr Holmes and Miss Miles returned to the hearing stating that they had been instructed to "step back in and to continue representing". The Tribunal allowed this to happen and pointed out to Mr Holmes that the matters that had been heard in his absence would be dealt with according to the evidence before the Tribunal and would not be revisited as he had absented himself.

Insurance.

275. The Applicants contended that the site has suffered from numerous insurance claims that have increased the premiums substantially and that it was unreasonable for the increase to be met through the service charge account given that many of the claims were as a result of inherent defects in the building's construction and given that the developers were unable to claim on the insurance for their own failings. Miss Gregory said that the insurance premium was £17,400 in 2009 and that the premium for the period from February 2010-February 2011 was £19,870.14 (AB3-1) and that for 2011 it was approximately £46,000 and for 2012 it was £50,277.64 according to the records from the expenditure reports at AB2-70. Although not within the ambit of this Tribunal, she pointed out that the policy for February 2013 – February 2014 was £61,105.90 (AB3-4) and that the premium for the current year was £75,474.95.This demonstrated the spiralling costs of the insurance premium that was going up and up because of the number of claims. Miss Gregory clearly linked the number of claims to the Applicants' view that many matters should have been met by the developer and not have been the subject of a claim through the insurance policy. Miss Gregory submitted that it was unreasonable for the leaseholders to have to keep picking up the full extent of the insurance premiums. The vagaries of the insurance policy have been outlined earlier on in this decision and will not be repeated here. The Applicants also submitted that there were major failings in the construction of the roof at the development which had resulted in so many water claims, and that a policy excess of £5,000 is now being applied to water claims as a direct result of the claims history.

276. The central point about Zurich not entertaining claims from the developer was put to Mr Holmes who said, in relation to paragraph 43 of the Applicants' statement of case that "It is and it isn't correct." Mr Holmes explained the Zurich policy was a Building Warranty policy and was provided to the apartment owners by the developer. When claims had been made for faults arising with the fabric of the building, Cunningham Lindsey, the loss adjusters for Zurich, had initially denied claims as the fabric of the building was a common part in the ownership of the developer / freeholder, who was excluded under the terms of the policy for making claims. This was in fact misleading and subsequently the loss adjusters changed their position so that claims can in principle now be made. At this point, Mr Holmes expanded his evidence with relation to the Zurich policy and drew the Tribunal's attention to the correspondence between Cunningham Lindsey, various leaseholders and TMS See further details below). This was most helpful to the Tribunal, and no doubt the leaseholders, as it gave understanding to the issues raised by the Applicants under the heading of "Flat works" and upon which the Tribunal had

heard submissions from the Applicants whilst the TMS representatives had been absent from the hearing room. This is referred to in more detail under paragraph 221 and following of this decision and where it is in the opinion of the Tribunal more relevant.

277. Mr Holmes referred to Cunningham Lindsey's letters of 22nd August and 12th September 2012 to TMS regarding 203 Courtlands, Dr Heginbotham's flat, (cited at paragraph 221 and 222 and following above). The 12th September letter continued that the surveyors from Cunningham Lindsey would be returning to Hayes Point to conduct investigations to confirm the cause of the water ingress affecting apartment 203, to devise a repair solution and to determine liability under the policy.

278. Mr Holmes said that this did appear to be a u-turn for Zurich and led to the successful insurance claim by Lindsey Kirby for the collapsed ceiling in the penthouse. Mr Holmes however did say that the key clause has always been "Major Physical Damage" (defined at paragraph 223 above) and he referred to the rejection of Mr Steele's claim because a defect on the flashing parapet was not deemed to be major physical damage. Mr Steele pointed out that nevertheless, the loss adjusters did find that the damage had arisen as a result of sub-standard work. Mr Holmes also voiced his belief that the wording changed for the different blocks and that there was also a mention of "catastrophic damage". Mr Holmes did not accept that the number of claims relating to the roof was as a result of poor construction. He said that the loss assessors would see if there was a valid claim. He said that the roof membrane to H304 and 305 had a total of seventeen tears in it. The roof at Hayes Point is substantial and seagulls are a problem. They deposit debris on the roof, they peck at the roof and they have found holes and tears to the roof membrane. He said that the building is subject to wear and tear and it was not correct to say that all of the faults were as a result of the developer's poor workmanship. Mr Holmes was asked directly by the Tribunal if he accepted that some items were latent defects and he sidestepped the question, replying that it was not for TMS to determine. He said that they would put in claims under the policy but he reminded the hearing of the items that are not covered by any insurance policy but where the costs, charges and expenses incurred by the landlord or the management company are to be the subject of an appropriate contribution from the tenant. (Fourth Schedule, paragraph 10(e)(ii) AB1-225).

279. Mr Holmes in response to direct questions from the Tribunal, said that TMS have encouraged leaseholders to make claims and have assisted them to do so and that, in response to the increase in claims, that TMS had considered joint or multiple claims. He said that claims could

not be made for the void units because the warranty was not issued on them until the completion of that unit. Mr Holmes was asked what would happen if there was a leak in a void unit? He responded that he would imagine that the loss adjusters would take it into consideration and if there was not major physical damage under the policy then the remedial costs would be recharged to the service charge fund.

280. Mr Holmes went on to say that nevertheless the buildings insurance (for usual perils such as Fire and Storm damage) is placed with Axa through Ian Gibson Insurance Brokers. Mr Holmes submitted that the premiums increase on this policy is not due entirely to a high claims history. He referred the Tribunal to the buildings declared value which in February 2010 was recorded on the policy at £19,817,000 and gave a sum insured of £25,762,100. He suggested that the higher the building value then the higher the premium. In 2010, he recommended to the freeholders that a buildings insurance revaluation was undertaken. Gleeds, Surveyors, undertook this in May 2010 and the new declared value became £39,397,000 with a sum insured of £51,216,100. This amount was indexed linked and by 2013 had risen to £49,860,000 with a sum insured of £64,818,709 and the building's declared value now is £50,957,478. Therefore overall the amount insured has almost doubled but it's not true to say that the overall claims are the main reason for the increase in the premium. There were significant claims for example in the year February 2012 to 2013; the total claims amounted to £308,000. It was also understood by Mr Holmes that the original buildings valuation had not allowed for a VAT element of 20%, so that the addition of this would have immediately raised the original sum insured referred to above, even if the revaluation exercise had not taken place.

281. Mr Holmes referred to the letter to TMS from the broker Ian Gibson Limited dated 8th February 2013 (at AB3-3) which gave advice about the terms of the premium for the insurance year between February 2012 and February 2013. The letter stated *"AXA have increased the rate by 7.5% this year due to claims totalling £308,984.89 with £14,070 outstanding (copy attached). We have also increased the sum insured to include VAT (20%) this year as this was not applied following valuation in May 2010 and was noted by the loss adjuster following the large loss. Therefore the sum insured has been increased by £7,987,400 plus indexation to make the total £49,860,545 and this is also reflected in the renewal premium."* Mr Holmes said that the significant claim in that year was well into six figures following a sewage leak which flooded a number of properties. He therefore stated that from the evidence in the claimants own bundle it could be seen that there was an increase of 20% of the £37 million to start with and the buildings declared value had also been upgraded by 20% on top of the valuation undertaken in

May 2010. Mr Holmes provided the insurance schedules for 2010, 11, 12, 13 and 14. Miss Miles confirmed that five different properties in Courtlands were affected due to a blockage, these being numbers 6, 9, 19, 20 and 21. She stated that there were various invoices in relation to this between April and August 2012 and Mr Holmes commented that these properties were "swimming in sewage".

282. Mr Holmes also said that the building's value had been uplifted in 2010 and the premium was also increased in that year when the main findings were for the replacement of the copper wiring and for the consequences of the lightning strike. There was discussion of the VAT status of the building and Mr Holmes said that he would clarify this and seek further information. That information came after the hearing had finished by letter to the tribunal dated 25 February 2014 confirming that Hayes point is not VAT registered and that it cannot be registered for VAT because it is a residential building. That letter also confirmed that with regard to the buildings insurance claim for CCTV damage following the lightning strike and Waverley's invoice dated 5 August 2011 in the sum of £6076.80, the sum of £4964 was received from Axa against that claim. This related to a £100 excess, less the VAT element which was not reimbursed by the insurer. Mr Holmes said that they had asked the broker to contact the insurer to establish whether the insurer would meet the full cost incurred against that invoice less the £100 excess.

283. Mr Haven pointed out that logically, the claims would include a vat element and that this should be paid back to the leaseholders once insurance claim payments were made. Mr Holmes had also said during the hearing that TMS were requesting confirmation of how the vat on claims was treated. Attached to the Scott Schedule were details of credits received from insurance claims between 2010-2012 that totalled £38,882.46.

284. **Determination** The Tribunal notes that the Applicants' case relies on the contention that the claims are based on failings in the building and resultant water ingress. It is not clear that this is entirely the case. We were provided with a claims experience report produced by Axa Insurance relating to the development with loss dates ranging from 21 August 2009 to 9 January 2012. Although the narrative is very limited there are references in there to various specific apartments but also, for example, a lightning strike on 9 May 2011 and a power surge on 20 October 2011. The largest claim is in respect of £154,000 (cause unspecified) and a further claim of £89,000 on 3 January 2011. The Tribunal also notes in AB3–9 a cover/debit note provided by Ian Gibson Ltd which states ' it is hereby understood and agreed that with effect from 7 June 2010 the buildings sum insured is increased to £39,937,000' and the additional premium due,

including additional terrorism cover, amounts to £12,086. The Applicants have not challenged the amount of the premiums per se and we did not have any expert evidence before us as to the buildings sum insured, nor the effect of any claims history on the premiums. It seems to the Tribunal that in broad terms the insurance company (in this case Axa) would not pay out such large sums of money, or any sums at all, if the claims were not valid under the terms of the policy and for the perils the policy represented. The leaseholders have had the benefit of those repairs and the monetary pay-out which would be shown as credits in the accounts; indeed credits are shown on the Property Expenditure printouts provided at AB2 pages 26 –86, and also collated as a separate worksheet by TMS on the Scott Schedule spreadsheet provided. No evidence has been provided that any claims under the buildings policy have been denied on the grounds that damage has been caused due to developer faults or building defects and we refer to our comments on "Flat Works" at paragraphs 231-239 above. The Tribunal also observes that the policy excess referred to by the Applicants is in respect of ' escape of water' i.e. pipe related, rather than water damage i.e. weather related. **Accordingly the Tribunal determine that the Buildings Insurance premiums for 2010, 2011 and 2012 were reasonably incurred and were reasonable in amount.**

285. Further there is reference within the original Scott Schedule under 'Miscellaneous' to an invoice dated 19th November 2012 to Ian Gibson Insurance Brokers for £5079.09 for an inspection contract for statutory plant within the premises and objection is made to this cost on the grounds that it is excessive. We determine that this is a reasonably incurred and reasonable cost. This relates to statutory and insurer's requirements for example to independent inspection of the lifts for safety purposes and is therefore reasonable.

286. **Landlord**. Under this heading in the statement of case Miss Gregory referred to the invoice at AB3-13 from Swalec Contracting dated 16th February 2010 for £4186 plus vat of £732.55 totalling £4918.55 for the replacement of stolen earth cables within the basement area of Hayes Point**.** She said that additional charges for CCTV and for the developer's stolen construction materials should not have been passed on to the service charge payers because the cabling stolen related to developer issues and the developer should have claimed. The claim on the landlord's insurance would result in increased insurance costs on renewal. Further that the insurance company recommended the installation of a further CCTV camera at Hayes Point which was charged to the service charge account. She said that the leaseholders believe that the camera covers the storage area used by the developer and was for the developer's benefit and in addition that the camera's presence impedes the views from some of the apartments.

The invoice for the camera, dated 8th June 2010 is at AB3-14, from Waveley Fire and Security Limited for £3859 plus vat of £675.33, totalling £4,534.33.

