RESIDENTIAL PROPERTY TRIBUNAL SERVICE

EASTERN RENT ASSESSMENT COMMITTEE
LEASEHOLD VALUATION TRIBUNAL

Case Number: CAM/09UE/LSC/2004/0043

Property: **Flats 1-7 Eversholt House, Grove Place, Leighton Buzzard**
and
Flats 1-6 & Flat 8 Icknield House, Grove Road, Leighton Buzzard

Applicants:

Mr C H Byham	**Miss C Derbyshire**
Mrs E Lisi	**Mr & Mrs K Saunders**
Mrs I E Mitchell	**Mr J McQuillian**
Miss N Fitzhugh	**Mrs E Randall-Garrod**
Miss K Cowley	**Mr D Thompson**
Ms V Morgan-Jones	**Mr J A Morris**
J Jessop	**Balstate services Limited**

Respondent: **Basicland Registrars Limited as Agents for Mrs Freda Finegold**

Hearing Date: **17 November 2004**

Present: For the Applicants - Mr & Mrs Byham; Mrs Lisi; Mr & Mrs Mitchell; Mrs Randall-Garrod; Mr Morris.
Martin Westley, Manager for the RTM Company now managing the Property

For the Respondent – John Galliers, employee of Basicland Registrars Limited (BLR)

The Tribunal: **D S Brown FRICS MCIArb (Chair)**
Mrs I Butcher
Miss M Krisko BSc(Est Man) FRICS

THE APPLICATION

1. This is an application under s.27A of the Landlord & Tenant Act 1985.

2. S.27A provides that
   (1) An application may be made to a leasehold valuation tribunal 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.

3. There is also an application under s.20C.

THE LEASE

4. The Tribunal was presented with a lease of Flat 5 Icknield House, which the parties confirmed was representative of all the leases in the Property.

5. The lease sets the service charge contribution for each flat as "*one-sixteenth part...of all costs and expenses incurred by the Lessor in carrying out its obligations under the Seventh Schedule and in connection with the Retained Land*". (Sixth Schedule, Clause 27)

6. The Retained Land is defined in the Third Schedule and includes those parts of the building which are used in common by the owners or occupiers of the flats and also "*all...television and radio aerials wires ducts and conduits*".

7. The Lessor's covenants in the Seventh Schedule, which are relevant to this application, include:-
   "*..shall insure the Property...against loss or damage by fire and such other risks and in such insurance office as the Lessor shall think fit....*"

   "*..shall keep the Retained Land and all fixtures and fittings and additions thereto in a good and tenantable state of repair decoration and condition including the renewal and replacement of all worn and damaged parts....*"

   "*..shall pay and discharge the proper and reasonable remunerations and expenses of any managing agent appointed by it...provided that so long as the Lessor shall not employ a managing agent it shall be entitled to add the sum of fifteen percent (15%) to any or all of the sums payable by the Lessor under this Lease.*" *(Clause 8)*

THE PROPERTY

8. The Tribunal inspected the Property before the hearing. It comprises two substantial detached residences which have been converted to eight flats each. The original buildings are three-storey. There is a modern extension to Icknield House which is two-storey.

9. The relevant common parts are three entrance halls and three staircases with landings.

THE EVIDENCE AND DECISIONS

10. The Tribunal firstly referred to the certification requirements contained in the Seventh Schedule. The Chartered Accountant who audits the accounts should state *"whether or not the fifteen pounds per centum has been added under Clause 8"*. The relevant certificates do not contain such a statement. They do contain an itemised schedule of the expenses which shows the management fee paid to the managing agents and the applicants do not take issue with this element of the accounting requirements. The Tribunal concludes that the accounts are clearly set out and that the Lessees were not in any doubt as to the fact that the 15% had not been charged and that the accounts, although not strictly in accordance with the letter of the Schedule, are acceptable.

11. Mr. Galliers produced at the hearing the signed audited service charge account for 2003, which was not included in the bundle.

