



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AG/LSC/2007/0121

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

Applicants: Ms M Hayoukane & Others

Respondent: William Road Properties Ltd

Premises: 23 & 27 William Road, London NW1 3EY

Date of Application: 23 March 2007

Dates of Hearing: 15 and 16 August 2007

**Appearances for Applicant: Ms M Hayoukane, Ms R Samji, Ms A Guthrie, Mr E
Fonseng, Mr R Cansick**

Representing Applicants: Mr J Gilbert & Mr M Marshall – BPP Legal Advice Centre

**Appearances for Respondent: Mr J S Latta – Senior Property Manager
Mr C Beard – Property Manager
Both of CPM Asset Management Ltd**

**Leasehold Valuation Tribunal: Mrs J S L Goulden JP
Mr J M Power Msc FRICS FCI Arb
Mr D Wilson JP**

Date of Tribunal's Decision:

REFERENCE: LON/OOAG/LSC/2007/0121

PROPERTIES: FLATS AT 23 AND 27 WILLIAM ROAD LONDON NW1E 3EY

Background

1. The Tribunal was dealing with an application dated 23 March 2007 under S 27A of the Landlord and Tenant Act 1985, as amended ("the Act") for a determination whether a service charge is payable and, if it is, as to –

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable and
- (e) the manner in which it is payable

2. After a Pre Trial Review held on 17 May 2007, the parties had agreed to mediate and this took place on 31 July 2007. Although it appeared on the face of the mediation document that there was no dispute as to actual (as opposed to estimated) charges raised on any of the service charge years in question, this was denied at the hearing.

3. It was agreed at the mediation that the landlord would not seek to place any landlord's costs of proceedings on the service charge account and therefore no determination is required of the Tribunal under the S20C application which had been lodged on 23 March 2007.

4. The Tribunal was advised that 23 and 27 William Road London NW1E 3EY ("the properties") form part of a development of 38 flats in three blocks. One of the blocks consists of Housing Association tenants who are not responsible for payment of service charges.

5. The parties agreed that all the leases were in the same form. A draft lease was provided and, at the hearing on 16 August 2007, the Tribunal was provided, at its request, with a copy of the completed lease of Flat 3 (Ms M Hayoukane's lease). This was dated 27 March 2003 and was made between McCabe Builders (UK) Ltd (1) Base Central NW1 Management Co. Ltd (2) and M Hayoukane and D Loke (3) for a term of 999 years commencing on 1 April 2002 at the rising rents and subject to the terms and conditions therein contained.

Role of CPM Asset Management Ltd. ("CPM")

6. CPM acts as managing agent for Base Central NW1 Management Company Ltd. ("Base Central").

7.CPM was appointed at the time of original construction by the developers, McCabe Builders (UK) Ltd. to act as agent for the management company, Base Central, until handover of control and administration of the management company to the residents.

8.Base Central is responsible for the administration, maintenance, repair and renewal of the properties and the tenants are responsible for funding the cost of the activities carried out by Base Central. In addition to the funds provided by the resident members of Base Central, the tenants of the commercial unit on the ground floor make a contractual contribution as set out in the leases. There is no additional source of funding.

9.The relationship between CPM as agent and Base Central as principal is set out in CPM's standard terms of appointment. Remuneration had initially been on the basis of a percentage of the gross service charge but CPM stated it moved to a fixed rate charge in 2003.

10.CPM and an associated company, Hertford Company Secretaries Ltd., were requested by the developers, McCabe, to be nominees and first directors and company secretary of Base Central until such time as resident directors were appointed from among the members of Base Central. This handover has never occurred.

11.As part of its duties, CPM prepared an annual budget of estimated expenditure under a number of headings. The initial budget was agreed with the developer and was estimated from knowledge of relative costs and information provided by the developers. Subsequent annual budget estimates were calculated on the basis of knowledge, together with evidence of actual expenditure incurred. The tenants are charged on the basis of such budget estimates in the proportion as shown in their respective leases.

Inspection

12.During the hearing, it became apparent that the Tribunal would need to inspect the properties. Inspection took place on 24 August 2007, after the hearing had concluded, in the presence of Ms Hayoukane and the caretaker. Although Mr C Beard, the property manager of CPM arrived later, he did not accompany the Tribunal during its inspection.