287. Miss Gregory pointed out that there was a further invoice dated 15th March 2011 from SSE Contractors for replacement of stolen earth cables within the basement area of Hayes Point for £3,067 plus vat of £613.40 totalling £3,680.40. Mr Holmes said that in relation to this invoice, it could be seen from the records at AB2-63, there was an entry under the "Repairs and renewals" heading dated 14th April 2011 which said "Axa insurance- theft of copper pipe" showing a credit of £3,503.73 (this entry was also attached to the Scott Schedule under the insurance credits tab).

288. The Respondent at RB1-3, paragraph 46 said that the copper cable encases the electric cable for the mains supply to the building and to individual properties, and is a valuable communal and not a developer item. With regard to the camera, the Respondent says that it was installed to provide additional security to the rear of the building which was a point of entry for thieves and that it was installed following the expression of concern from property owners who also felt vulnerable. The camera turns through 180 degrees and covers all of the seaward side of the development. Mr Holmes further added that the measures taken to protect the building were reasonable and were covered under the Fourth Schedule of the lease, clause 10 (e)(v) and (vi) at AB1-226. He said that in terms of security, the windows of the basement were no more or less secure than any other windows and although locked, that if a thief could not get in at one point then they would seek another entry point. He confirmed that TMS were making a judgement call on the reasonableness of the CCTV camera. Miss Gregory did not challenge the cost of the camera but rather, whether the leaseholders should pay for it.

289. **Determination.** The Tribunal consider that the **cost of the CCTV camera is reasonably incurred against the service charge fund** (there being no challenge to the reasonableness of the cost.) Some leaseholders had asked for additional security and this was a reasonable step given that there had been break-ins at the site. Additionally, the seaward side of the property is large, open and exposed and the camera is a proportionate and reasonable response to the security issues there. With regard to the copper thefts, it can be seen that these were subject to insurance claims and there was evidence of the re-credit of the second claim. Reference should also be made to the Tribunal's earlier comments and findings on the 'Flat Works' issues. The managing agents are obliged to deal immediately with the consequences of the break in and have made an insurance claim the proceeds of which have been credited to the service charge

account. The Tribunal accept Mr Holmes submission that the copper wires serve the supply for the benefit of the whole building and that the costs of the remedial work are reasonably incurred against the service charge fund and are reasonable in amount. With regard to any shortfall between the costs incurred and the amount recovered under the insurance policy, then, whether this be a vat issue or matters related to the loss assessors valuation of the claim, this is not something that the Tribunal, on the evidence before us, can look behind. In summary, the costs that the Applicants object to with regard to the replacement of the copper wire are allowed.

290. **Radecarl invoices**. These were at AB3 16-19. AB3-16 was dated 21st December 2012 for £345 plus vat of £69 totalling £414 and was for "Extra works conducted for Mr Mike Rowswell as per our e mail quote dated 19-12-12", AB3-18 likewise was for "Extra works conducted for Mr Mike Rowswell as per our e mail quote dated 14-12-12" for £1,181 plus vat of £236.20 totalling £1,417.20. Mr Holmes said that he would ask Mr Rowswell to forward the e mails (the latter was not present on the final day of the hearing during these exchanges) but Miss Gregory objected on the grounds that they had already had ample time to forward the e mails.

291. The Tribunal note that there was no reliable evidence before it explaining to what the costs in AB3-16 and 18 related. The e- mails to Mr Rowswell were not before us and we agree with Miss Gregory that in any event, the Respondent had been afforded ample opportunity to have supplied that evidence and had not done so. Mr Holmes said that these related to a whole list of items including cleaning, supplying and fitting a new glass back to the undercroft door, to examining number 220 to seal up the window frame, working on the cladding to Woodlands, to sealing around Headlands 302, clearing gutters and trimming a tree.

292. In the circumstances, **the Tribunal finds that these particular costs were reasonably incurred and were reasonable in amount against the service charge.**

293. **Radecarl-downpipes.** At AB3-19 was the invoice dated 21-12-12 for £10,000 plus vat of £2,000 totalling £12,000. This was for cutting the bottom of all down-pipes, re-positioning the brackets, rodding down the pipes from a high level and cleaning all debris from site (£8,100) and for doing the same for all the small down-pipes (£1,900). Miss Gregory said that following this work, the water from the down pipes floods everywhere and she questioned whether it was reasonable for this to have been done at the leaseholders expense since the down pipes in their previous form had been there for many years. The Respondent's statement of case said that the

downpipes were removed to clear blockages and then re-fitted, that the works were undertaken by a high level access platform in order to reduce scaffolding costs for the whole building exterior, and that the works were ongoing for several weeks.

294. Mr Holmes said that the flat roofs at Hayes Point are substantial and as they are in a seaside location they suffer from problems from the wildlife and seagulls, which nest there. He said that it is unlawful to disturb seagull nests that contain eggs and chicks. He said that the downpipes were not fitted with inspection access points or rodding points and each pipe went to its respective gully. He said that in periods of heavy rain seagull nests and dead chicks have been washed into the pipes causing blockages. He said that Radecarl hired a cherry picker because this was the most economical way to do the work. Around 50 to 60 downpipes were cleared and then refitted and he said that this was undertaken as part of good estate management. He said that they had to be physically removed and cut short to enable them to be rodded in the future. Mr Holmes described that the access platform was of a crane type and that there was only one of them in the country which came from London.

295. Mr Holmes said that the practical effects of blocked pipes were water overspill onto balconies, roofs and terraces and a couple of properties in Woodlands had suffered water ingress as a result of blockages. There was disagreement between Mr Haven and Mr Holmes as to the best way to rod the pipes and Mr Holmes confirmed that there were no cowls on top of the pipes. Mr Haven enquired whether any other quotes were obtained, and indeed Mrs Matthews was concerned at this as she felt that TMS favoured Radecarl. Mr Holmes indicated that the cost of the platform was the expensive item.

296. **Determination on downpipes.** There were a considerable number of downpipes, over fifty, which were causing flooding to the roof and subsequently water ingress to some of the apartments. The Tribunal consider it would be incumbent on any responsible manager to take action to prevent this problem becoming worse and these works are therefore a service charge item**. Although there may have been alternative methods to carry out this work this did not make the method adopted by TMS unreasonable and the Tribunal find that in the circumstances the costs were reasonable and reasonably incurred.**

297. There was next reference by Miss Gregory to an item dated 13 January 2011 for £480 but no other information was given. The Applicants queried as to whether this was an insurance claim. On the Scott Schedule, TMS indicated that they could not respond as there was no information

provided. Miss Gregory submitted that it was unreasonable to put a matter through the service charge account when nobody could explain what it was for. However Miss Miles referred to AB2-52, the property expenditure transactions for 2011 and pointed out that on 13 January 2011 there was an entry for £480 to Cardiff Drains for overpumping gallons of waste from the pump station. Miss Gregory pointed out that they had not seen an invoice for this, and while this may be regrettable, the Tribunal are satisfied from Miss Miles explanation that the expenditure was incurred in this fashion and there was no evidence before the Tribunal save for the lack of an invoice to suggest that this was unreasonable expenditure or unreasonably incurred and therefore this amount is allowed.

Electricity.

298. The Applicants' statement of case raised a number of issues about the electricity charges which they contended were excessive for a number of reasons. The Applicants stated that the administration charge for the preparation of the electricity schedule was unreasonable, that the proportions given to the landlord related zones such as the sales office were not fair and reasonable, that there were defects in the electrical wiring at Hayes Point which have been in existence since the first occupation in 2007 in that the lights are permanently on in the development which has caused continuous use of electricity and increased costs and a higher requirement for replacement bulbs.

299. With regard to the 2010 electricity schedule the Applicants stated that the monthly charge by TMS was excessive. For 2011, the applicants contended that the accounts show that the cost of landlord electricity was £169,184, and following the recharge to individual residents properties at £85,261 there remained a balance of £83,923 for communal electricity which was to be apportioned upon an equally split basis. The Applicants contended that the total of the 12 monthly invoices and schedules that TMS had provided for the 2011 electricity differed from these figures. They said that the 12 month bills totalled £153,455 and the total from the leaseholders' individual charges was £98,101 leaving a balance of £55,339 for communal electricity for the year. The applicants said that the amount for electricity upon the PKF property expenditure report for 2011 totalled £163,841.85. The applicants contended therefore that the residents have overpaid for electricity in 2011 by approximately £29,584.

300. With regard to the electrical installation that means that the lighting is on for 24 hours a day, seven days a week, the applicants say that TMS have indicated that it would be in the region of a six figure sum to correct this and the Applicants estimate that the electricity over use as a

result has contributed to approximately 25% of the whole electricity costs incurred at Hayes Point. They say that this problem has existed since the development was handed over to the freeholder and continues to date. The Applicants estimate that the approximate over charge for electricity on communal usage for 2011 is £20,980 being a 25% overpayment of the communal usage figure of £83,923. For 2012 they are unable to provide a figure because the accounts have yet to be provided but argued that the 25% overpayment figures should equally be applied and a proportionate amount be refunded to the service charge account by the respondents in due course.

301. The Respondent's statement of case observes that these calculations and estimations of costs are those of the Applicants, are disputed and not accepted. It records that property owners are provided with a schedule and electricity costs recharged on a monthly basis and the Respondent believes that the claimants are referring to accounting adjustments in the year-end report. With regard to the lights being on all of the time, the Respondent points out that there is no contract between Hayes Point Management Company Limited and the developer. The communal areas fall outside of any developer's warranty which expired several years ago. There was no recourse between the landlord or management company to the developer (Respondent's statement of case, paragraphs 56 and 57.)

302. With regard to the **service charge apportionments to the sales office**, the Applicants referred to the determination in HP1 that £72 per month was a reasonable monthly figure. The Applicants said that a meter was fitted to the sales office in 2011 and they believed this showed that on average the amount of £90-£100 per month was more reasonable for 2010.

303. Mr Daughton further amplified this point and referred to exhibits to his statement which contained at page 1 of the exhibit a table headed "Charge of Electricity to Site Office (2011)". He said that the first time the sales office appeared in a spreadsheet accompanying the electricity Bill was in March 2011. For the first four months from March the units used by the site office was shown as zero and the cost was a nominal charge that everyone paid. He said that in October the final reading was said to be 50,284. However he pointed out that for November the initial reading was 5,028. He said that they had obviously been reading five digits instead of four and for example the first initial reading in July 2011 was recorded as 20,248 and it should have been 2,024. He said that the cost paid in July 2011 was £565.51 and the following month in August was £473. He said that after September's initial reading of 31,687 there was a rebate of £2,871 for the sales office even though this was based upon an incorrect original

reading from July of 20,248. He pointed out that in October there was again a five digit reading of 37,766 initially, but in November and December they have read the correct amounts and there are four figure readings.

304. Mr Daughton submitted that the meter would have been fitted in March 2011 with a zero reading because he does not believe that the meter would have appeared on the spreadsheet in March 2011 if the meter had not been fitted then. He also said that if you divide 2,024 (the reading at the beginning of July) x 4 it is approximately 500, which would suggest at an approximate usage of 500 units per month, that the meters were fitted at the beginning of March. Further it did not appear unreasonable to the Applicants that the sales office would have consumed approximately 500 units per month from March to June 2011 given the readings taken from July to December 2011.

305. Mr Daughton referred to paragraph 63 of the Applicants' statement of case. He said that a significant rebate was given to the sales office in September 2011 in the amount of £2,871 when in fact they had not paid such a sum in the preceding months. The figures show that over the 10 month period to which they relate, the sales office received a net rebate for the year of £392.92, whereas the charge for the period should be an additional £750 to the service charge account giving a total underpayment of approximately £1,150 on the part of the site office. He said that the unit charge for the year was 9.2p, so say 9p. 9p x 8,315 (the final reading for December 2011) equals approximately £750.

306. The Respondents' statement of case at paragraph 63 referred to the electricity schedule for September and October 2011 and said that the £2,871 was a charge not a rebate. Mr Holmes pointed out that at page 12 of the Respondents' bundle, the sales office was charged £551.33 for electricity for September and at page 15, was charged £1136.71 for electricity for October. He accepted that the sub meter for the sales office was read incorrectly by the concierge for the first two months but this was queried and the account was adjusted accordingly.