12. The application relates to specific items of service charge in the years ended 31 December 2002, 2003 and 2004 and the Tribunal dealt with these in turn. Mr Byham acted as spokesperson for the applicants.

YEAR ENDED 31/12/02

Cleaning - £1002

13. The applicants, in their written statement, claimed that the cleaners only attended for about one hour per fortnight and so the cost equated to £42 per hour, which is excessive. They suggested that £11-13 per hour was more suitable.

14. The respondent included in the bundle a letter from GML Services who actually took over the cleaning during 2003. They said that their charges included fuel and travel time of over two hours and that the actual cleaning time was equivalent to a rate of £11.50 per hour. The applicants queried the reference in this letter to GML having had the contract for 7 years, which was untrue. Mr. Galliards thought they might have meant to refer to the time for which they had held cleaning contracts for other properties which BLR now deal with. The cleaners during 2002 were also London based.

15. At the hearing, the applicants stated that the attendance time was 1-1½ hours per fortnight but that the property has never been cleaned properly. They queried whether using a London based cleaner for 2 hours per visit reflected value for money.

16. Mr Morris said that when he viewed the property in February 2002 there were autumn leaves in the hall and all the way up the stairs. When he moved into his flat in June 2002 they had still not been cleaned up. He said the hallway was in a disgraceful state and that he had not been able to get a response from the earlier agents or from BLR, who took over the management in September 2002.

17. Mr Mitchell said that one of the cleaners used to bring her grandchild with her and he and his wife looked after the child while the cleaning was being done, so they know how long it took. It was not longer than 1½ hours and was every three weeks not two.

18. Mr Galliers said that the basis of the cleaning charge was explained in the GML letter. They did not travel to Leighton Buzzard just to clean this property, there were at least three other blocks in the Luton and Leighton Buzzard. He acknowledged that this meant that any travelling time and expenses should be apportioned between four properties. He said that the cleaners do not accept that they were at the property for less than two hours per visit.

19. He said that he had requested the previous cleaners, Shipshape, to provide a breakdown of their costs but they had not done so.

20. The applicants pointed out that the hallway to flats 5 and 8 Icknield House were not being cleaned at all. The cleaners said they did not know it was in the contract and did not have a key for it.

21. Mr. Galliers had produced a report from Clipper Maintenance Services dated 6 December 2002, following an inspection of the property. It was in the form of a tick-box summary which indicated that all areas were clean except the walls to the ground floor and first floor in Icknield House. The applicants pointed out that they could not have inspected one of the Icknield House areas because they had no key and the report appeared to confuse Icknield House and Eversholt House.

22. Mr Byham asked how often BLR inspected the property to check on things like the cleaning. Mr Galliers said that Nigel Derby, the property manager, did visit in 2002 when they took over the management. Inspections were carried out annually and the last was in September 2003. (The RTM company took over in September 2004). He accepted that the 2002 inspection could not have included the hall and stairs to 5 and 8 Icknield House because they did not have a key for it.

23. The Tribunal considers that using a London based cleaner for Leighton Buzzard properties was not in itself unreasonable, especially if they attended to a number of properties in the area and had a wider contract with the managing agents. However, it is not reasonable to expect the Lessees to pay for the additional travelling time and costs. On the breakdown provided by GML, which the Tribunal accepts only refers to their own charges, the travelling costs have clearly not been shared between the four properties referred to by Mr. Galliers.

24. It should be possible to employ reputable cleaners within a reasonable travelling distance of the property and, indeed, the RTM company has done so. The Tribunal concludes that the charge of £1002 is not reasonable. It considers that a charge of £11.50 per hour would be

reasonable. From the evidence presented, it accepts that the cleaners were not in attendance for 2 hours per fortnight and considers that a reasonable charge would be for 1½ hours. This would give £17.25 per fortnight, on 26 days, totalling £448.50.