13.The properties were part of a development of three blocks of brick construction under a flat roof which had been completed in 2003. The blocks numbered 17-33 William Road and were situated off Hampstead Road. The residential units were over commercial units on the ground floor. One block was not subject to the application since it was tenanted. The remaining two blocks, Nos 23 and 27, the subject of the application, were of seven storeys (No 23) or six storeys (No 27) (including the commercial premises) and each had a separate entrance with entryphone. The Tribunal was advised that there were 23 flats in No 23 and 15 flats in No 27.

14.The Tribunal inspected the common parts of 23 and 27 William Road, each of which, although fairly narrow, were carpeted, clean and well decorated. There were letterboxes for each flat within the ground floor common parts. In No 27, the Tribunal inspected the

caretaker's room which was on the ground floor. This was, in effect, a storage cupboard with a sink unit, no natural light and contained meters.

15. Each block had one modern lift which served all floors, although it appeared that the emergency communication system in each lift did not work. On some of the floors in each of the blocks unsightly wiring was noted outside the doors to certain flats. The Tribunal understood that this wiring may have been provided for the installation of burglar alarms by the flat owners if required.

16. To the west side of the property was a bicycle storage room in which there was a water pump housed within a cupboard. The Tribunal was advised that the bicycle store also contained the caretaker's private toilet facilities but this was not inspected by the Tribunal.

17. Adjacent to the bicycle storage room was another storage room which contained large refuse bins marked for recycling purposes.

Hearing

18. The hearing took place on 15 and 16 August 2007. The Tribunal appreciates the courteous manner in which the parties dealt with the matters raised before the Tribunal.

19. The Applicants are various tenants of the properties. The application was lodged by Ms M Hayoukane of Flat 3, 27 William Road. The Applicants who attended for the whole or part of the hearing were Miss M Hayoukane (Flat 3, 27 William Road), Mr E Fonseng (Flat 6, 27 William Road), Ms R Samji (Flat 11, 27 William Road) Mr R Cansick (Flat 14, 27 William Road), and Ms A Guthrie (Flat 2, 23 William Road). At the hearing on 16 August 2007, Ms Guthrie made an application to be joined as an Applicant. The Tribunal acceded to that request. The Applicants were represented by Mr J Gilbert and Mr M Marshall, both of BPP Legal Advice Centre. The Tribunal is grateful for their assistance in this matter, which was provided pro bono.

20. There was some confusion as to the correct Respondents. William Road Properties Ltd are apparently the freeholders and, as stated above, Base Central is shown on the lease as the residents' management company. Base Central's managing agents are CPM. The Tribunal was advised that each resident is a member of Base Central. The Respondents are therefore named as William Road Properties Ltd and Base Central. Base Central (only) was represented by Mr J S Latta, Senior Property Manager and Mr C Beard, Property Manager, both of the managing agents, CPM. On questioning by the Tribunal, Mr Latta confirmed that he worked three days per week and Mr Beard had only been in the post of property manager for four months. For those reasons, the Respondent's assistance by way of evidence to the Tribunal was, in some respects, limited.

21. Having discussed the issues with the parties, the Tribunal granted an adjournment at the commencement of the hearing in order that the parties could discuss and, if possible,

narrow the issues. This proved successful in part in that the Applicants did not pursue their initial challenge in respect of costs relating to janitorial supplies, 24 hour emergency service and building services engineer.

22. The service charge year is 1 June to 31 May in each year. The specific service charge years in dispute are set out under each head.

23. The issues which remained outstanding, and which required the determination of the Tribunal were as follows:-

Caretaking costs

Insurance

Management fees

Lift maintenance charges

Water pump costs

Telephone costs

Apportionment of water rates costs

Estimated service charges applied against historic deficit.

Reimbursement of fees

24. The salient parts of the evidence and the Tribunal's determinations are given under each head.

25. As a general point, it appeared from the evidence provided at the hearing, and as agreed by Mr Latta on behalf of the Respondents, that the service charge demands had only ever been based on estimated charges and the tenants had never received audited accounts or even details of the costs the managing agents had incurred on a year by year basis in providing services to the two blocks, the cost of which fell to the service charge account. This information only became available to the Applicants for the first time during these proceedings. The Tribunal has been influenced in its determinations by this practice which is considered unacceptable and contrary to the lease terms.