307. **Day and night usage**. The applicants further contend that the electricity demands made of leaseholders via the service charge for communal electricity usage subsidise the actual apportionments if meters recorded day and night usage. They say at paragraph 65 of their statement of case, that the total electricity units in 2011 were 1,457,878 of which 353,738 were attributable to night rate units. Because the meters in the individual apartments do not record day/night usage, the individual flat is charged on average a flat rate of 10.27 per unit for the

year. This results in approximately £12,300 from night units being incorporated into the communal service charge expenditure therefore subsidising individual flats whose electricity costs charge may be higher or lower if the unit rate was accurately charged based upon day/night usage rather than the flat average unit rate applied. The Applicants' say that if this rationale is applied to 2012 then the difference between the actual rate and the average unit rate results in a subsidised amount of approximately £12,000.

308. Mr Daughton further amplified this point by reference to calculations at page 2 of the exhibits to his witness statements in which he had set out the units used both in the day and the night for each month of 2011, the total monthly bill and the actual invoice cost for the night units. These figures differed slightly from those in the statement of case referred to above (for example referring to a total of 353,744 night units). He had divided the total bill for the year of £149,805 by the total number of both day and night units to arrive at figure of 10.27p per unit. He contended that the electricity supplier had been paid £22,640 but that the costs charged on a unit basis were £36,329, a difference of £13,689.

309. The Applicants have considered the invoices from the electricity supplier and estimate that from the night units used, 90% is attributable to use between the hours of midnight and 7 a.m., and given these timings this is likely to be as a result of electricity usage in the communal areas. The Applicants say "that as a result of poor development choices, installations or programming of the software associated with recording of electricity usage,… this continues to prejudice individual leaseholders in receiving accurate electricity invoices for their actual usage and costs associated." They say that this prevents fair and reasonable service charges from being calculated. The Applicants say that 90% of £13,689 is £12,320, and that they are overpaying by this amount.

310. Mr Holmes said that the method for calculating bills was determined in the previous Hayes Point hearing. He said that the SWALEC bill is received and divided by the number of units. He said that the day and night use simply cannot be determined on an individual per property basis, as individual properties are not fitted with dual phase meters. He said that there is no evidence to say how an individual leaseholder uses their electricity. An owner may not have their lights on but could be using the electricity in other ways. He said it is a massive assumption to conclude that most of the night usage is the landlord's. To prove this could only be done by replacing the loggers. Mr Daughton accepted that assumptions have been made but asked Mr Holmes to accept that the majority of the costs came from the lights of which there were very

many. The Respondents' statement of case points out that between the hours of midnight to 7 a.m., is the period of maximum occupation of the properties when residents are asleep and likely to have the heating on, but either way it cannot be proved because day/night use cannot be split and determined.

311. Mr Holmes pointed out that electricity use was seasonal and there was greater consumption in the winter months when the invoices were almost double. He said that the invoices were £8,000 or £9,000 in the summer but could be up to £23,000 or £24,000 in winter they could not differentiate between the day and night use. He said that at the request of the owners, the developer employed Evans Electrical in 2009. They spent several weeks refitting individual lights at no cost to the owners. Each fitting has its own settings and they removed and checked every single light on Headlands. He said that to achieve what the owners would like to achieve would require a complete rewire of the development and the fittings installed do not give the owners what they want.

312. Mr Haven said that he had been in Headlands at the time of Evans Electrical's work and they were trying to do the adjustments, but the lights outside his apartment remain on all the time.

313. The Applicants statement of case (at paragraph 70) refers to a sum of in excess of £80,000 having been spent dealing with lighting issues for the period under consideration of 2010 – 2012. Miss Gregory referred to invoices at bundle AB-3 pages 22-134 relating to electrical and lighting costs. (The Tribunal's bundle did not have pages 24 to 31). Miss Gregory said that the total for light bulbs was in excess of £38,000 and this does not include fittings and she believed that the total costs for lighting was £88,000 over three years.

314. Mr Holmes said that the company and the landlord are fulfilling their obligations under the Sixth Schedule. He said that there are over 2000 bulbs on site and if they are on 24/7 then they will blow. He also pointed out that some of the bulbs are quite expensive, particularly those in the car park area. He said that they will use low-energy bulbs when they can but these bulbs are more expensive.

315. **Decision on electricity and lighting.** The Tribunal refer to our earlier comments, in particular on Flat Works. The management company have to manage the development as it is when it was handed over to them, in TMS' case, from January 2009. The lights were permanently on when the managing agents took over. It is also the case that TMS had investigated the feasibility of changing this system but concluded that the costs would be far too high. Therefore, although

the Tribunal understand the importance of this issue to the leaseholders and their consideration that it results in extra expense, **the costs are reasonable and are reasonably incurred against the service charge fund.** The concerns that the leaseholders have as a result of the different day and night rates are again matters that the Tribunal cannot make a determination upon since the agents have to manage the equipment that is in situ. In relation to the sales office, the Tribunal were satisfied on Mr Holmes' evidence, that the initial error had been rectified and there had been a credit to the service charge account in relation to this.

316. **Miscellaneous and petty cash items.** There were numerous other items described as miscellaneous or petty cash, please see the Scott Schedule on the attached spreadsheet for further details. It was neither proportionate nor reasonable to hear evidence upon every one of these items and in the event it would not have been possible to have done so in the hearing time allotted. Therefore the Tribunal have considered the totality of the evidence, the witness statements and the comments in the Scott Schedule and elsewhere within the parties' respective statements of case and bundles of evidence before coming to a decision upon the individual items. The amounts allowed are recorded in the Scott Schedule. There were some preliminary comments and evidence heard upon these matters and details are set out below.

317. At bundle AB3 - 137 was an invoice from CMB maintenance Ltd dated 9 April 2010 for £6131.84 inclusive of VAT. Miss Gregory challenged this as being a drain down for the void units owned by the freeholder and therefore an unreasonable charge to the leaseholders. Mr Holmes stated that this was not paid by the service charge and was for the former freeholder Galliard to pay, and accordingly we accept that this was not a charge to the service charge payers.

318. There were various further invoices for Ceaton Security Services between AB3- 136 and 183, for example at AB3-136 dated the 26 March 2010 for £1194.39 and 138 for £267.90 on 26 May 2010. These invoices related to investigating and rectifying the faults on the access control system and dealing with door maintenance. Mr Holmes said that these items related to the door maintenance and access system and was the company fulfilling its obligations under the Sixth Schedule of the lease. The Applicants in the Scott Schedule variously described these as being unreasonable upon the basis that they were ongoing faulty issues from 2009 relating to the control panels or that they were the landlord's issues with the building. There were other occasions where the applicants considered that the timesheets supplied by the engineers in support of their work demonstrated that the time spent was excessive and therefore unreasonable.

319. The Tribunal is unable to judge that the time spent was unreasonable upon the basis of the timesheets. These do not give an indication, other than in the barest terms, of the work done and any reasons for the time spent. For example if there were complications or other factors. The Tribunal simply does not have the evidence to determine that the time spent on individual timesheets was unreasonable. **The Tribunal's earlier comments with regard to the landlord and developer issues apply and that the costs incurred on the door entry system maintenance by Ceaton Security systems are reasonable and are reasonable in amount.**

320. Miss Gregory referred to the invoices at AB3-165 dated 23rd of April 2012 for £6,000 inclusive of VAT and at AB3-194 dated first of August 2012 both to APMS for works to the Brise Soleil (a sun shading structure). She said that she was unsure what the failings of these items were and if these sums were recoverable. Mr Holmes referred to what he described as the bundle of rejection letters for the claims for Headlands 301 to 309 and said that this related to parapet works above the Brise Soleil in Headlands 301 and 302. In other words that these matters were not covered by the insurance policy and therefore needed to be paid from the service charge. Miss Gregory had been concerned as to what the invoices related, and once these were explained **the Tribunal were satisfied that these costs were reasonably incurred and reasonable in amount.**

321. With regard to **petty cash,** the applicants contend as per their statement of case *"that all of the invoices set out under the heads of dispute "Petty Cash" are unreasonable service charges and should not be recoverable against the service charge account."* The Applicants clarified that they do not dispute whether the cost of the item on the individual receipt is reasonable, but they do not consider these expenditures to be service charges within the definition of the lease or under the Act. The Applicants also say that some of the items of expenditure are multiple in nature and it is unfair and unreasonable to charge the service charge account for the excessive spending on the part of the Respondents. Miss Gregory referred to the invoices at AB3-196-349 and submitted that there are many items within there such as a cat bowl, cigarettes and so forth that are not service charge items and further that are placed within categories that undermine the point of clear accounting. Mr Holmes said that Mr Rowswell had covered the purchase of many of these items in principle in his evidence and the Respondent's statement of case pointed out that it was not unreasonable that certain items should be re-occurring. For example if toilet roll was used in the communal toilets it is replaced and the cost will re-occur.

The Respondents submit that it is true of the majority of consumable items which, by their very nature, once consumed or used will have a replacement cost.

322. The Tribunal notes that the approach taken to petty cash items by the Applicants, namely considering that all items were unreasonably incurred against the service charge fund is characteristic of the poor relationship between the Applicants and the Respondent and the complete lack of trust between the parties. These include on the Scott Schedule spreadsheet for example an item for £3.98 on 24 September 2011, said to be plants for the grounds, and £3.95 on 5 November 2011 for gardening gloves, objected to by the Applicants upon the basis that there was no receipt. On 7 August 2011 £9.83 was spent at Asda, described as miscellaneous – protector. The Applicants queried whether this was a legitimate expense and asked what is it? The Respondents confirmed that it was gardeners' equipment, namely eye goggles. These are just a very small selection of numerous items that are in dispute on the spreadsheet, but they encapsulate the poor relations between the parties. The Tribunal is bound to observe its disappointment that it was not possible for agreement to be reached between the parties upon items such as these, obliging all parties and the Tribunal itself to spend time upon matters that really ought to have been capable of amicable resolution.

323. The Tribunal refers the parties to the attached extract from the **Scott Schedule at Appendix Two** and the Tribunal's comments therein upon individual items. Please note that with regard to the Scott Schedule, where there is an entry that says 'Reasonable' or 'reasonably incurred' this means that the Tribunal was satisfied that it was both reasonable to incur the cost and that such costs were reasonable in amount and the entries are to be read accordingly. Further, where there is reference to 'insurance' items, then this means that it was reasonable for the money to be spent on that item from the service charge fund, notwithstanding that it may have been the subject of an insurance claim. In the event that such a claim was successful, then the service charge fund will be credited with the proceeds of the claim when received. If the insurance company accepted that the claims were legitimate, then it follows that the claims were reasonable and the initial expenditure on the matters from the service charge fund was reasonable.

324. Please note that this is not the Scott Schedule that was submitted to the Tribunal, but an extract from the same with the extraneous items stripped out, such as entries relating to 2013 and items that have been dealt with in the body of this decision. The numbering may therefore

differ from the original Scott Schedule. Further, upon the Scott Schedule are references to works on the Penthouse. We have found that these are service charge items and refer to our general comments on Flat Works and insurance earlier in this determination. We have applied the same principles in assessing the reasonableness of such costs and the liability of the service charge fund in relation to those items.

325. With regard to the **swimming pool**, Miss Gregory referred the tribunal to invoices at AB3-350-352. The invoice at page 350 was to "Hire a Hubby" in the sum of £1,380 dated 18 October 2010 and was said to relate to the changing room area. At page 351 was an invoice from J and E Hall international for £382.20 in relation to repairs carried out to the swimming pool ventilation dated 10 February 2011, and at 352 was an invoice from Radecarl dated 18th of April 2013 and therefore not a matter that this tribunal could consider. Miss Gregory said that the items with regard to ventilation had been raised with the previous agents and that the failure to address those concerns within a reasonable period of time would give rise to additional expenditure in future years to refurbish the entire area, which now appears to have been the case. (The historic neglect argument). Miss Gregory confirmed that the Applicants' case was that had the developer on site been requested to address the issues within the pool area at time then this further additional expenditure would not have been required so soon into the development's life as an active residential community. Mr Holmes rejected this and submitted that the items related to normal maintenance. He said that the changing rooms are well used and they have had to undertake refurbishment for both changing rooms as a result of the high usage. The Respondents further pointed out that the works were not recoverable from the developer or covered under any developer warranty.