25. **Some cleaning firms would charge for materials in addition and there might be a charge for some travelling over a reasonable distance, and the Tribunal would have considered an uplift to £500 to cover this. However, the Tribunal is satisfied that the standard of cleaning during 2002 was not acceptable and that there were occasions when the attendance time was less than 1½ hours and it therefore makes a deduction in respect of these matters. It directs that a reasonable charge for cleaning would be £400.**

Insurance - £5052.87

26. The premium charged to the service charge account in each year was paid in December for the ensuing year. The period of cover for this premium was 30 December 2002 to 30 December 2003.

27. The applicants consider that this was excessive and suggested a reduction of £2,150.

28. The respondent pointed out that he applicants had not produced an alternative quotation for 2002. They said that the property was insured as part of a large portfolio.

29. They produced a letter form ghbc Insurance Brokers, dated September 2004, which had been written to explain the levels of premiums. This stated that "insurance premiums are cyclical. In 2001 insurers suffered one of the worst years (in terms of losses) in their history, including the New York terrorist attacks, floods in Europe and a massive increase in Liability based claims (as a result of the introduction of no win no fee actions). Premiums increased dramatically and 100% increases were not uncommon as capacity in the UK insurance market reduced." It went on to say that premiums are also affected by factors such as location and claims experience. The 2002/3 rating was 26.1p per £100 insured, "which at the time was excellent value". The 2003/4 renewal was invited at level terms and the cover was index linked.

30. The letter stated that the market cycle is now entering a period of reductions and premiums have been falling with "reductions of 30%-40% on claim free business." The writer stated, "I do not feel that the lessees have paid more than they could have reasonably expected to. If anything I feel they were particularly fortunate not to have paid more for the 2002/3 period of insurance. Their increase was kept to a minimum by our negotiations with insurers and the implementation of new risk management measurements introduced following the appointment of BLR and ourselves."

31. At the hearing, Mr Byham said that the applicants are not disputing the level of cover, which was £2,131,551. He pointed out that they pay the premium as

part of the service charge at the beginning of the year but the landlord does not pay it out until the end of the year.

32. With regard to the level of premium, the estimate for 2004 was £6620. The RTM had obtained quotes in the region of £3615, (included in the bundle), to which terrorism cover would be added at £207.90. There should therefore be a pro rata reduction in the service charge for 2002. Mr Westley said that he had sent the brokers a copy of the current schedule and had asked for quotes for identical cover. There were two differences – the public liability was reduced to £1million and there was a franchise excess arrangement, whereby no claims would be met under £200 but any claim over £200 would be paid in full.

33. Mr. Westley agreed that it was not unreasonable for the landlord to include the property in a block insurance policy. The RTM insurance is in a similar type of scheme. However, if the bulk of properties in a portfolio are in London the premiums will be higher. They will also be affected by the claims history of the portfolio.

34. The bundle included copies of several decisions on service charge cases. These included reference to *Berrycroft Management Ltd –v- Sinclair Gardens Investments (Kensington) Ltd [1997] 1 EGLR 47.* Mr. Byham said that the applicants understand the decision in that case and that the landlord is entitled to insure under a block policy and is not obliged to obtain the cheapest insurance available. However, he referred to a Southern Rent Assessment Panel case, "6 Silchester Road", in which that Tribunal, whilst following the Berrycroft decision, held that it still had jurisdiction to decide upon reasonableness and could reduce the sum which the landlord charged, which it did in that case, applying a figure of £3 per £1000.

35. Mr Byham said that if the RTM could obtain a premium over 40% lower, the premium being charged does not pass the test of reasonableness. He also referred to a London case where the question of commission paid back to the landlord by the broker was considered. The applicants have no evidence that similar commission is paid in this case but assume that it is.

36. He said that LVT's and courts see 30p per £100 as reasonable but in Bedfordshire market rates are more like 12-15p

37. Mr. Galliers said that there was nothing to that says that BLR were paid commission. All insurance brokers are paid commission. They may pass some of it back to the landlord or agent if, for instance, the landlord has a lot of properties and the ongoing costs are less. From the ghbc letter, referred to previously, one cannot apply the figures for one year retrospectively to another. When BLR took over, the claims record of the portfolio was appalling. They had had to change underwriters every year. BLR have been dealing with claims more effectively and the claims history has now improved. He does not have any information about the claims history on the subject property prior to 2002.