Caretaking costs

26. The sums challenged under this head are the actual payment of £33,865 for the service charge year 2004/2005, £34,207 for the service charge year 2005/2006 and the budget estimates of £26,675 for the service charge year 2006/2007 and £25,176 for the service charge year 2007/2008.

27. The Applicants said that the amounts paid were excessive and the quality of the service was not commensurate with the amounts paid. They maintained that there was no need for a caretaker and the caretaker provided no benefit to the tenants. There had never been a relief caretaker when the present post holder had been sick or on holiday. The caretaker did not work all day. It was said *"we are paying for someone to sit at the front door to take in the post in the morning and to vacuum the carpets on the stairs and*

landings once a week. We would be better off giving the key to the postman and contacting a cleaner to clean once a week."

28. The Applicants said that they had made written complaints to the managing agents in respect of employment costs. It was maintained that the caretaker's take home pay was in the region of £14,000 to £15,000 per annum. In the Applicants' view the cost to be placed on the service charge account should be no more than £16,500 to £19,000 plus VAT plus a percentage for the managing agents to supervise etc. They therefore considered that a reasonable amount to be borne by the tenants should be no more than £23,000.

29. Mr Latta said that the caretaker's hours were 8am to 5.30pm five days a week. On the second day of the hearing, he provided a breakdown of the caretaker's duties (some of which were disputed by the Applicants). Mr Latta maintained that no complaints had been received and the actual costs charged to the tenants was between £24,000 and £26,000 and these costs had been reasonably incurred.

30. In the Respondents' supplementary statement of case, it was stated, inter alia *"It is..clear that the Applicants have not fully understood all of the costs and liabilities involved in employment...please note CPM was requested to arrange a caretaker before there were any lessees at William Road. There were two alternatives; for the Management Company (which had no income) to employ a caretaker or to arrange one from a supplier. If the Management Company were to take the responsibility, in addition to finding the money, it would also have to take on all employer's administration, costs and liabilities including redundancy liabilities and sickness support. If a supplier provided cover, then the costs of the employment risk taken, employers liability, a return for the administration and risk and VAT would be added.....CPM offered to arrange to provide a caretaker as we were in a position to delay applying the costs while the company had no funds and to adjust later when the company was flourishing. This was possible with an associate company, but not possible with an external firm, who would not agree to defer income"*.

31. The Fourth Schedule to the lease sets out the covenants by the management company, the cost of which may be placed on the service charge account to be borne by the tenants. Paragraph 7 thereof states:-

"To employ such staff or contactors as may be reasonably required to carry out all necessary works of maintenance cleaning and repairs and such other duties as are necessary for the proper running and management of the Reserved Premises and the Maintained Areas".

32. There was no issue as to the landlord's right to employ a caretaker in principle by the Applicants and the Respondents were entitled to employ a caretaker. Further, the tenants purchased knowing that a porter was to be provided and therefore were aware that they would have to pay for a caretaker.

33. Having considered the evidence provided, the Tribunal determines that caretaking costs of £24,000 for 2004/2005 and £25,000 for 2005/2006 are relevant and reasonably incurred and properly chargeable to the service charge account and an estimated budget of £26,000 for 2006/2007 and £26,000 for 2007/2008 if incurred would be reasonable.

Insurance

34. The sums challenged under this head were the actual payments of premium of £12,835 for the service charge year 2004/2005 and £20,308 for the service charge year 2006/2007 (which had not yet been audited). The insurance premiums for other years were not disputed.

35. The Applicants said that the cost was excessive and complained that the block building insurance is with a subsidiary company of CPM and therefore *"we question its validity and the charges. It's shocking the amount we are asked to pay has multiplied by 4 times in four years. It doesn't make any sense and is totally unreasonable"*. Although an alternative quotation had been obtained from Norwich Union, it was accepted by the Applicants' representatives that this was no longer relevant. In the view of the Applicants, a reasonable annual charge would be £10,567.

36. Mr Latta said that the 2004/2005 charge of £12,835 was the amount paid to the insurers who had been the most competitive bidder. It was a block policy. Each year, the broker would send out tenders to major insurers and the most appropriate had been chosen.