326. In respect of the swimming pool costs that were under challenge, the Tribunal refers to its earlier comments with regard to recoverability from the developer and flat works and **considers upon the evidence that the costs incurred were reasonable in amount and were reasonably incurred against the service charge fund.**

Costs.

327. The Applicants seek a determination pursuant to section 20C of the Landlord and Tenant Act 1985 as to the costs of these proceedings. In HP1, the tribunal said the following:

"Costs of the LVT proceedings and section 20C Landlord and Tenant Act 1985.

There were four issues for the Tribunal to determine in relation to the costs of these proceedings. These were;

a. *Is the Landlord entitled to recover the costs incurred in taking proceedings before the LVT under the lease, and if so what is the extent of the costs to be awarded?*

b. *The Respondents application for an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Landlord in connection with these proceedings before the 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 tenant.*

c. *Has either party acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings such as to attract a costs order against them of up to £500 (under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002).*

d. *Should the Tribunal make an order against any party requiring them to reimburse the whole or part of any fee paid by them in respect of the proceedings? (Under Regulation 9 of "The Leasehold Valuation Tribunal's (fees) (Wales) Regulations 2004").*

<u>The lease – provisions relating to costs of the LVT proceedings.</u>

The Fourth Schedule of the lease (Tenants covenants with the Landlord) at paragraph10 (e)(i) …….has the tenant acknowledging that the Landlord and or the Company was entitled and authorised to refer any service charge demands to the Lands Tribunal or any other relevant Tribunal "for the purposes of assessing the reasonableness (whether before or after the service charge demand has been levied or the certificate aforesaid has been finalised) and the costs charges and expenses incurred by the Landlord and/or the Company in connection therewith shall be deemed to be an expense incurred by the Landlord and/or the Company in respect of which the Tenant ***shall*** *be liable to make an appropriate contribution under the provisions contained in this clause". (Our emphasis). The Tribunal noted the mandatory nature of this clause and the obligation upon the part of the Tenant to make a contribution to the costs, charges and expenses incurred.*

TMS additionally in written representations on costs, referred us to their terms of business at ……..and particularly to Appendix 1 ……. which includes the term "providing evidence to Court, Leasehold Valuation Tribunal or similar in connection with unpaid ground rent, service charge, or compliance with Lease or Covenants will be charged at £110 per man hour." They

also have a term that states "attendance at any meeting after 8pm or attendance at meetings in excess of 4 per annum a charge per hour or part thereof of £60."

Therefore the Tribunal finds that there is authority within the lease for both the Landlord and/or Hayes Point Management Company Limited to charge the tenants for the costs involved in the LVT proceedings to determine the reasonableness of the service charges."

328. The present tribunal is faced with the same four questions and adopts entirely the contents of the foregoing paragraph.

329. **The application under section 20 C Landlord and Tenant Act 1985**

In HP1 the Tribunal said as follows*; "Section 20C of the Act is headed "Limitation of service charges: costs of proceedings". The relevant parts of this section are as follows;*

"(1) a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the Landlord in connection with proceedings before a..... leasehold valuation 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 tenant or any other person or persons specified in the application.

(2) The application shall be made –

(b) in the case of proceedings before a leasehold valuation Tribunal, to the Tribunal before which the proceedings are taking place.....

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

It is clear that section 20C only comes into play if, as in the instant case, the Landlord is entitled to charge the tenants for the costs of the LVT proceedings under the lease. The Tribunal also reminded itself that section 19 of the Act with regard to the reasonableness of the relevant costs incurred and the standard of the services or works also applies."

330. In the original application made by Miss Gregory on 3rd February 2011 the tick box for the section 20C application had not been completed but a section 20C application was made and allowed in the directions hearing and order of 4th December 2013.At the conclusion of the hearing on the 20th February 2014, it was agreed by both parties that they would provide written representations upon the question of costs. It had not been possible owing to the constraints of time and the large amount of issues that the Tribunal had to deal with, to hear oral argument upon the section 20C application within the allotted hearing time. The

Applicants, by their final written submissions dated 7th March 2014 addressed the question of costs.

331. The Applicants' submissions point out that they had not had any indication of the actual costs that were to be claimed by the Respondent for this matter and so could only make general points. However the Respondent, by letter of the 6th March 2014 to the Tribunal supplied details of the costs of Mr Holmes and Miss Miles' attendance at the tribunal which totalled £5544 inclusive of VAT. There were no figures for any preparation time, even though Mr Holmes and Miss Miles must have spent time on this matter prior to the hearing itself. Miss Gregory, in her written submissions made without sight of these figures, set out the various failures of the Respondent to comply with directions, and pointed out that no Respondent witness statements had been submitted at all and that there had been continuous verbal responses and documents provided during the hearing to address disputed items, all of which should have been submitted by 4 December 2013 in response to the Scott Schedule. Miss Gregory submitted that *"TMS has throughout the course of its management of Hayes Point and in the period covered within these proceedings been utterly opaque and uncommunicative with those residing in or owning properties on the site. Their approach has been combative, obfuscatory and completely without any sense of consultation or dialogue."* Further, Miss Gregory offered the view that *"TMS' incompetence, coupled with an apparent extreme unwillingness to communicate transparently has been the root cause of all the problems faced by the parties before the tribunal."*

332. Miss Gregory contrasted the attitude of the Applicants who had willingly and upon a voluntary basis compiled as much information "*as our collective expertise will allow*", with TMS "*which has been almost deliberately uncooperative. From a company that holds itself out as a management company "committed to high levels of customer service coupled with a high degree of transparency" (per TMS's website) this is frankly wholly inadequate."* Miss Gregory did say that she had some sympathy with TMS and the predicament that they found themselves in at the hearing but concluded *"it is the Applicants' submission that all costs the respondents incurred as a result of this RPT should be borne by each respondent and not recoverable against the service charge account. Any costs incurred by TMS acting on behalf of any of the respondents again should fall to the respective respondent that instructed TMS in the matter. It is the Applicants' opinion that the respondents have endeavoured to abuse process and justice*

throughout this RPT and therefore, should not be at liberty to recharge any costs to the service charge account."

333. By contrast, save for the letter of 6th March 2014 providing the timesheet and the hours spent by Mr Holmes and Miss Miles at the hearing itself, TMS on behalf of the Respondents did not make any submissions upon the section 20C matter, or any other submissions in relation to the costs of the proceedings.

Decision upon the costs of the LVT proceedings and section 20C application.

334. The Tribunal in Wales has no general power to award costs against a losing party, however there is provision under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 for the Tribunal to award costs of up to £500 against a party where;

"(2)(b) He has, in the opinion of the Leasehold Valuation Tribunal,
acted frivolously, vexatiously, abusively, disruptively or
otherwise unreasonably in connection with the proceedings."

335. **In determining the Respondents section 20C application** we are to consider all of the circumstances. There is no presumption either for or against the making of an order. The Tribunal may take into account the circumstances and the conduct of the parties. Further, the Leasehold Valuation Tribunal's (fees) (Wales) Regulations 2004, at Regulation 9 provide the Tribunal with discretion to require any party to the proceedings to reimburse any other party to the proceedings the whole or part of any fees paid by him in respect of the proceedings.

336. The Tribunal find that the Respondents, represented by TMS, have failed to comply with the directions and at times have conducted the case apparently without regard to the need to comply with the Tribunal's directions for the efficient administration of justice. As indicated earlier in this determination, Mr Holmes drew a distinction between TMS being retained throughout the currency of this application as the managing agents of Hayes Point, and being retained as the freeholder's representatives in the LVT proceedings. The identity of the freeholder has changed. It was the original developer, formerly Galliards but latterly Hayes Point (Sully) Limited until 19 December 2013 when Surelane Limited purchased the freehold, and also, (according to the letter dated 5 February 2014 to all owners at Hayes Point from Yasmin Miles,) acquired Hayes Point Management Company Limited. Mr Holmes told the Tribunal that he was not receiving instructions from the respective freeholders in connection with proceedings save for on an ad hoc basis, for example only receiving instructions to write to

the Tribunal on the morning of the directions hearing of 4 December 2013, and only receiving late instructions to prepare the Respondents statement of case and bundle of documents.

337. For the avoidance of all doubt, the Tribunal accept what Mr Holmes tells it upon this point, and that he was placed in an invidious position by those from whom he received his instructions. It was not clear to the Tribunal from whom he was receiving instructions and at what time, a state of affairs that continued during the currency of the hearing when he was contacted by Mr Conway, solicitor on behalf of Surelane during the evening of the third day, without previously having had any communication from that individual. At times, Mr Holmes gave the impression that he was not entirely certain of the provenance of his instructions throughout the history of this application, particularly in the months leading up to the freehold of Hayes Point being placed for sale at public auction on 31 October 2013, and the months after that.

338. The Tribunal therefore accept that Mr Holmes was placed in a very difficult position (exemplified by the extraordinary turn of events upon the final day of the hearing as described above when he and Miss Miles withdrew from the hearing room only to reappear a couple of hours later) and therefore do not attach any blame to him personally for the way in which he was obliged by those who instructed him, to conduct his case. Indeed, notwithstanding the breaches of directions and the haphazard nature of Mr Holmes handing in numerous pieces of evidence throughout the hearing (which strained the Tribunal's indulgence), Mr Holmes provided considerable assistance to the Tribunal and was able to provide answers and information to many of the points raised by the Applicants. Certainly the Tribunal's task would have been considerably more difficult had he been absent from the hearing altogether.

339. However, there is force in Miss Gregory's submissions upon costs and the Tribunal is left in no doubt that the Applicants have been frustrated by the lack of communication and information from the Respondents which meant that all matters remained at issue by the time of the hearing. Consequently Ms Gregory and her fellow applicants were obliged to spend more time upon the case than they would have done had there been full cooperation and compliance with the directions. Further, cumulatively, a not insignificant part of the time allotted for hearing the substantive matters in dispute was spent dealing with applications relating to the exclusion of the Respondents late evidence, the admission of further evidence, emails and information that developed throughout the hearing, and the extraordinary suggestion that the Tribunal should interrupt the proceedings on the fourth day to take a phone call at the convenience of a solicitor, Mr Conway, of whom it had not previously heard. The LVT office was also bombarded

by Mr Holmes with a succession of emails and attachments throughout the currency of the hearing which all ought to have been provided considerably in advance of the hearing had the directions been complied with. Thus the Respondents default affected not only the Applicants and the tribunal members hearing the case, but the administrative staff of the tribunal as well.

340. The Tribunal have carefully considered all of the representations upon costs and section 20C and all of the circumstances of the case. The Tribunal is satisfied for the reasons given above that the successive Respondents have behaved unreasonably in connection with these proceedings with their flagrant disregard for directions and haphazard approach to the instruction of TMS. No explanation was provided to the Tribunal by or on behalf of the Respondents in connection with the auction and the change of freeholder and how this impacted upon the proceedings and the directions already in place when it would have been a simple matter to have done so. This was, in addition to breaching the Tribunal's directions, a matter of professional discourtesy to the Tribunal and to the Applicants. Therefore it is ordered that the current Respondent Surelane Limited, do pay Miss Gregory as the lead applicant (on behalf of the applicants) £500 in costs within 28 days of the promulgation of this decision.

341. With regard to section 20C, notwithstanding that the Applicants have not succeeded upon many of the matters that they have raised, nevertheless the Tribunal note that there is no rule that costs should follow the event, and we are to consider what is just and equitable in the circumstances. There were no arguments put against the section 20C application by the Respondents and accordingly, having taken into account the Applicant's submissions it is ordered that **all of the costs incurred by the two separate freeholders in connection with these proceedings before the LVT are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicants or the leaseholders of Hayes Point,** and are to be borne by the appropriate freeholder.