38. Mr. Galliers produced an e-mail from Carlo Marelli of ghbc dated 14 November. Mr Byham was given time to read this and was content for it to be included and dealt with. Mr Marelli confirmed that claim free business this year on certain properties may well experience discounts of up to 40%. The premiums for this year will differ vastly from those obtained in 2002 and 2003. He acknowledged that the claims experience of a portfolio will obviously be taken into account in setting a premium but confirmed that the rate obtained for the two years in question was reasonable and fair.

39. Mr. Byham referred to an AA information item from July 2004 which stated that "building premiums have remained static" and an earlier one from April 2004 which said that there had been a fall of 18p in the average premium of £208.33. The Tribunal notes that the heading on the latter is "Home Insurance".

40. Mr. Galliers stated that the sum insured on the buildings had not been reviewed in the last 3 years but the applicants are not taking issue with the level of cover.

41. In the *"Berrycroft"* case it was held that a landlord is not obliged to obtain the lowest premium but must agree the premium at the market rate or negotiate the insurance contract at arm's length in the market place.

42. In *Forcelux Ltd –v- Sweetman and another [2002] 2 EGLR 173 (LT)* it was held that the question for the Tribunal to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest but whether the charge that was made was reasonably incurred. It must consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS Code and the Act.

43. In this case, the insurance was effected through a broker and the evidence indicates that it was obtained in the market at the then market rate. The applicants have not produced any alternative quotes for the year in question and the Tribunal knows from experience that premium rates fluctuate from year to year and that one cannot extrapolate premium rates for one year from another.

44. The Tribunal accepts that the premium rate will have been affected by the claims history. However, the Tribunal does not consider that it was unreasonable for the landlord to continue to insure the property as part of a block policy. It does consider that it has an overriding power to consider the reasonableness of the charge.

45. The premium of £5052.87 equates to £2.37 per £1000 cover. In the Tribunal's experience and in the light of the evidence it finds that this is not an unreasonable rate for 2002 and there is no reliable evidence to the contrary. It therefore considers that the charge for insurance was reasonably incurred.

Management Fees - £2444

46. The applicants stated that the fees equate to £200 per month and that they should be £110 per month.

47. The respondent stated that the fees equate to £130 plus VAT per flat and that this is reasonable. Mr Galliers referred to a court judgement but the Tribunal found this of little assistance as there are no details of the case or the type of management undertaken and no indication that the court specifically considered the question of reasonableness.

48. Mr Byham wondered why the lease provided for the landlord to make a 15% charge if no managing agent is appointed but the agent was allowed to charge more than 15%. He said that the lessees did not know what the management entailed. They found the staff to be unhelpful, rude and obstructive. During 2002, when BLR took over the management, no-one from the company came to see the lessees. They did not even have the keys to one entrance.

49. The RTM are now paying £90 per flat to Mr Westley, who has a detailed specification of his duties.

50. Prior to BLR, the agents David Glass Associates were even worse, he said. An example was a single visit by them on 2001 when they were going to arrange external decorations. The lessees disputed the proposed charge, they came to a meeting, said they would get back to the lessees but never did and the work was never done. He said that BLR wrote last year about repair or removal of the portico but it was never done. On another occasion a lessee had telephoned six times to complain about the condition of paving stones but nothing was done.

51. Mr Galliers said that BLR's management fees were at the lower end of the scale. They do an annual inspection. They did write about the portico but the lessees did not agree as what should be done. They have to pay the insurance premium, even if the lessees have not paid, also the ground rent. They have to maintain Pl and employer liability insurance. Management would be uneconomic at less than this. He said that Mr Westley is not undertaking full management for the RTM. The applicants have not provided any evidence of lower fees which other agents would have charged for full management of this property. There may have been occasions when people were not phoned back but BLR has provided a reasonable level of management for the charge.