37. The Tribunal has considered the invoices provided, together with the insurance schedules which it requested. A block policy should produce economies of scale and, as explained to the Applicants, the landlord was under no obligation to accept the lowest quotation. The Tribunal has also considered an email from the broker to Mr Latta dated 26 July 2007, which compared and contrasted the premiums of Zurich and Norwich Union. In this email, it is stated, inter alia, *"for your information, at renewal 2007 we had negotiated preferential terms with Zurich on this particular development, which resulted in approximately a 10% premium/rate reduction compared to the terms that were being offered by the expiring insurer Alliance. The renewal premium being offered by Alliance, which is a policy which is not as wide as Zurich was going to be in the region of £12K"*

38. The Tribunal determines that the sum of £12,835 for the service charge year 2004/2005 is relevant and reasonably incurred and properly chargeable to the service charge account. In respect of the service charge year 2006/2007, the Tribunal has seen an invoice from Allianz Cornhill which suggests that only £11,280.63 had been paid and no cogent evidence has been provided to support the sum of £20,308, and accordingly whilst accepting that insurance premiums may increase and this figure has not yet been audited, only the sum actually paid would be reasonable and properly chargeable to the service charge account and, in this connection, determines that it should amount to no more than £12,835.

Management fees

39. The sums challenged under this head are the actual payments of £9,381 for the service charge year 2003/2004, £10,680 for the service charge year 2004/2005 and £14,765 for the service charge year 2005/2006. The estimated budgets for 2006/2007 and also for 2007/2008 are £14,761 for each of those years and these were also challenged. The estimated budgets are subject to revision. All payments are inclusive of VAT.

40. The Applicants said that the cost was too high and the service was not commensurate with the cost. They stated *"we have no idea what this service provides"*. It was alleged that there was a lack of management from CPM and, as an example, the electricity board had threatened to cut off the common parts electricity and the insurance and caretaking services were far too expensive. It was maintained that there was no contact with the managing agents and any attempts to engage with them by the tenants were *"ignored"*. The budget headings were *"persistently and regularly overestimated"*. The Applicants said that they had received no details of actual service charge costs or audited accounts. It was alleged that the standard of the building was poor with faulty wiring.

41. Ms Guthrie said that there had only been two meetings since the building had been occupied, and there was no mechanism for a meeting to be arranged. She also complained that the floors were filthy and light bulbs had not been replaced. Mr Cansick and Ms Hayoukane both said that they had not received replies to letters and telephone calls. Ms Hayoukane said *"we are completely dissatisfied with the managing agents and want to get rid of them"*. An alternative quotation was provided from Crabtree Property Management Ltd. which indicated that alternative managing agents could be obtained at a cost of £200 plus VAT per unit.

42. Mr Latta said that he had considered Crabtree's terms of appointment and said that there was a difference in the way in which the charges were made. Crabtree were entitled to make additional charges whereas CPM's costs were included within the management fees as part of the service. He said that charging by way of a percentage on a sliding scale took care of the differences on the development at the time. However, the percentage method was last used in the service charge year 2003/2004 and for the last three years, a flat rate had been used since the new management had wished to do things differently. Mr Latta accepted that there had been no publicity on this. Mr Latta said that the management company had been in deficit for a number of years, and supplied full details of such deficit. In part, this was caused by the developers refusing to pay service charge contributions on units which had not been sold initially, but was also caused by service charge arrears. By the year 2007, the shortfall was £16,049. The provisional amount for service charge arrears at present was £12,491. Mr Latta said that in recent times, he had offered to meet the Applicants in their own time in order to discuss the issues.

43. Mr Latta said *"I think CPM could have done better to solve the problems but where no funds were available and many of the problems were caused by lack of funds, it is unreasonable to expect a property manager to pull a rabbit out of the hat. The developer had created a standard block of flats and then tried to market it as upmarket without*

having the funds". Mr Latta accepted that the tenants had made complaints but denied that they had been ignored and maintained that every document from a tenant on the file had been dealt with. He conceded that some emails to CPM received no reply.