342. Finally, the Tribunal order that the fees paid by the Applicants, namely the £350 application fee and £150 hearing fee, totalling a further £500 in addition to the costs already ordered, are to be reimbursed by Surelane Limited to Miss Gregory on behalf of the Applicants, within 28 days of the promulgation of this decision.

Signed

Richard Payne

Legal Chair

5th August 2014

APPENDIX 1

Applicant Name	Apartment No.
Helen Carter	W7
Adrian Hibbert	C2, H120, W122
James Smith	C1
Greg Holtam	C9
Teresa Yorke-Wade	C10
Mr & Mrs Kuska	C14
Mr & Mrs Davies	C16
Dr Margaret Heginbothom	C203
Ben House	C22A
Mr & Mrs Page	C30, W17
Mr Peter Daughton	C32, W322
Mr Wayne Lindhardsen & Miss Sparks	C36
Mr Cardenas-storey & Miss Jafar	H1
Mr & Mrs Wakelin	H118
Mr Andrew Richards	H208, W304
Mr Martin & Mrs Rose Haven	H308
Mr & Mrs Morgan	W102
Mr Yap and Miss Teo	W11
Miss Katherine Snell	W110
Mr S Brennan	W123
Mrs Jean West	W15
Mr & Mrs Weller	W16
Ms Sonja Sanghani	W216
Mr Williams & Mrs De Claire	W22
Mr & Mrs Craze	W222
Mr & Mrs Costa	W303
Ms Costa	W324
Mr Chris Williams	W9
Hazel Wayman	W01
Matt Rogers & David Atkins	W209
Emma Cottingham	W12
Helen Fitt	C11
Mrs Patel	W14
Mrs Wayman	W1
Sarah Gregory	W123

APPENDIX 2

Invoice No.	Head of Dispute	Supplier Name	Invoice Date	Amount	Amount in Dispute	Purpose of Invoice	Reason for Dispute	Landlord/Agent Comments	Panel Comments
Not specified	Concierge	GM Plumbing & Heating	Not specified	150.00	£150.00	Remove water heater from conference room and fit in concierge room	Why is this now required?	heater not working in concierge office to heat water, not needed in the meeting room so moved across, cheaper than replacing heater in office	Reasonably incurred and reasonable in amount
Not specified	Concierge	NO RECEIPT	Not specified	2.00	£2.00	DOOR WEDGES	Unreasonable expenditure	cleaner sundries-vital when people are moving in and out	Reasonably incurred and reasonable in amount.Accepted by Applicants.
188	Concierge	Not Specified	Not specified	30.00	£30.00	pc voucher states uniform	Unreasonable expenditure	Uniform	Reasonable
37	Concierge	Not Specified	Not specified	17.46	£17.46	pc voucher states descaler	non itemised receipt	cleaner sundries	Include as part of cleaning costs overall.
44	Concierge	Not Specified	Not specified	9.99	£9.99	pc voucher states first aid	non itemised receipt	cleaner sundries	Reasonable.
46	Concierge	Not Specified	Not specified	32.75	£29.98	fans	Unreasonable expenditure	Office -hot	Reasonable.
78	Concierge	Not Specified	Not specified	10.00	£10.00	pc voucher states shirt sam	Unreasonable expenditure	uniform provided-cheaper than Simon jersey	Reasonably incurred and reasonable in amount.
3156	Flat Works	EVANS ELECTRICAL	11/02/2010	461.78		Remove trace heating from apartments to landlords	DUE TO DEVELOPER FAULTY INSTALLATION BY DEVELOPER	Costs were recharged to the developer's account	unreasonable

TMS/HP/EM CALL/SEW/FLD/03 /04-01/2011/0001	Flat Works	APMS	03/01/2011	1500.00	£1,500.0 0	Emergency call out raw sewerage flood and contaminations: shut off electric heating & power sockets to 3 apartments; investigate water penetration to undercroft; lift and rod all covers to investigate; bail out sewerage; investigate site drainage system and locate blockage; rod out main drains; rod and relieve main sewerage plant. (unable to pump out main sewerage line and empty raw sewerage).	Flooding again	insurance claim	Reasonably incurred and reasonable in amount.See comments on Flat Works.
TMS/HP/2ND SEW/FLD/12/01/2 011/0003 & TMS/HP/SEW/FLD /CLR/11-10/2011/0002	Flat Works	APMS	21/01/2011	2752.80	£2,752.8 0	For works completed to apartments 22,23, 25	works to Flat	insurance claim	Reasonably incurred and reasonable in amount.See comments on Flat Works.
TMS/SULLY/W301 - RF/02/2011/0005	Flat Works	APMS	01/03/2011	2902.80	£2,902.8 0	For roof repais to concrete pillars/abutments: hack off and renew render to centre pillar; fit rain drips/flashing to two pillars; render above 2 coats; repaint to match existing; make repairs to original detailing.	roof repairs as a result of failed roof	this is a service charge item, in relation to building maintenance.	Reasonably incurred and reasonable in amount. See comments on Flat Works.

TMS/SULLY/UNDERCROFTY/SOIL/LK/REP/03/2011/0006	Flat Works	APMS	14/03/2011	216.00	£216.00	Repair leak in undercroft soil pipes: strip out board enclosure; investigate leak; refit soil pipe and seal; refit board enclosure.	Flooding again	maintenance issue	Reasonably Incurred
HP/W-DAM/COMAREAS/305-106-105/10/01/2011/0004	Flat Works	APMS	14/04/2011	2000.00	£2,000.00	For works completed per instructions (?)	Landlord issue with building	maintenance issue	Reasonably incurred and reasonable in amount. See comments on Flat Works.
TMS/SULL/W301/WATERINGRESS2/04/2011/0007	Flat Works	APMS	14/04/2011	3072.00	£3,072.00	Works completed at W301; second water ingress from leading edges of windows/doors: erect scaffold; cut out broken down sealant; cut out water damaged fillets; clean and dry; supply and fit angle bead above door and window; supply and fit fillet. Internally: cut/grind/release steel shot nails; release as above steel joists; strip.cut out existing water damaged timber packing; supply and fit marine ply; refit steel tongues, steel joists and packing; cart away debris.	Landlord issue with building	insurance claim	insurance claim but reasonably incurred and reasonable in amount see comments on flat works.

TMS/HPS, STEELE INTERNALS/04/2011/0008	Flat Works	APMS	13/05/2011	2104.00	£2,104.00	Works completed as per two quotations(?). Total was reduced by £300 due to dispute with Mr & Mrs Steele as not allowed to complete works.	Landlord issue with building	insurance claim	insurance claim but reasonably incurred and reasonable in amount see comments on flat works.
TMS/HP/SCAF/PNT-HS/21/07/2011-00012	Flat Works	APMS	24/07/2011	2481.60	£2,481.60	Supply of scaffold system as set out in estimate dated 24/3/11. Erect system to penthouse.	Landlord issues with building	insurance claim	insurance claim but reasonably incurred and reasonable in amount see comments on flat works.
TMSHP02	Flat Works	Walker & Hutton Electrical Services	26/07/2011	130.00	£130.00	Install replacement mains electric meter at W217 and W121	Landlord issue with Sub Meters	faulty meters, service charge item.	Reasonably incurred and reasonable in amount.
TMS-SCAF/HIRE/PH/2011-00014	Flat Works	APMS	15/11/2011	1240.80	£1,240.80	Extended hire of scaffolding to penthouse roof (original hire exceeded)		this was not due to the origianl hire exceeding, this is the amount for extended hire of the scaffolding to pent house	Reasonably incurred and reasonable in amount. See comments on Flat Works.
36039	Flat Works	Oakland	30/11/2011	203.27	£203.27	Call out to investigate report of unit leaking in Apartment 304 as per service report 57103	Flat works	Oakland called out as suspected air con leak that would have been re-charged, however this was in fact a leak from the roof, penthouse terrace/decking above, so service charge item	Reasonably incurred and reasonable in amount. See comments on Flat Works.

TMS/SCAF/HR/2011-00018	Flat Works	APMS	21/12/2011	1240.80	£1,240.80	Final rental period and removal of scaffold to penthouse.	Penthouse issues	last payment for scaffolding hire and payment for the removal	Reasonably incurred and reasonable in amount. See comments on Flat Works.
TMS-PENT/H/RF/LGHT/2011/00017	Flat Works	APMS	21/12/2011	180.00	£180.00	Call out to site; clean down and service roof light; two men on site H&E; three hours inc travel.	Penthouse issues	service to roof skylight, service charge item	Reasonably incurred and reasonable in amount. See comments on Flat Works.
TMS/HPS/C06/FLD/INSPCT/2012-00020	Flat Works	APMS	01/04/2012	138.00	£138.00	Investigate source of water leak: lift raised floor in heater cupboard; check drains.		service charge maintenance item	Reasonably incurred and reasonable in amount. See comments on Flat Works.
##############	Flat Works	Carpet Right	01/04/2012	1019.60	£1,019.60	Baltimore mocha; quckstep French oak; laminate underlay; purpose gripper; quickstep Scotia; Quckstep Incizo; Min laminate fitting charge; carpet fitting charge; balterio delivery charge; marjesty tacrmajesty 1.37m		insurance claim	insurance
538	Flat Works	Radecarl	03/04/2012	90.00	£90.00	Investigate lumps udnerr turf on balcony areas and report back with findings	Penthouse issues	service charge item	Reasonably incurred and reasonable in amount. See comments on Flat Works.

TMS/HPS/UNDERC-FLD/SOL/COURTLANDS/00021	Flat Works	APMS	09/04/2012	780.00	£780.00	Sewerage flood to apartments C06, C19, C20, C21: investigate, cut into soil pipe, rod and jet throuogh to clear; supply and fit inspection point; clear and cover sewerage waste until full clean up arranged.	Flat works	insurance claim	insurance
	Flat Works	Paul Murphy Carpentry Services	11/04/2012	286.00	£286.00	2 emergency call-outs; make area watertight, tidy and clean; remove old flooring and make good.	Flat works	insurance claim	insurance
154273	Flat Works	Paul Murphy Carpentry Services	16/04/2012	286.00	£286.00	C19: call out to take up complete flooring in hallway to above apartment; using a water vacuum, suck up remaining water; take off existing bath mirror panel and set aside, take of frame work to bath for access. Renew and repair bath waste and solvent weld pipework as required. Clean all wate damaged areas under existing bath.	Flat works	insurance claim	insurance
560	Flat Works	Radecarl	18/06/2012	90.00	£90.00	Investigate and repair leaks to Flats W220 and W224. Supply written rpeot to Mike.	Flat works	service charge item	Reasonably Incurred
570	Flat Works	Radecarl	05/07/2012	90.00	£90.00	Investigate and repair leak in Headlands 17.		service charge item	Reasonably Incurred