52. Mr. Byham said that the run in's regarding the cleaning were indicative of the response they used to get. In 2004 he wrote with queries on the 2003 accounts but got no response. He followed it up by e-mail and fax and it took months to get a reply, which was even then not plausible. On 11 April 2004 fourteen lessees wrote to BLR regarding the 2003 and 2004 service charge demands and were sent a reply on 4 June that left a number of queries. These were set out in a letter of 12 June and Jacqui Katz, from BLR, responded on 16 June by saying "In view of the content of your letter, we do advise that you refer the matter to the LVT as we are unable to adjust the service charge accounts."

53. Mr. Galliers said in reply to a question that Jacqui Katz did inspect the property but did not arrange to meet the lessees. The lessees never asked for a meeting.

54. It is clear to the Tribunal from the documents and evidence before it that the standard of management of this property by BLR and their predecessors fell short of that which is to be expected from a competent professional property management company. It did not comply with the RICS Service Charge Residential Management Code in a number of respects, such as not inspecting regularly, not responding promptly and suitably to requests from lessees for information nor providing relevant information, and not being clear, concise and courteous when communicating with lessees. Annual inspections on a property such as this are not adequate. There has been a failure to properly supervise repairs and cleaning services and failure to attend promptly to items of disrepair.

55. In the Tribunal's experience, a management charge of £130 per flat would not be unreasonable for a properly effected, competent and efficient management service. This was not such a service. The Tribunal finds that the service was not of a reasonable standard and that a charge of £2444 is not reasonably incurred. It considers that an appropriate and reasonable charge would be £110 per flat, plus VAT, amounting in total to £2068.

YEAR ENDED 31/12/03

Cleaning - £1054.50

56. The applicants considered that the charge should be at a rate of £12-14 per hour. They had produced a letter from Mr Morris of Flat 5 Icknield House to BLR dated 1 May 2003 in which he complained that no cleaning had been carried out for three weeks or indeed since BLR took over. He referred to some outstanding repairs that required attention. Subsequently Mr Morris had to provide a key of the entrance door to his communal hallway to the cleaners.

57. At the hearing, Mr Byham said that the cleaners said they had never been instructed to clean that area. When they began to do so, there was no alteration in the time charged for cleaning so the previous cleaning must have taken less than two hours per visit.

58. Mr Byham raised the possibility of double billing for July. Shipshape Cleaning had billed and been paid for July 2003 but GML had billed for July, August and September and had been paid. Mr Galliers said that this had been credited back because GML had not billed for December. The total charge for the year equated to twelve months. Mr Byham asked why that information could not have been provided before, which Mr Galliers did not know.

59. The Tribunal finds that there was some extra cleaning work for part of the year but that the cleaners were not in attendance for the equivalent of 2 hours per fortnight throughout the year and that the charge of £1054 was not reasonably incurred. On the basis set out for 2002, the Tribunal considers that a reasonable charge would be £12.50 per hour for 1¾ hours per fortnight, amounting to £568.75, which it rounds up to £600.

Insurance - £6012.29

60. For this year, the insurance included Emergency Assistance Cover at a cost of £520. The applicants questioned whether this was reasonably incurred.

61. Mr Byham said that the cover allows an approved contractor to be called out for emergency work.

62. Mr Galliers expanded on that. He said that the cover was not subject to an excess on emergency repairs. The cover is an insurance product. It guarantees a contractor to attend within 2 hours. It reduces claims arising on the main policy because the damage would be limited by prompt attention. There is no call out charge to pay. There is an upper limit on claims of £250 but no limit on the number of claims.

63. He said that under Clause 2 of the Seventh Schedule the lessor can insure against such other risks as it thinks fit. This cover was included to improve the level of claims and the profitability of the scheme. ghbc were trying to bring in measures to manage claims more effectively.

64. Mr. Byham questioned whether it was a risk to the building. It only gave cover up to the main policy excess. Does it benefit the lessees?