44. Property management requires funding and the Tribunal accepts that CPM must have been placed in a difficult position in that they were starved of funds from the start by the developers refusing to pay the service charges on unsold units and also later by some tenants being in arrears with their service charges. It had been anticipated that the management company would be handed over in its entirety to the residents shortly after the development was completed in 2003, but this had not taken place.

45. However, a managing agent must advise the tenants on an annual basis of the actual costs incurred in the spending of the tenants' monies. Further, the tenants need to know the previous year's costs to obtain an informed judgement when presented with the following year's budget. This is reinforced by paragraph 8 of the Fifth Schedule to the lease (which sets out the provisions governing maintenance charges) which states:-

"As soon as practicable after the expiration of each year ending on 24 June the Management Company shall ascertain and certify the amount of the actual maintenance charge for the preceding twelve months and the amount standing to the credit of the reserve fund and serve on the Lessee a copy of such certificate (which shall be binding and conclusive on the Management Company and the Lessee and any balance remaining to be paid by the Lessee after giving credit for the interim payments made by the Lessee in respect of such year shall be paid by the Lessee within fourteen days of the service of such certificate of (if there is a balance repayable to the Lessee) such balance shall be repaid by the Management Company within the like time Provided that the Management Company may at its absolute discretion defer until three months after 24 June next following the date of the demise of the last of the apartments to be demised the ascertainment and certification of the maintenance charge for any year of the term ending prior to such date".

46. There is no evidence that the above paragraph has been complied with in any way.

47. The level of management fees are within an acceptable band if the service was of an acceptable standard. The Tribunal notes that in the year 2003/2004 there were additional problems in that this was a new building with new problems, the managing agents were faced with arrears from the start and it is acknowledged that they did hold meetings with the tenants during that year. However thereafter, in the view of the Tribunal, there have been consistent and fundamental breaches of the lease and the Service Charge Residential Management Code issued by the Royal Institution of Chartered Surveyors. The intention of this Code was to *"provide a basis for determining how management should be undertaken, indicating as far as possible the legislative requirements as well as good practice"*. Mr Latta has been open about the shortcomings of CPM.

48. The Tribunal determines that in respect of management fees the sum of £9,381 for 2003/2004, £9,500 for 2004/2005 and £10,000 for 2005/2006 are relevant and reasonably incurred and properly chargeable to the service charge account. In respect of the estimated budgets for 2006/2007 and 2007/2008, the Tribunal determines that the sum of £10,000 if incurred would be reasonable.

49. The Tribunal wishes to make it clear that it has made substantial reductions in view of the poor service provided. The sums determined are on the low side. If the service improves, the tenants must expect to pay considerably more than the sums presently determined by this Tribunal.

Lift maintenance charges

50. The sums disputed were estimated charges of £3,000 for 2003/2004; £3,079 for 2004/2005; £5,559 for 2005/2006; £5,730 for 2006/2007 and £3,000 for 2007/2008. The only actual expenditure shown was £5,713 in the service charge year 2004/2005.

51. The Applicants challenge was that the estimates were too high and there had been no maintenance contract in force before or after the service charge year 2004/2005. They complained that the lifts were in partial darkness and, despite complaints to CPM, they had not been serviced and had been out of order for approximately three weeks. It was maintained that the alarms in the lifts had never been connected which was a serious security issue. The Applicants had obtained an alternative quotation dated 2 August 2007 for standard maintenance from Independent Lift Services for £720 plus VAT.

52. Mr Latta said that the maintenance contract had been put in place by the developers and was in existence when CPM took over, and therefore had to be honoured. The service lift maintenance premium had not been paid since there had been no money to pay it, but the contractors had not refused service, although he conceded that the contractors had threatened to cancel the contract for non payment. Mr Latta confirmed that there was a concern that the sum of £5,713 may include the lifts in all three blocks and only two blocks were responsible for the service charges. There would have to be an adjustment if such were the case. Mr Latta said that the budget estimates were prudent. There was no money for telephones or lighting, but the contractors had serviced the lift when required to do so.

53. Lifts have to be maintained and the Applicants should be prepared to pay for such maintenance within the service charge.