HP/SULLY/C21/REPS/2012-000A2	Flat Works	APMS	02/08/2012	2652.00	£2,652.00	For work completed as per estimate dated 19/4/12; flood damage repair to C21.	Flat works	insurance claim	insurance
HP/SULLY/C06/REPS/2012-000A1	Flat Works	APMS	06/08/2012	2325.60	£2,325.60	For works competed to apartment C06 as per quote dated 19/4/12; flood damage repairs	Flat works	insurance claim	insurance
R4878	Flat Works	Roof Bond	29/08/2012	4873.04	£4,873.04	For works as per application for payment No. 1 dated 29/8/12	Flat works	service charge item	Reasonably Incurred
591	Flat Works	Radecarl	30/08/2012	252.00	£252.00	Fill crack in window sill and wall in 203; fill crack in corridor outside 101; move cupboard in office to different wall and fill up holes. Investigate leak in 218 and report back.	Flat works	service charge item	Reasonably Incurred
33108	Flat Works	Inspirational Lighting & Electrical	19/11/2012	240.24	£240.24	360 degree ceiling PIR; 13 amp single socket	Flat works	communal area, maintenance issue	Reasonably Incurred
33151	Flat Works	Inspirational Lighting & Electrical	21/11/2012	92.43	£92.43	100 metrs 1.0 6243Y; box metal plasterboard drivas	Flat works	communal area, maintenance issue	Reasonably Incurred
658	Flat Works	Radecarl	26/11/2012	387.60	£387.60	Investigate/repair/replace seal on roof sky light at C06.	Flat works	service charge item	Reasonably Incurred
664	Flat Works	Radecarl	30/11/2012	132.00	£132.00	Call out to secure and board up double doors to the undercroft basement.	Flat works	communal area, maintenance issue	Reasonably Incurred
674	Flat Works	Radecarl	21/12/2012	6072.00	£6,072.00	50% payment for taking up decking boards and supply of new boards and accessories for H305. Total order value £10,120; waiting for roof bond to complete roof	Flat works	service charge item	Reasonably Incurred

						works.			
	Flat Works	tms land registry admin fees	18/05/2010	16.00	16.00	tms charged us FOR C106	Not a service charge item	Service charge item, we need to obtain copies of leases from time to time	Reasonably Incurred
	Flat Works	treforest glass	18/07/2011	156.00	156.00	repairs to door and patio	Flat works	service charge item	Reasonably Incurred
	Flat Works	eforest glass	20/07/2011	571.20	571.20	supply/fit glaze to aluminium frames	Flat works	service charge item	Reasonably Incurred
radecarl	Flat Works		21/12/2011	6072.00	6072.00	50% payment for taking up decking boards	Flat works	duplicate entry	unreasonable
	Flat Works	radecarl	21/12/2011	6072.00	6072.00	50% payment for taking up decking boards	Flat works	service charge item	Reasonably Incurred
Not specified	Flat Works	GM Plumbing & Heating	Not specified	280.00	£280.00	Supply and fit Santon electric water heater and repair to leaking pipe in water tank room	Why is a electric water heater now required in this room?	supply and fit water heater in meeting room as this was taken for the concierge office	Applicants accepted
Not specified	Flat Works	TMS Group	Not specified	1019.60	£1,019.60	Reimbursement top Courtlands 20 for damages as a result of water damage from overflowing on site drains	Flat works	insurance claim	insurance
	Flat Works	Twyn Construction	23/01/2012	2000.00	£2,000.00	Invoice for excess for above claim & cost of above works as per quotation.	Flat works	insurance claim	insurance

	Flat Works	Caerphilly Skip Hire	31/01/2012	210.00	£210.00	Deliver to Mr Rowfwell on 23/01/12 08 Cu Yd	Penthouse issues	service charge item, skip for removal of items	Reasonably incurred and reasonable in amount. See comments on Flat Works.
	Flat Works	Rentokill	17/02/2012	4312.30	£4,312.30	35 mm screened overflow and warning overflow pipe and all associated fittings. Tank fitted with separate raised inlet valve chamber. Inlet float valve	Flooding again	water leak to water tank room, insurance claim	insurance
	Flat Works	Ceaton Security Services Ltd.	20/02/2012	213.08	£213.08	4.5 hours engineer. Work on engineers sheet 25799 and 25800	Flooding again	service charge item	Reasonably Incurred
	Flat Works	Oakland	24/02/2012	1178.30	£1,178.30	To attend site to supply and fit replacement pressurisation unit pump as per quotation 21676.	Flooding again	not flooding, mainteannce item	Reasonably Incurred
	Flat Works	Roof Bond	24/02/2012	1272.00	£1,272.00	2 men @ 1 day to leak test	Flooding again	service charge item	Reasonably Incurred
147092	Gardening	Frank Sutton	04/03/2010	616.88	£616.88	John Deere lawn mower	EXCESSIVE	Gardeners equipment-essential	Reasonably Incurred
147086	Gardening	Frank Sutton	04/03/2010	3419.26	£3,419.00	John Deere mower, Universal trailer	EXCESSIVE	Gardeners equipment	Reasonably Incurred
Not specified	Gardening	STYLE GARDENS	03/06/2010	13.47	£13.47	CREDIT CARD RECEIPT	NON ITEMIZED RECEIPT	Gardeners equipement	unreasonable
171820	Gardening	Frank Sutton	06/03/2012	1424.52	£1,424.52	New John Deere Walk behind mower; new John Deere lawn mower		Gardeners equipement	Reasonably Incurred
Not specified	Gardening	Dandys Garden Centre	Not specified	79.95	£79.95	Unspecified items bought with personal credit card	Unreasonable expenditure	Gardeners equipement	Reasonably Incurred

Not specified	Gardening	Jewsons	Not specified	172.67		Gravel paid with personal credit card. Includes refund of £61.15 (£233.82-£61.15)	Unreasonable expenditure	For Jean Wests drainage trough Gardeners equipment	Reasonably Incurred
17	Gardening	Not Specified	Not specified	8.46	£8.46	compost bags according to pc voucher	Unreasonable expenditure	Gardeners equipement	Reasonably Incurred
47	Gardening	Not Specified	Not specified	36.00	£36.00	pc voucher states fuel	non itemised receipt	Fuel needed for tractor	Reasonably Incurred
50	Gardening	Not Specified	Not specified	8.89	£8.89	pc voucher states ground supplies	non itemised receipt	Gardeners equipement	Reasonably Incurred
51	Gardening	Not Specified	Not specified	51.61	£51.61	pc voucher states ground supplies	non itemised receipt	Gardeners equipement	Reasonably Incurred
53	Gardening	Not Specified	Not specified	19.00	£19.00	pc voucher states ant wasp spray ets	non itemised-credit card	Gardeners equipement	Reasonably Incurred
2064	Miscellaneous	Electrical Contractors & Engineers	08/03/2011	655.00	£655.00	Supply electrical material and labour for testing of cable to meter in C7s cable defective. Provide labour and materials to remove meter from cupboard. Provide main service connection block to replace meter and relocate in TMS main MCCB panel room to facilitate new cable new meter position and run to channel 19 nr 23 and block 6-7 tested and left safe	Landlord issue with building	Service Charge Item	Reasonably incurred and reasonable in amount. See comments on Flat Works and on meters in main decision.
TMS/HPS/GYM-REPS/04-2011/0009	Miscellaneous	APMS	14/05/2011	210.00	£210.00	Repair work in communal gym: replaster damaged area of walls; apply 2 coats emulsion.	Landlord issue with building	communal area, service charge item	Reasonably incurred and reasonable in amount. See comments on Flat Works.

16845	Miscellaneous	TMS Group	15/07/2011	588.00	£588.00	Obtaining key fobs from ADI Gardner Ltd for Hayes Point using TMS Office Credit Card	Not seeing credits in accounts for replacement fobs being given out.	Concierge collect £10 deposit from each resident for fobs, non returnable if fob not returned	Reasonably incurred and reasonable in amount.
	Miscellaneous	D J LEWIS	27/08/2011	187.00	187	ELECTRC REPAIRS	DUE TO DEVELOPER INSTALLATION FAULTS	Service Charge Item	Reasonably incurred and reasonable in amount. See comments on Flat Works.
TMS/HP/BRIEZE SOLIO/STRIP/INSP /2011-00015	Miscellaneous	APMS	15/10/2011	480.00	£480.00	To strip down, inspect and report on Brieze Solios as agreed.		Service Charge Item	Reasonably incurred and reasonable in amount.
	Miscellaneous	365 building	08/02/2012	912.00	£912.00	ELECTRIC WORKS		Service Charge Item	Reasonably incurred and reasonable in amount.
HPS/SOIL-UNDER-C-C09/2021-00019	Miscellaneous	APMS	27/03/2012	270.00	£270.00	To cut through soil pipe below C09: clear solid blockage/ supply and fit inspection point.		Service Charge Item	Reasonably incurred and reasonable in amount.
5313	Miscellaneous	SHM Communications	30/04/2012	4359.10	£4,359.10	Elster MID; System installation per day; System commissioning per day; mileage costs; site expenses; accommodation		number of electric meters not working, SHM only contractor to resolve.	Reasonably incurred and reasonable in amount. See comments on Flat Works and on meters in main decision.
81	Miscellaneous	Not Specified	01/05/2012	57.60	£57.60	pc voucher states various items	receipt a year old items not visable	Service Charge Item	Unreasonable - not clear to what this relates.Disallowed.
37678	Miscellaneous	Oakland	15/06/2012	598.80		Maintenance Contract 26535 renewal for 6 months 1/6/12 - 30/11/12		Service Charge Item	Reasonably incurred and reasonable in amount.

37685	Miscellaneous	Oakland	15/06/2012	216.00		Maintenance Contract 26755 renewal for 12 months 1/6/12 - 31/5//13		Service Charge Item	Reasonably incurred and reasonable in amount.
5503	Miscellaneous	SHM Communications	20/08/2012	363.60	£363.60	Elster MID; System installation per day; System commissioning per day; mileage costs; site expenses; accommodation		Service Charge Item	Reasonably incurred and reasonable in amount. See comments on Flat Works and on meters in main decision.
34389	Miscellaneous	South West Supplies	29/10/2012	189.51		Cam Action door closer; G-N angle bracket; Midrail letterplate		Service Charge Item	Reasonably incurred and reasonable in amount.
12.925	Miscellaneous	Ian Gibson Insurance Brokers	19/11/2012	5079.09		Inspection contract for statutory plant within the premises in accordance with attached schedule and summary. (?)	Excessive	Service Charge Item	Reasonably Incurred.
	Miscellaneous	tms	10/12/2010	11.75	11.75	admin charges re land registry	Not a service charge item	to obtain copy of lease, service charge item	Reasonably Incurred
	Miscellaneous	365 building	11/11/2011	396.00	396.00	removal waste/main ?		This invoice covered removeall of old bikes, shelves erected in cleaning room and remove of damaged tiles and plasterboard in gents shower room, all communal maintenance issues	Reasonably Incurred
	Miscellaneous	overpump gallons of water	13/01/2011	480.00	480.00	?	Ins claim ?	APMS - pumping of water, from flood	Reasonably Incurred
365	Miscellaneous		13/07/2012	924.00	924.00	Just to refix a drain outside block 4	ExcESSIVE	Service Charge Item	Reasonably Incurred

365	Miscellaneous		19/03/2012	585.60	585.60	No invoice	Poor accounting no evidence spent at Hayes Point or on which item	unable to comment as I don't have the informaiton	unreasonable
speedy assist	Miscellaneous		27/01/2012	150.79	150.79	don't know purpose debit card 100.00x2 less 59.21 plus 10.00 admin fee		unable to comment as I don't have the informaiton	unreasonable
185	Miscellaneous	jones dairies	Not specified	22.24	£22.24	receipt not visable	Unreasonable expenditure	unable to comment as I don't have the informaiton	unreasonable
Not specified	Miscellaneous	NO SUPPLIER NAME	Not specified	10.99	£10.99	???????????	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
Not specified	Miscellaneous	Not Specified	Not specified	13.00	£13.00	Not Specified	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
16	Miscellaneous	Not Specified	Not specified	41.40	£41.40	items on receipt covered	also query iphones flp 6.00 which is visable	refers to stationery item incorrectly coded	unreasonable
62	Miscellaneous	Not Specified	Not specified	40.43	£40.43	Not Specified	pc voucher states fuel 2 receipts. Receipt for21.01 missing. Receipt for 19.42 states duplicate receipt no supplier no date	fuel for tractor	Reasonably Incurred
21	Miscellaneous	sainsbury	Not specified	7.34	£7.34	no narrative	credit card receipt only	Staff Sundries	unreasonable
Not specified	Miscellaneous	Speedy Asset Services Limited	Not specified	83.05	£83.05	Delivery, collection and hire of adaptors, shield and bulding dryer	Unreasonable expenditure	service charge item	Reasonably Incurred
	Miscellaneous	Gas Safe	06/01/2012	260.00		Supply and fit new guttering; fit new water heater		Service Charge Item	Reasonably Incurred