65. Mr Galliers replied that it reduces claims because things get dealt with before problems get worse. It covers the common parts too, so lessees would be more inclined to react to a problem in the common parts knowing that they would not be billed for a call out.

66. Mr Byham referred to the fact that the policy was cancelled with effect from 30 August 2004 because of the RTM takeover.

67. Ghbc had said that cover was on level terms with 2002/3 but the cover was index linked. The sum insured was £2,253,050.

68. As for the Emergency Assistance Cover, the Tribunal does not consider that this qualifies as "other risk" under Clause 2 of the Seventh Schedule. Even if it does qualify, the Tribunal does not consider that it was reasonable to incur an additional £520 premium for the limited cover afforded. It considers that it was reasonable for the landlord to effect terrorism cover, which is not uncommon in policies of this type

69. **The Tribunal's conclusions are as for 2002. The premium of £5492.28 for Buildings Cover and Terrorism Cover together equates to £2.45 per £1000. In its experience and in the light of the evidence this is not an unreasonable rate for 2003 and there is no reliable evidence to the contrary. However, this premium related to the year ended 30 December 2004. The policy was cancelled at the end of August 2004, when the RTM company took over. The insurance was therefore effective for only eight months and the premium should be apportioned accordingly. The Tribunal therefore finds that the sum of £3661.52 would be reasonable.**

Management Fees - £2538

70. The applicants considered that the fees should be £115 per month. They had a quote from Mr Westley of Keyholder Lettings and Management, dated 18 June 2004, quoting a fee of £120 per month.

71. The respondent said that the charge was based on £135 per flat plus VAT which was reasonable.

72. Both parties said at the hearing that the same arguments applied to this year as 2002.

73. **For the same reasons as for 2002, the Tribunal finds that the charge is not reasonably incurred. It considers that a management charge of £135 per flat would be reasonable for a properly effected, competent and efficient management service and that an appropriate and reasonable charge for the service which was provided would be £115 per flat, plus VAT, amounting in total to £2162.**

Repairs to gutter - £199.75

74. The applicants said there was no evidence of this work. The respondent referred to the invoice from Clipper Maintenance Services dated 23 June 2003 for the amount charged.

75. Mt Galliers was asked if he had any record of instructions being given to Clipper Maintenance Services for this work. He had not. He presumed that the property manager had instructed them verbally.

76. Mr Byham said that none of the lessees had seen anyone carry out this work. They had not seen any ladders or any mess from gutter cleaning. Some of the lessees work from home and so they would have seen something.

77. Mr Galliers had nothing to add.

78. **Mr Galliers is not able to produce any evidence that this work was instructed or that it was carried out, other than the invoice itself. There is**

no suggestion that BLR checked that the work had been done. It seems unlikely that all of the gutters could have been cleaned, a task which would have taken some time, without any lessee noticing it. The Tribunal concludes that the work was not carried out and that the charge is not therefore reasonably incurred.

Clear up ceiling - £132.19

79. The Tribunal saw the relevant ceiling during its inspection. There is an area of approximately 1.5-2 sq.m. of plaster skim which has fallen from the ceiling. Mr Galliers had not seen it.

80. Mr Mitchell confirmed his written statement in the bundle that he had cleared up the fallen plaster.

81. Mr Byham said that the work was not carried out by Clipper Maintenance Services. Mr Mitchell said that he saw two people at the property within a few weeks, he could not remember exactly when. He said that he and his wife had telephoned BLR several times to get the ceiling repaired but nothing had been done.

82. Mr Galliers said that the contractors had been instructed. When asked how he knew this he admitted that there was nothing in writing. He said obviously the contractors did attend on site, it may be that the work had already been done and what has been billed is a call out charge.

83. It was suggested that clearing up the fallen plaster was a minor job for the cleaners, not a job for a maintenance contractor. He said that they would want the contractor to attend anyway to assess what repair was needed. Asked if there was a quote for the repair work, he said that they would have provided one. He admitted that nobody from BLR inspected the damage. No insurance claim was made because the cost would be less than the excess.