54. The Tribunal determines that the actual expenditure in respect of lift maintenance of £4,434 for 2004/2005 and £1,279 for 2005/2006 are relevant and reasonably incurred and properly chargeable to the service charge account providing that this relates to the two blocks only which pay service charges. If, as Mr Latta said, there is a concern that the costs may include lifts in all three blocks, it is expected that these figures must be adjusted accordingly. The budget estimates of £3,000 for each of the years 2006/2007 and 2007/2008, if incurred, would be reasonable. No sum should be placed to the service

charge account in respect of the service charge year 2003/2004 since it appears that there was no actual expenditure.

Water pump costs

55. The sum challenged under this head was actual expenditure of £3,282 in respect of the service charge year 2004/2005.

56. The Applicants said that the work carried out was in respect of the water pump situated to one side of the properties which served the top two floors only and had been leaking, so that there was no proper water supply to the relevant flats. The water pump had been replaced but the Applicants were of the view that the quality of the work had been poor and had taken too long. The tenants said that they had complained in August 2003 but the work had not been carried out until September 2004 when the cost may well have increased.

57. Mr Latta said that CPM were in "*an impossible situation*". There had been a failure on the part of the developer in that the installation of the original pump appears to have been inadequate or faulty. If the managing agents had undertaken to expend money on matters which possibly were under guarantee, the guarantee would be invalidated.

58. In minutes of a meeting held by CPM on 28 August 2003 it was stated, inter alia, "*residents advised that the water pumps were making noises and as a result CPM will organise these to be inspected. Should any ongoing problems be discovered this report will be duly forwarded to the developer for their consideration*".

59. In minutes of a meeting held by CPM on 1 December 2004 it was stated, inter alia, "*following the pump breaking down on the development in September 2004..... CPM approached Rapid Pumps to provide costs in replacing the cold water booster for both pumps. They advised that to attend to site, isolate the existing pump mechanically and electrically, to remove the existing pump from the site and to supply and install a replacement pump, motor assembly, test and commission and installation would cost £2,672 plus VAT..... CPM then approached Euro Pumps Service Ltd.... who advised that the cost of this site visit to inspect and to install two pumps would be a total of £1,898 plus VAT.... which was deemed to be the best value to perform the job required. In September 2004 CPM entered into communications between McCabe... have been contacted about the leaks from an early stage and this should have been picked up under maintenance by the contractors. The final word from McCabe was that the pumps had been installed according to guarantee and as a result they felt they had no responsibility in the failure of these pumps and it would be a cost borne by the management company. CPM have therefore settled this amount for the pump installed to the development from the Company's finances..... "*

60. There is no evidence before the Tribunal that the water pump required replacement in 2003, as suggested by the Applicants, although there is evidence that it broke down in 2004. It is acknowledged that the pumps served only the upper floors but from a perusal

of the lease terms it is considered that the pumps fall within the wording of the definition of "Reserved Services", and as such fall within the provisions of the Fourth Schedule in respect of maintenance thereof as a service charge item. Whilst the Tribunal has sympathy with the views expressed by the Applicant tenants on the lower floors who felt that they should not have to bear the cost of a replacement pump which only benefited the upper floors, in the opinion of the Tribunal there is no difference between this situation and, for example, a tenant of a flat on the ground floor objecting to contributing to the maintenance of the lift (which, as in this case, also only benefits upper floors).

61. Having inspected the invoices, the Tribunal determines that the sum of £3,282 in respect of the replacement water pump is relevant and reasonably incurred and properly chargeable to the service charge account.

Telephone costs

62. The Applicants challenged the actual costs incurred of £314 for the service charge year 2003/2004; £546 for the service charge year 2004/2005; £43 for the service charge year 2005/2006, the estimate of £100 for the service charge year 2006/2007 and the estimate of £200 for the year 2007/2008.

63. The Applicants said no telephones were available for use by the tenants. They understood that the costs related to the telephone in the lift but no such telephone exists. It was confirmed by Mr Latta that the caretaker did not have a telephone. The telephone line in the lift was terminated in 2004 and the telephone in the lift had never at any time been connected.

64. In the Respondent's supplementary statement of case it was stated "*telephone lines were provided for each of the lifts and the costs are for line provision. These were originally ordered by the developer and transferred to the management company after development completion*".