Not specified	Petty Cash	WILKINSON	17/01/2010	19.94	£19.94	2 HEATERS	Not service charge item	In case residents heating mal functions- emergency fan heaters	Reasonably incurred and reasonable in amount.
Not specified	Petty Cash	FOCUS	05/02/2010	18.80	£18.80	NUTS AND BOLTS	PETTY CASH SHEET SAYS BOUGHT FOR GAILLIARDS - Not service charge item	for maintenance issues on site.	unreasonable
Not specified	Petty Cash	TESCO	05/02/2010	18.97	£18.97	HIFI- RADIO	Not service charge item	Office	unreasonable
Not specified	Petty Cash	TESCO	06/02/2010	29.97	£29.97	STEREO RADIO FOR OFFICE	Not Service charge item- BOUGHT HIFI DAY BEFORE	Asked for by residents for meeting room	unreasonable
Not specified	Petty Cash	NO SUPPLIER NAME	10/02/2010	12.99	£12.99	????	NON ITEMIZED RECEIPT - unable to judge if service charge item	unable to comment as I don't have the informaiton	unreasonable
Not specified	Petty Cash	ASDA	17/02/2010	19.35	£1.80	HOT CROSS BUNS	Not service charge item	meeting room meeting	unreasonable
Not specified	Petty Cash	NO SUPPLIER NAME	21/02/2010	12.48	£12.48	????	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
Not specified	Petty Cash	TINTERN ABBEY	23/02/2010	12.99	£12.99	CAFÉ EXPENDITURE	Not service charge item	wrong coding, this is for gardeners gloves	unreasonable
Not specified	Petty Cash	ASDA	04/03/2010	5.71	£2.65	MAY FAIR	CIGARETTES-Not service charge item	This is not cigarettes, I'm sure you can't get them for £2.45 anymore. This is stationary for office	Reasonably Incurred
Not specified	Petty Cash	ASDA	14/03/2010	32.04	£6.00	BISCUITS AND SWEETS	Not service charge item	meeting room	Reasonably Incurred
Not specified	Petty Cash	merlins	20/03/2010	6.53	£6.53	NON DESCRIPTION	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable

Not specified	Petty Cash	C BROWN	01/04/2010	60.00	£60.00	CASH GIVEN TO TENANT - For Vacuum Cleaner	Not service charge item	For office and meeting room-signature obtained	Reasonably Incurred
Not specified	Petty Cash	NO SUPPLIER NAME	02/04/2010	23.99	£23.99	SHOP SUNDRIES	Not service charge item	cleaning sundries	Reasonably Incurred
Not specified	Petty Cash	NO SUPPLIER NAME	24/04/2010	5.98	£5.98	LEATHER GOODS	Not service charge item	cleaning sundries	Reasonably Incurred
Not specified	Petty Cash	ASDA	25/04/2010	18.85	£3.55	BISCUITS	Not service charge item	meeting room	Reasonably Incurred
	Petty Cash	TMS	01/05/2010	1109.20	1109.2	ADMINISTRATION FEES FOR ELECTRIC	EXCESSIVE	This is an additional service, collerating the information and raising all invoices and postage	not a petty cash item - refer to Electricity admin charges
Not specified	Petty Cash	Not Specified	07/07/2010	10.00	£10.00	KETTLE	ANOTHER KETTLE NO RECEIPT TAKEN FROM PC SHEET	staff sundries	unreasonable
Not specified	Petty Cash	Not Specified	10/07/2010	9.86	£9.86	Not Specified	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
Not specified	Petty Cash	WILKINSON	27/07/2010	7.75	£1.99	SANDWICH TRAY	NOT NECESSARY	Staff Sundries	Unreasonable
Not specified	Petty Cash	Not Specified	31/07/2010	3.38	£3.38	TEA	Not service charge item	Staff Sundries	Reasonable
Not specified	Petty Cash	Not Specified	22/08/2010	10.49	£10.49	Not Specified	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
Not specified	Petty Cash	Not Specified	31/08/2010	12.38	£12.38	SMALL FORKS	Not service charge item	Staff Sundries	unreasonable
Not specified	Petty Cash	Not Specified	09/09/2010	6.97	£6.97	Not Specified	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
Not specified	Petty Cash	Not Specified	09/09/2010	19.96	£19.96	RECEIPT NOT READABLE	????	unable to comment as I don't have the informaiton	unreasonable

Not specified	Petty Cash	WILKINSON	11/09/2010	19.57	£3.50	MORE SANDWICH TRAYS	Not service charge item	Staff Sundries	unreasonable
Not specified	Petty Cash	ASDA	12/09/2010	13.41	£0.84	MORE BISCUITS	Not service charge item	meeting room	Reasonably Incurred
Not specified	Petty Cash	Not Specified	19/09/2010	12.17	£12.17	Not Specified	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
Not specified	Petty Cash	Not Specified	16/10/2010	1.49	£1.49	Not Specified	NON ITEMIZED RECEIPT	unable to comment as I don't have the informaiton	unreasonable
Not specified	Petty Cash	TESCO	18/10/2010	24.24	£4.78	MORE CAKES	Not service charge item	meeting room	Reasonably Incurred
Not specified	Petty Cash	ASDA	26/12/2010	35.91	£1.00	CAR MAT these are rubber oblong mats receipted as car mats	Not service charge item	Used in gym to stop equipment moving	Reasonably Incurred
Not specified	Petty Cash	TESCO	28/12/2010	12.81	£4.94	CAR MATS ditto	Not service charge item	Ditto	Reasonably Incurred
80	Petty Cash	Not Specified	01/05/2012	8.06	£8.06	pc voucher states stationery	part of receipt visable says shoecare rest of receipt not visable- 2012 receipt. A year old	office sundries	Reasonably Incurred
	Petty Cash	cardiff advertiser	02/04/2010	38.78	38.78			advertising for job vacancy	Reasonably Incurred
	Petty Cash	gift vouchers	22/12/2011	720.00	720.00	xmas box staff	Not service charge item	staff sundries	Unreasonable - disallowed.
amazon	Petty Cash		03/12/2012	191.60	191.60	natural oak duckboard	Flat works	paint for communal areas	Reasonably Incurred
192	Petty Cash	lifestyle	Not specified	8.04	£8.04	kettle	Unreasonable expenditure	office sundries	unreasonable
54	Petty Cash	Not Specified	Not specified	9.84	£9.87	coffee sugar milk	non itemised receipt	staff sundries	Reasonable
67	Petty Cash	Not Specified	Not specified	13.00	£13.00	pc voucher says ataionary	credit card receipt non	stationary	unreasonable

							itemised		
186	Petty Cash	sainsbury	Not specified	12.71	£6.39	biscuits	Not service charge item	meeting room	Reasonably Incurred
Not specified	Petty Cash	TESCO	Not specified	5.43	£5.43	SWEETS AND BISCUITS	Not a service charge item	meeting room	Reasonably Incurred
Not specified	Petty Cash	WILKINSON	Not specified	18.28	£0.97	NAIL POLISH	Not a service charge item	to cover screw heads to prevent rusting	Reasonably Incurred
Not specified	Petty Cash	WILKINSON	Not specified	18.28	£1.20	CAT BOWL	Not a service charge item	This was infact a measuring jug to measure chemicals for swimming pool	Reasonably Incurred
	Petty Cash	ASDA	07/01/2012	4.78	£4.78	KETTLE	ANOTHER KETTLE	office equipment, incorrect coding in shop	unreasonable
7	Petty Cash	Poundstretcher Ltd	07/03/2011	15.97	4.99	Misc S/D?	What is this?	Stationary Item for office	unreasonable
39	Petty Cash	Misc	02/05/2011	1.99	1.99	Garden Supplies - Hoseconnector	No Receipt	Gardeners equipement	unreasonable
31	Petty Cash	B&M	07/05/2011	3.78	1.49	Face Wash	Legitimate Expense?	Receipt wrong code.hand gel	Reasonably Incurred
52	Petty Cash	Misc - Can't Read Receipt	14/05/2011	8.91	8.91	Misc - Not Itemised	Not service charge item	purchase of mildrew spray, air freshner, bleach and descaler, service charge item.	Reasonably Incurred
68	Petty Cash	WILKINSON	21/05/2011	5.02	.98	Moisturiser	Not service charge item	Gardeners soap	unreasonable
68	Petty Cash	WILKINSON	21/05/2011	5.02	.59	Hand Lotion	Not service charge item	Gardeners	unreasonable
62	Petty Cash	Misc - Can't Read Receipt	25/05/2011	38.00	38.00	Work Boots - SL	Not service charge item	Gardeners equipement	Reasonably Incurred
70	Petty Cash	Misc - Can't Read Receipt	29/05/2011	12.92	.59	Moisturiser	Not service charge item	Gardeners soap	unreasonable
22	Petty Cash	Asda	31/05/2011	126.45	13.99	Printer Cartridges	Why so many?	for photocopier, printer & dyno tape	Reasonably Incurred

22	Petty Cash	Asda	31/05/2011	126.45	19.99	Printer Cartridges	Why so many?	for photocopier, printer & dyno tape	Reasonably Incurred
22	Petty Cash	Asda	31/05/2011	126.45	12.99	Printer Cartridges	Why so many?	for photocopier, printer & dyno tape	Reasonably Incurred
22	Petty Cash	Asda	31/05/2011	126.45	67.49	Printer Cartridges	Why So Expensive?	for photocopier, printer & dyno tape	Reasonably Incurred
22	Petty Cash	Asda	31/05/2011	126.45	11.99	Printer Cartridges	Why so many?	for photocopier, printer & dyno tape	Reasonably Incurred
100	Petty Cash	Argos	01/06/2011	37.98	37.98	Printer Cartridges	Legitimate Expense? - Why So Expensive	for photocopier, printer & dyno tape	Reasonably Incurred
121	Petty Cash	Misc - No Receipt	04/06/2011	0.49	.49	Sugar	No Receipt	Staff Sundries	Reasonably incurred.
90	Petty Cash	Misc - No Receipt	11/06/2011	16.95	16.95	Plants - Grounds	No Receipt	Gardeners equipement	Reasonably Incurred
93	Petty Cash	Misc - No Receipt	11/06/2011	8.48	8.48	Plants - Grounds	No Receipt	Gardeners equipement	Reasonably Incurred
110	Petty Cash	Argos	22/06/2011	37.98	37.98	Printer Cartridges	Why so expensive?	for photocopier, printer & dyno tape	Reasonably Incurred
114	Petty Cash	Tesco	30/06/2011	4.73	1.75	Misc - no receipt	No Receipt	unable to find any reference to this item, no receipt for tesco	unreasonable
153	Petty Cash	Marks and Spencer	01/07/2011	2.76	1.98	Biscuits	Legitimate Expense?	used for meeting room, residents only.	Reasonably Incurred
153	Petty Cash	Marks and Spencer	01/07/2011	2.76	.78	Water	Legitimate Expense?	water had to be purchased as the hygiene test showed a bad reading so staff unable to use the water supply	Reasonably Incurred
174b	Petty Cash	Misc - No Receipt	01/07/2011	9.87	9.87	Stationery	No Receipt	Stationary used in concierge office	unreasonable
118	Petty Cash	Asda	03/07/2011	13.71	.50	Milk	Discount of .50p charged	Staff Sundries	Reasonably incurred

