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**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00MG/LIS/2013/0073

Property : Flats 3 and 7, No 10 Queens Gate, Plymouth, PL4 7PW

Applicant : Mrs D Johns (through her Attorneys)

Representative : Mr R James of counsel

Respondent : 10 Queensgate Management Ltd

Representative : Mr A Hoolash

Type of Application : Section 27A and 20C of the Landlord and Tenant Act 1985
(Liability to pay service charges)
Tenants application for the determination of
reasonableness of service charges.

Tribunal Members : Judge A Cresswell (Chairman)
Mr M Woodrow MRICS

**Date and venue of
Hearing** : 20 November 2013 at Plymouth Magistrates' Court

Date of Decision : 10 December 2013

DECISION

The Application

1. On 23 May 2013, the Applicant, the owner of the leasehold interest in Flats 3 and 7, 10 Queens Gate, Plymouth, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the service charge costs claimed by the landlord, via the Respondent management company, for the years 2007 to 2012.

Preliminary Issues

2. There were two preliminary issues.
3. Mr James submitted that none of the service charges for the years in question were recoverable by reason of a failure by the landlord to make demands which comply with the terms of the lease. He wished the Tribunal to determine that issue at the conclusion of all of the evidence.
4. Mr James also submitted that Mr Hoolash, who is the landlord (with his wife), and who was present and represented at the Case Management Hearing held on 10 July 2013, had failed to submit any evidence. In fact, Mr Hoolash had submitted documentary evidence and submissions since he had become unrepresented. The Tribunal could see no reason why it would prejudice the Applicants if it was to give proper consideration to the documentary evidence provided by Mr Hoolash and the submissions he had to make, supported by Mr H Williams of his accountants and Mr D Gerrard of Freehold Management Services, the current managing agent, in accordance with Rules 3, 6 and 18 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Inspection and Description of Property

5. The Tribunal inspected the property on 20 November 2013 at 1000. Present at that time were Mr Hoolash, Mr Williams, Mr Gerrard, Mr P Johns, Mrs D Ford (the latter 2 people being the Applicant's attorneys), Mr R Pearce, solicitor, and Mr James. The property in question consists of a large end of terrace building which has been previously extended and converted to provide 8 self-contained flats. Common parts include the hallway, landing and stairs, and externally a small garden and yard which includes 7 allocated parking spaces delineated on the lease plan (which spaces have been altered by re-painting).

Summary Decision

6. This case arises out of the tenant's application, made on 23 May 2013, for the determination of liability to pay service charges for the years 2007 to 2012 inclusive. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that the landlord has not demonstrated that all of the charges in question were reasonably incurred; the individual items of charge are detailed below.
7. The Tribunal allows the tenant's application under Section 20c of the Landlord and Tenant Act 1985, thus precluding the landlord from recovering its cost in relation to the application by way of service charge.

Directions

8. Directions were issued on 10 July 2013.
9. This determination is made in the light of the documentation submitted in response to those Directions and the evidence and submissions received at the hearing. The

Tribunal read a witness statement by Mrs Ford and Mr Johns and heard oral evidence from Mrs Ford, Mr Johns, Mr Hoolash, Mr Williams and Mr Gerrard.

The Law

10. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
11. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. Under Section 20B of the 1985 Act, if any of the costs taken into account in determining the amount of the service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, the tenant is not liable to pay those costs, unless during the 18 month period 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.

Ownership and Management

12. The property is owned by Mr Aboo Swaleh Hoolash (Mr Hoolash) and Mrs June Elizabeth Hoolash. The Respondent is the Management Company to which service charges are payable by the tenants; Mr Hoolash is a director of the Respondent company. Freehold Management Services is the managing agent currently appointed by the Respondent.