84. Mr Byham said that he had spoken to plasterers who said they would have cleared the mess and replastered for less than this bill.

85. Once again, the respondent is unable to produce any evidence that the work was done and even now has not inspected the damage. The Tribunal accepts the evidence of Mr Mitchell that he, in fact, did the work. Even if he did not, a reasonable charge would be for half an hour's cleaning, certainly not in excess of £130. The Tribunal finds that this charge was not reasonably incurred.

Aerial - £199

86. The bundle included an invoice from Knights Installations for this amount, which states that the charge was for "Broken cable found to be at fault. Poor

reception found on the communal aerial system. Had to install individual aerial for No 8. Basic digital aerial. Install supplied set price. 3 storey prop."

87. Mr Byham said he had spoken to the contractor who had told him that this was the most expensive option. It is an enhanced aerial for receiving digital television. He said it would have been cheaper to rewire the communal aerial. Reception on the communal aerial was poor, useless, and some lessees have installed their own aerials. Why was the communal aerial not repaired? This work was for the benefit of the lessee of No. 8 and should have been billed to that lessee.

88. Mr Galliers said that the landlord was responsible for maintaining the communal aerial system. The cable to this flat would have had to be replaced, it was not working well or not at all. This was the best solution. He considered that it was a reasonable cost for the repair.

89. Mr Byham said that if the charge had been for an enhanced communal aerial the applicants would have no objection but it was actually for the benefit of one flat.

90. Replacement of the communal aerial with an enhanced communal aerial would probably have been covered by the Seventh Schedule because Clause (h) of the lease preliminaries provides that "*Repair includes the rectification or making good of any defect notwithstanding that it is inherent or due to the original design of the Property or of the relevant part of the Property.*" Had the broken cable to Flat 8 been repaired that would have been a service charge item.

91. The Tribunal finds that this was not work covered by the Seventh Schedule and is not, therefore a service charge item. It was not a repair to the communal aerial. It was an improvement to address the poor reception by Flat 8 but the other flats also had poor reception. The cost was not reasonably incurred.

YEAR TO 31/12/04
(These items relate to the interim service charge demanded on 6 October 2004)

Cleaning - £1110

92. The applicants consider that the charge should be £13-15 per hour.

93. The respondent's case was as before.

94. Mr Byham said that the charge should be reduced to cover 8 months, as the RTM company took over at the end of August. They now pay £50 per month for 4 hours.

95. For the reasons referred to previously, the Tribunal finds that this charge is not reasonable. It considers that a reasonable charge would be £13 per

hour for 1¾ hours per fortnight, amounting to £591.50 for a year, apportioned as £394.33 for the period January to August inclusive. It rounds this up to £420.

Insurance - £6620

96. Both parties made representations about the level of insurance premium, neither referring to the fact that the premium already charged in the year to 31/12/2003 was for a period of insurance 30/12/03 – 30/12/04. It also escaped the attention of the Tribunal at the hearing. The parties were given an opportunity to make written representations on the matter. Mr Galliers accepted that the insurance for the year to December 2004 was included in the 2003 service charge accounts and that there should be an adjustment for the cancellation in August 2004. He confirmed that there would be no further charge for insurance in the 2004 accounts prepared up to the hand-over to the RTM company.

97. As the RTM company took over the property with effect from 1 September 2004 and the landlord's insurance policy was cancelled with effect from 31 August and the insurance premium up to 30 December 2004 was included in the previous year's service charge, there is no insurance to pay in this service charge year.

Management fees - £2726

98. The applicants considered that the charge should be £120 per month and that it should only be for eight months.

99. Mr Galliers said that they had had to take on new staff, make arrangements to create new accounting procedures under the provisions of the Commonhold and Leasehold Reform Act, apply for registration with the FSA under the Insurance Mediation Directive, all of which added to the company's costs. They have had to increase their management fees. LEASE acknowledges that fees will increase. He accepted that some of the regulations referred to will not come in until 2006 but said that companies could not leave it until the last minute, they had to be prepared.