117	Petty Cash	LIDL	04/07/2011	7.04	4.99	Extension Lead	Why so many?	cleaner sundries	Reasonably Incurred
154	Petty Cash	Morrisons	05/07/2011	7.33	1.99	Galliard Sales - Shortcake Bites	Not service charge item	meeting room sundries for meetings	unreasonable
154	Petty Cash	Morrisons	05/07/2011	7.33	4.00	Galliard Sales - Flowers - Sales Week	Not service charge item	flowers for meeting room	unreasonable
154	Petty Cash	Morrisons	05/07/2011	7.33	1.34	Galliard Sales - Sugar for Sales Week	Not service charge item	meeting room sundries for drinks	unreasonable
156	Petty Cash	Asda	06/07/2011	6.32	3	Postage	Charged £9.32 inc £5 change	Stamps & Napkins, charged £6.32 as clearly stated on receipt, £11.32 used to pay and £5 change given	Reasonably Incurred
155	Petty Cash	Hayes Expenses	07/07/2011	12.20	30.50	Travel - Diane to Collect Key Fobs	Why Not Posted?	Too expensive to post	Reasonably Incurred
157	Petty Cash	One Stop	08/07/2011	7.45	.18	Milk	Discount of .18p charged	discount as two bottle is milk purchased, all staff sundries	Reasonably Incurred
145	Petty Cash	Morrisons	09/07/2011	7.50	3.50	Biscuits	Not service charge item	for meeting room sundries	Reasonably Incurred
137	Petty Cash	Asda	11/07/2011	12.00	12.00	Shirt for Sam	Legitimate Expense?	Staff Uniform, cleaner - polo shirt-summer	Reasonably Incurred
143	Petty Cash	Misc - No Receipt	11/07/2011	9.00	9.00	Misc - no receipt	No Receipt	No receipt to query amount	Unreasonable
136	Petty Cash	WILKINSON	16/07/2011	16.94	5.38	Flea Drops	Not service charge item	Ant killer, grounds sundries	Reasonably Incurred
150	Petty Cash	Tesco	18/07/2011	134.80	21.97	Printer Cartridges	Why so many?	for photocopier, printer & dyno tape	Unreasonable
150	Petty Cash	Tesco	18/07/2011	134.80	40.97	Printer Cartridges	Why so expensive	for photocopier, printer & dyno tape	Unreasonable
152	Petty Cash	Tesco	18/07/2011	13.83	.85	Galliard Sales - Biscuits	Legitimate Expense?	for meeting room sundries	Unreasonable

152	Petty Cash	Tesco	18/07/2011	13.83	4.98	Galliard Sales - Biscuits	Not service charge item	for meeting room sundries	Unreasonable
150	Petty Cash	Tesco	18/07/2011	134.80	40.97	Printer Cartridges	Not service charge item	for photocopier, printer & dyno tape	Unreasonable
150	Petty Cash	Tesco	18/07/2011	134.80	15.97	Printer Cartridges	Why so many?	for photocopier, printer & dyno tape	Unreasonable
123	Petty Cash	Misc - No Receipt	23/07/2011	3.50	3.50	Cleaning Supplies - Misc	No Receipt	cleaning sundries	Reasonably Incurred
110	Petty Cash	Misc - No Receipt	23/07/2011	3.50	3.50	Cleaning Supplies - Misc	No Receipt	cleaning sundries	Reasonably Incurred
167	Petty Cash	B&M	30/07/2011	4.49	.98	Disinfectant	Discount of .48p + change of .50p charged	discount applied due to 2 bottles being purchased at a cost of £1.50	Reasonably Incurred
167	Petty Cash	B&M	30/07/2011	4.49	2.99	Shampoo	Not service charge item	Carpet shampoo	Reasonably Incurred
13	Petty Cash	Morrisons	04/08/2011	4.98	4.98	Flea Drops	Not service charge item	Ant killer/wasp killer	Reasonably Incurred
175	Petty Cash	Misc - Can't Read Receipt	06/08/2011	22.00	22.00	Misc - can't read receipt	Can't Read Receipt	actually only receipt on this date is for £22.68 from Aldi for cleaning and office sundries	Reasonably Incurred
178	Petty Cash	Asda	07/08/2011	9.83	9.83	Misc - Protector	Legitimate Expense? - what is it?	Gardeners equipement - Eye Goggles	Reasonably Incurred
178	Petty Cash	Asda	07/08/2011	9.83	1.88	Misc - Shades	Legitimate Expense? - what is it?	Gardeners equipement - Sunglasses	Reasonably Incurred
41	Petty Cash	B&Q	21/08/2011	3.27	3.27	Misc - Number for BL12	Where are these?	Adhesive numbers for block	Reasonably Incurred
7	Petty Cash	Asda	28/08/2011	15.61	1.16	Whitener	Discount of £1.16 charged	cleaning sundries	Reasonably Incurred
4	Petty Cash	Asda	01/09/2011	19.98	19.98	Tennis Racquets	No Receipt	For tennis court, residents use	Reasonably Incurred

76	Petty Cash	Karcher	01/09/2011	192.00	192	Misc - Repair to Jet Wash	What % of New Price?	to fix gardeners equipment	Reasonably Incurred
18	Petty Cash	Spar	06/09/2011	4.18	3.00	Milk	Not service charge item	Staff Sundries	Reasonably Incurred
18	Petty Cash	Spar	06/09/2011	4.18	1.18	Sugar	Not service charge item	Staff Sundries	Reasonably Incurred
15	Petty Cash	Misc - No Receipt	07/09/2011	1.49	1.49	Milk	Not service charge item	Staff Sundries	Reasonably Incurred
90	Petty Cash	Asda	11/09/2011	27.31	18.99	Phone	Where is this?	Phone in office for emergency calls	Reasonably Incurred
47	Petty Cash	Stokes	17/09/2011	3.98	3.98	Plants - Grounds Raspberry	Where is this?	gardeners sundries	Reasonably Incurred
69	Petty Cash	CM3	24/09/2011	3.57	2.86	Plasters/Dressing Strips	Change of £6.43 charged	Staff Sundries	Reasonably Incurred
68	Petty Cash	Misc - Can't Read Receipt	24/09/2011	3.98	.99	Plants - Grounds	£4.97 charged	Plants for Grounds	Reasonably Incurred
112	Petty Cash	British Red Cross	01/10/2011	18.99	18.99	Radio\charger	Legitimate Expense?	gardeners sundries-yes broken charger	Reasonably Incurred
86	Petty Cash	Halfords	05/10/2011	99.99	99.99	Spanner Set	Can we see?	of course, currently in shed, photo available	Reasonably Incurred
118	Petty Cash	Asda	23/10/2011	45.70	1.00	Paper	Charged £1 more	office sundries	Reasonably Incurred
118	Petty Cash	Asda	23/10/2011	45.70	20.47	Printer Cartridges	Too Many?	Cartridges on special offer so purchased as additonal stock for stationary cupboard	Reasonably Incurred
150	Petty Cash	Asda	30/10/2011	61.74	20.47	Printer Cartridges	Too many?	Cartridges on special offer so purchased as additonal stock for stationary cupboard	Reasonably Incurred
150	Petty Cash	Asda	30/10/2011	61.74	18.47	Printer Cartridges	Too many?	Cartridges on special offer so purchased as additonal stock for stationary cupboard	Reasonably Incurred

133	Petty Cash	Jewsons	01/11/2011	48.60	48.60	Extension Lead	Too many?	needed for cleaning stairs	Reasonably Incurred
188	Petty Cash	B&M	03/11/2011	31.02	3.99	Extension Lead	Why so many?	office sundries	Reasonably Incurred
188	Petty Cash	B&M	03/11/2011	31.02	16.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
188	Petty Cash	B&M	03/11/2011	31.02	9.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
175	Petty Cash	Misc - No Receipt	05/11/2011	3.95	3.95	Garden Eq - Gloves	No Receipt	gardeners sundries	Reasonably Incurred
139	Petty Cash	Asda	06/11/2011	71.28	20.37	Printer Cartridges	Excessive	for photocopier, printer & dyno tape	Unreasonable
139	Petty Cash	Asda	06/11/2011	71.28	18.47	Printer Cartridges	Excessive	for photocopier, printer & dyno tape	Unreasonable
178	Petty Cash	B&M	06/11/2011	27.98	12.99	Kettle	Excessive	office sundries	Unreasonable
178	Petty Cash	B&M	06/11/2011	27.98	14.99	Extension Lead	Too many?	gardener sundries	Reasonably Incurred
145	Petty Cash	B&M	07/11/2011	24.99	24.99	Kettle	Legitimate expense?	Faulty returned-credit	Unreasonable
	Petty Cash	Novatech	11/11/2011	79.98	79.98	Computer Monitor	Legitimate Expense?	computer in concierge office	Reasonably Incurred
148	Petty Cash	Novatech	11/11/2011	31.98	14.98	Cable	Who is Mr Bail?	For office PC	Reasonably Incurred
148	Petty Cash	Novatech	11/11/2011	31.98	17.00	Computer Wireless Adapter	Why wireless - who is Mr Bail?	For back office lap top	Reasonably Incurred
156	Petty Cash	Tesco	14/11/2011	8.00	8.00	Extension Lead	Excessive	cleaner sundries	Reasonably Incurred
126	Petty Cash	LIDL	16/11/2011	10.94	.99	Juice	Not service charge item	Staff Sundries	Unreasonable
126	Petty Cash	LIDL	16/11/2011	10.94	4.43	Biscuits	Not service charge item	meeting room sundries	Reasonably Incurred
169	Petty Cash	Aldi	25/11/2011	12.99	12.99	Christmas Decorations - Tree	Not service charge item	Site decorations	Unreasonable
164	Petty Cash	B&M	26/11/2011	2.99	2.99	Extension Lead	Too many?	cleaner sundries	Unreasonable
164	Petty Cash	B&M	26/11/2011	2.99	2.99	Extension Lead	Too many?	cleaner sundries	Unreasonable

182	Petty Cash	Sports Direct	27/11/2011	60.05	20.00	Work Boots - GL/JE	2 or 3?	2xgardener sundries	Reasonably Incurred
179	Petty Cash	Tesco	28/11/2011	5.48	5.48	Comp Lap Top Case?	Legitimate Expense?	needed to protect lap top	Unreasonable
162	Petty Cash	Misc - Can't Read Receipt	29/11/2011	10.97	5.00	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
162	Petty Cash	Misc - Can't Read Receipt	29/11/2011	10.97	1.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
162	Petty Cash	Misc - Can't Read Receipt	29/11/2011	10.97	1.98	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
162	Petty Cash	Misc - Can't Read Receipt	29/11/2011	10.97	2.00	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
193	Petty Cash	B&M	01/12/2011	7.99	7.99	Christmas Decorations - Lava Lamp	Not service charge item	Site decorations	Unreasonable
202	Petty Cash	Taxi	02/12/2011	23.70	11.70	TAXI FOR SAM	Not service charge item	No public transport at 6.30am so taxi supplied for sam to cover Mike's early morning shift	Unreasonable
202	Petty Cash	Taxi	02/12/2011	23.70	12.00	TAXI FOR SAM	Not service charge item	No public transport at 6.30am so taxi supplied for sam to cover Mike's early morning shift	Unreasonable
186	Petty Cash	Asda	04/12/2011	63.26	5.00	Extension Lead	Too many?	concierge sundries	Unreasonable
186	Petty Cash	Asda	04/12/2011	63.26	18.97	Printer Cartridges	Too many?	computer in concierge office	Unreasonable
184	Petty Cash	LIDL	05/12/2011	119.98	119.27	Chairs	How many chairs? (2) - only claimed £119.27	4 foldable for staff room	Unreasonable
195	Petty Cash	Planet Christmas	09/12/2011	9.99	9.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
197	Petty Cash	B&M	10/12/2011	12.98	9.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
200	Petty Cash	Misc - Can't Read Receipt	10/12/2011	6.99	6.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable

199	Petty Cash	Tenovus	10/12/2011	5.24	5.24	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
204	Petty Cash	B&M	12/12/2011	25.74	8.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
204	Petty Cash	B&M	12/12/2011	25.74	7.99	Christmas Decorations	Not service charge item	Site decorations	Unreasonable
205	Petty Cash	Screwfix	12/12/2011	69.95	29.99	Work Trousers - Trousers	Receipt says Trainers	Incorrect coding in shop, work uniform	Reasonably Incurred
201	Petty Cash	Dougfield Plumbers	14/12/2011	139.73	139.73	Boiler	Replacement or New?	to fix as broken down	Reasonably Incurred
585	Pool	Radecarl	28/08/2012	576.00	£576.00	Plaster and paint sky light ceiling; repair plasterboard and tile sin woman's shower; woman's changing room touch up damp patch; unblock drain to disabled toilet/shower; take off lock to staff room toilet, fill & paint.		Maintenance issues on site, service charge item.	Reasonably Incurred