The Lease

13. The Applicant holds Flats 3 and 7 under the terms of leases dated 9 February 2007, which were made between Mr and Mrs Hoolash as lessor, the Respondent as the Management Company and Doreen Ellen Johns as lessee. Under the lease, service charge costs are to be split on the basis of a 1/8th share per apartment. The Third Schedule to the lease sets out the mechanism for the collection by the Respondent of the service charge; towards the end of the Third Schedule are covenants by the lessee in respect of the service charge. A lessee is required to pay a provisional sum of £500 towards the service charge. In subsequent years, the lessee pays the service charge for the preceding year; where the service charge for the previous year has not been ascertained and certified in accordance with the lease, the lessee is to pay either that provisional sum or the service charge payable for the preceding year but one. The Respondent is required to prepare an account after 31 December in a year showing the amount of the costs incurred in the immediately preceding year ending on 25 December and to provide the lessee with a copy of that account, together with a notice of the charges payable by the lessee.

Consideration and Determination

Compliance with the Terms of the Lease

14. The Tribunal finds it clear that the Respondent has never prepared accounts in the manner required by the lease. Mr Gerrard accepted that this was the case. It does not appear that Mr Hoolash has been well served by his accountant because a different accounting year has been chosen ending on 31 August, seemingly at the suggestion of the accountant, and the accountant suggested that the provisional sum should be increased to £800 from £500 when there is no mechanism within the lease to do so. Until the Respondent complies with the lease requirements, the detailed service charges demanded will not be payable. The Applicant accepts that she must continue to pay £500 per year per apartment until demands are made in accordance with the terms of the lease.
15. The Tribunal has gone on, however, to consider whether those individual items challenged by the Applicant are reasonable and payable.

Year to 31 December 2007

16. **The Applicant** submitted that she received no indication of the claimed service charge for this year until she had sight of a letter dated 10 September 2009 from H M Williams Chartered Accountants to Mr Hoolash so that any claim for a sum over and above the £500 provisional sum was time barred.
The Respondent was unable to provide evidence that notice was given to the Applicant of any costs incurred more than 18 months prior to 10 September 2009.
The Tribunal finds accordingly that only £500 is payable for the year 2007. The earliest record of charges for this year were in a letter of 10 September 2009 and the only evidence as to when this was received by the Applicant was in Mrs Ford's witness statement to the effect that it was received in the autumn of 2009 and there was no evidence from the Respondent to counter this assertion. Accordingly, the Tribunal did not go on to consider the reasonableness of the individual elements challenged by the Applicant.

Year to 31 December 2008

17. **Insurance**
The Applicant complained that the Respondent had failed to provide the insurance certificate and that the premium of £1599 appeared to be excessive and that there was no evidence that the sum had been paid.
The Respondent submitted that all insurance certificates had been handed personally by him to solicitors acting on behalf of the Applicant and further pointed to correspondence from his own solicitor who was told that a solicitor handling matters on behalf of the Applicant had left the file in some disorder.
The Tribunal noted that whilst there was no direct evidence of the payment of a premium for the year 2008, there was a letter offering renewal of the insurance in 2009 for £565. A similar sum was paid in 2010 and £449 was paid in 2011. It was apparent to the Tribunal that the building had never been properly valued or assessed to establish the reinstatement value for insurance purposes and that the value attributed had effectively been guessed by the Respondent and the insurance company/broker. The Tribunal noted that there was a rebuild value of £700,000 in a certificate of insurance dated August 2006 but no evidence as to where this figure had come from. The Tribunal further noted that the sum insured in 2008 was £500,000 but there was no direct evidence as to why the sum had been reduced or why the sum insured in 2010 was £520,000 or why a similar valuation was applied in 2012.

It was also apparent that the premium for insurance had varied considerably as there was a premium of £1433.25 in August 2005. There was no evidence to support a premium of £1599 for the year 2008 or to show why it was so out of kilter with premiums for the following 3 years. On the basis solely that there was apparently insurance to renew in 2009 and that the Respondent was able to obtain insurance for the building in the sum of £565 in the following two years, the Tribunal finds that only the sum of £565 is payable for the year 2008.