65. The Tribunal has considered the invoices produced, all of which are addressed to the developers.

66. The telephone in the lifts were not working at the time of the Tribunal's inspection, and cannot accept that the costs are for the provision of the telephone line, as suggested by the Respondent (particularly for the years 2003/2004 and 2004/2005).

67. The Tribunal determines that of the actual costs referred to above, although relevant, none have been reasonably incurred and therefore none are properly chargeable to the service charge account. For the same reason, the estimated sums, if incurred would not be reasonably and properly chargeable to the service charge account. . The Tribunal wishes to point out that if a telephone system is connected in the lift, the tenants should expect to bear the costs thereof within the service charge.

68. It is also considered that the absence of communication facilities for emergencies in lifts may well be a health and safety issue.

Apportionment of water rates costs

69. The challenge was in respect of the actual costs incurred of £1,973 for the service charge year 2003/2004; £2,138 for the service charge year 2004/2005; £3,288 for the service charge year 2005/2006 and the estimated cost of £7,258 for the service charge year 2006/2007.

70. The Applicants said that the tenants of Flats 1 to 9 in No. 27 and Flats 1 to 12 in No 23 had individual water meters and water supply from the time they purchased. The tenants on the upper two floors in No 27 (believed to be five flats) and the upper three floors in No 23 (believed to be nine flats) had their water supplied by a single water main. The cost of water was split amongst all the tenants, but it was alleged that only the tenants on the top floor benefited therefrom. The managing agents had known of this arrangement since December 2003 (ie shortly after completion of some of the purchases of the Applicants' flats)

71. Mr Latta agreed that the current charging arrangements were unfair and acknowledged that this was poor management on the part of CPM. He said that the management company had no power to vary the leases and application must be made to the landlord. Water rates were charged on the building and was the liability of the management company. The tenants had to pay.

72. Mr Marshall said that on each of the budgets, the sums demanded have varied, and therefore there was a precedent for variation of expenditure.

73. In minutes of a meeting held by CPM on 1 December 2004 it was stated, inter alia, "*in respect of water meters to the development... advised that due to pressure problems individual water meters had been provided to the properties up to floor 3 and can confirm that meters can now be fitted to properties on the fourth and fifth floors..... CPM can advise that the water rates will be collected through the management company and divided on a square footage basis to those individual residents concerned. Therefore it may be in the interest of residents to have these meters fitted to ensure correct billing*"

74. In a letter written by CPM to Mr Cansick dated 1 September 2006, it states, inter alia "*the budget for your development shows an entry for water rates. Some members are concerned that they are already paying their own water rates directly and did not want to pay twice. I can confirm that there are a small number of properties that share a water meter. These properties and these properties alone pay into the management company for this water. The majority of properties pay different charges to each other and the total amount on the budget is not just divided by the number of properties. Should you already pay your charges to the water company directly, I can assure you that you do not pay for this a second time through your maintenance charges*".

75. The Applicants were not challenging the invoices but merely the principle. Water rates charged on the building are clearly service charge items, but in this case those Applicants who have individual meters (and have had individual meters since they purchased from the developers) are challenging payability.

76. The Tribunal has considered the lease terms and in particular the First Schedule thereto which sets out the property demised ie the extent of each flat. The demise of each flat includes various rights, one of which is as follows:-

"The right of passage and running storage and disposal of gas water electricity.....in and through and by means of the Reserved Services and the Leased Services and all necessary rights of entry for the purpose of inspecting maintaining and repairing and renewing the same.....PROVIDED THAT the right to the passage of water shall so far as the same relates to the supply of main water (whether or not through any tank or cistern) to the Demised Premises be subject to the payment by the Lessee to the Lessors or to the statutory water authority (as the case may require) of the water rate assessed in respect of the Demised Premises or (if and so far as the water rate is not separately assessed upon the Demised Premises or some part thereof) of a fair proportion of such assessment to be determined by the Lessors or their surveyor"

77. In the view of the Tribunal, the provision of water does not come within the definition of Excluded Services in the lease, namely **"service installations used or intended exclusively for the benefit of the Apartment"** but does come within the definition of Reserved Services in the lease, namely **"sewers drains water pipes pumps tanks gutters.....and other like means of disposal or storage of soil water gas ...and other services... which are now or may within the perpetuity period be in or under the building or any part thereof....."**. The Tribunal considers that the provision of water does not merely cover the supply to individual flats (some of which are metered) but to the building as a whole and as such falls on the service charge.