100. There had not been a commencement order in respect of the accounting provisions of the Commonhold and Leasehold Reform Act prior to August 2004. The Insurance Mediation Directive comes into effect in January 2005. The Tribunal accepts that these provisions are likely to have an effect on the level of management fees. It also accepts that some preparation is necessary for these changes but does not consider that it would have been necessary to incur significant extra costs prior to September 2004. Because of the take over by the RTM company, the management fees are only applicable for eight months. The Tribunal finds that this charge is not reasonable.

101. For the reasons given before, the Tribunal considers that a reasonable rate for the level of service being provided would be £120 plus VAT per flat per year. Therefore for the eight months to 31 August it would be £1504.

THE S.20C APPLICATION

102. S.20C provides that the Tribunal may make an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court 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. Such an order may be made if the Tribunal considers it just and equitable in the circumstances.

103. Mr Byham pointed out that BLR have provided answers to some of the lessees' questions since the application was submitted, such as the breakdown of the cleaning costs. These answers could have been given before. Perhaps if Ms Katz had come and discussed the issues with the lessees the hearing could have been avoided. The lessees have been putting their questions in writing. When responses have been received they have raised more questions. It was Ms Katz who told the lessees to take the matters to the LVT.

104. Mr Galliers responded that the lease provides for recovery of the costs. BLR have responded to queries in the past. Ms Katz advised application to the LVT only because it looked as if agreement could not be reached and that was the best way to resolve the issue. The freeholder will seek to recover the charges by BLR for dealing with the hearing on her behalf. He accepted that matters may have been resolved if there had been a meeting between BLR and the lessees but that was not requested by either side.

105. Clause 27 of the Lease provides that the lessee shall pay one sixteenth of "*all costs charges and expenses incurred by the Lessor in carrying out its obligations under the Seventh Schedule hereto and in connection wit the retained Land*".

106. The Seventh Schedule provides that "*the Lessor shall pay and discharge the proper and reasonable expenses of any managing agent*". The question of whether that provision includes the costs of a hearing such as this was not addressed by the parties and the Tribunal does not consider it appropriate or necessary in this case to make a finding on that point.

107. The Tribunal has found against the respondent on a number of the issues raised in the application. Mr Galliers has accepted that a meeting between the parties might have resolved matters. His explanation that there was no such meeting because neither side requested one is most

unsatisfactory. A competent managing agent would have made arrangements for such a meeting. Many of the issues were raised with BLR by the applicants prior to the application without satisfactory response forthcoming.

108. Taking all of the circumstances into account, the Tribunal finds that it is just and equitable to make an order under s20C.

SUMMARY AND ORDER

The Tribunal determines that the following service charges are payable in respect of the disputed items:-

Year ended 31/12/02	
Cleaning common parts	£ 400.00
Insurance	£5052.87
Management Fee	£2068.00
Year ended 31/12/03	
Cleaning common parts	£ 600.00
Insurance	£3661.52
Management Fee	£2162.00
Repairs and Maintenance	£ 924.69
Year ended 31/12/04 interim payments	
Cleaning common parts	£ 420.00
Insurance	NIL
Management Fee	£1504.00

AND that the total service charge payable for each year is therefore:-

Year ended 31/12/02	**£ 8,601.77**
Year ended 31/12/03	**£ 9,152.88**
Year ended 31/12/04 interim	**£ 4,699.00**

AND that each lessee is liable to pay one sixteenth of the said service charge, such payment, if not already made, to be made to Basicland Registrars Limited as agents for the Landlord within 28 days of the date hereof.

AND
the Tribunal makes an Order under Section 20C of the Landlord & Tenant Act 1985 that none of the costs incurred, or to be incurred, by the landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicants.

Dated this 1st day of December 2004

Signed: (Chair)

D S Brown FRICS MCIArb