78. The Respondent states *"the total amount on the budget is not just divided by the number of properties"* and the Applicants have not provided evidence to the Tribunal that the proportion paid by them is unreasonably incurred. Their view is that they should not be charged at all.

79. The Tribunal determines that the sum of £1,973 for 2003/2004, £2,138 for 2004/2005, and £3,288 for 2005/2006 are relevant and reasonably incurred and properly chargeable to the service charge account and an estimate of £4,000 for 2006/2007 if incurred would be reasonable.

80. The lease is the formal contract between landlord and tenant. As advised at the hearing, if the tenants consider that the leases are defective (rather than merely unsatisfactory) then presumably they will consider taking legal advice as to whether to seek a variation of the lease terms. The Tribunal expresses no view as to whether or not such an application would prove successful.

Estimated service charges applied against historic deficit

81. The Applicants' challenge under this head was that the estimates were overestimated, unhelpful and misleading. They said that the sums were *"thrown into a general pot"*.

82. Mr Gilbert, on behalf of the Applicants, said that the budgets were not set by the developer and CPM had sufficient control to vary the same. There had been no reconciliation, and actual figures had not been seen by the Applicants until the hearing. He accepted that the estimates should not be ring fenced if minor, but these were *"way off"*.

83. Mr Latta said that an annual provision had to be made otherwise there would be a lack of funding. If there was no actual expenditure in a particular year, the monies were transferred to the management company account to offset the following year's charges. The figures had to be approved by the developer until handed over to residential control. He accepted that the figures should be appropriate but said that it was *"very awkward to change the budget from the weighting given by the developers"*. He said that the developers had *"lost interest"*. Mr Latta said *"if the need to provide funding was narrowed down item by item property management will become impossible particularly since it is not a requirement of the lease"*.

84. The Tribunal has been critical of the use of estimated figures by the managing agents and the lack of information supplied to the tenants as to the actual expenditure. This method of accounting should cease as being contrary to the lease terms. However, the Tribunal determines that the payment of service charges cannot be "ring fenced" in the way suggested by the Applicants to cover only specific items. The Tribunal therefore rejects the Applicants' contention in this respect.

Reimbursement of fees

85. The fees under this head amounted to £300 in total, being £150 application fee and £150 hearing fee.

86. The Applicants accepted that perhaps there had been a delay in taking formal steps but many informal steps had been taken. Since the Pre Trial Review there had been ongoing conversations with both parties but, although the Applicants had tried, settlement had not proved possible. Ms Hayoukane and Mr Cansick had taken time off work as part of their holidays to attend the hearing. A considerable amount of work had been carried out and if CPM had done their job properly there would have been no need for the tenants to bring the matter to the Tribunal.

87. Mr Latta said that he had considerable sympathy with the Applicants in that CPM had not provided them with information which they had requested and to which they were entitled. He accepted that there should have been no need for the tenants to go to the Tribunal but his sole aim had been reconciliation. As soon as the application had been lodged, he had offered to meet the tenants in their free time in order to discuss the issues

and provide them with any information requested, but he felt that there had been a reluctance on the part of the Applicants to meet him half way. He accepted that the Applicants had been uncertain and worried. CPM had gone to considerable expense and additional costs had been incurred because the Applicants had not identified the issues early enough.

88. In accordance with paragraph 7 of Directions issued by the Leasehold Valuation Tribunal on 17 May 2007, the Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

89. The Tribunal acknowledges that both sides have incurred costs which are irrecoverable. It is felt that, in the particular circumstances of this case, to make an order for the Respondent to reimburse any part of the application and/or hearing fees would be punitive, particularly in view of the fact that the Respondent had been prepared to mediate and, at the mediation which was only partially successful, confirmed that it was not intended to seek to place landlord's costs of proceedings before the Tribunal on the service charge account.

90. The Tribunal does not intend to exercise its discretion under this head and declines to make an order for reimbursement by the Respondent to the Applicants of the application and/or hearing fees or any part thereof.

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.

CHAIRMAN..........

DATE.....*24 September 2007*.....