It is very important that the insurance reinstatement value be ascertained and that the Respondent demonstrates that it has sought value for money in the insurance market.

18. **Security Costs/Maintenance & Cleaning**

The Applicant submitted that there is actually no “security cost” and that the Respondent had accepted that this related to maintenance at the building and that his accountant had used the term “security”. Mr James indicated that there was no evidence as to where the costs of £3328 come from, there being no evidence of a contractor having been paid or of an employment contract or of National Insurance or PAYE.

The Respondent submitted a hardback book which contained details of payments made to a “caretaker” on the basis of a payment of £64 per week, which equated with £3328 per annum. The employee concerned was a Mrs Hilda Yankey (or Yankee). The book records that Mrs Yankey was employed until June 2012, having moved on to a monthly payment of £277.34 in November 2011 and that a Mr Nichola (sic) Powell had assumed the role in July 2012 at a similar rate of pay. Mr Hoolash told the Tribunal that Mr Powell was self-employed.

The Tribunal noted that the Applicant was concerned that the payment of this maintenance charge had not led to a clean and attractive building, but there was limited evidence of this concern which appeared to arise from visits to the property on 6 June 2012 and 21 October 2013. In that context, the Tribunal noted that the photographs submitted were not dated. The Tribunal could see that keeping the common areas and garden and yard clean and clear could take 8 hours per week and that 8 hours was a reasonable period for the range of duties described. Whilst there was no evidence of compliance with employment legislation in terms of a written contract of employment, there was evidence both from Mr Hoolash and Mr Gerrard in relation to the more recent period and from the book that payments had been made to a caretaker each week and there was reference too to tax coding. Faced with evidence from Mr Hoolash that he had supervised the work of the caretaker and from Mr Gerrard that he too had more recently supervised the caretaker and conflicting evidence of poor standards on only two occasions, on balance the Tribunal finds that the sum of £ 3328 was expended and is reasonable and payable.

19. **Repairs & Renewals**

The Applicant submitted that there was no evidence for the basis of the charge of £753.

The Respondent indicated an account of 28 July 2008 for £32 for work associated with a lock and 5 February 2008 for £720 for works associated with water ingress. In relation to the latter account, Mr Hoolash told the Tribunal that there was water ingress arising from problems with a balcony at the front of the building; that he had had a telephone call from Executive Lets which dealt with issues on behalf of the Applicant and that he felt under pressure. Mr Lynch who

had conducted the work was available whilst others he said he attempted to contact were not. He said Mr Lynch gave a verbal guarantee.

The Tribunal noted that there were 2 invoices referred to above. It was satisfied that £32 was reasonable and payable for a call-out to replace/repair a lock. However, in relation to the works associated with water ingress, there was no evidence of any real urgency. A landlord should be expected to source a reputable builder who would give a guarantee for work of this nature and an expectation that that would be a person with specialist knowledge. There was insufficient evidence of the nature of this work and its true cost and the Tribunal noted that further work was required to the same area in January 2009. There was scant information contained on an unheaded receipt which appeared to be a page from a booklet which the Tribunal concluded must be one owned by Mr Hoolash because pages of what appear to be that booklet feature as receipts from other contractors in the bundles provided by both Mr Hoolash and Mr Gerrard. The page here did not even identify the contractor by his full name, using only the name "Lynch" and not providing any contact details for "Lynch". In the circumstances described, the Tribunal was unable to say that the invoice/receipt in the sum of £720 was either reasonable or payable.

Year to 31 December 2009

20. Insurance

The Applicant pointed to the fact that no certificate had been produced, but did not suggest that the sum of £565 was unreasonable.

The Tribunal noted that whilst there was no certificate there was reference to a renewal in the sum of £565 on the same terms with the same broker. In a letter from CIA of 4 August 2010 there was reference to the insurance lapsing on 5 August 2010. On that basis, the Tribunal allows the sum of £565 as being reasonable and payable.

21. Security Costs/Maintenance & Cleaning

The Applicant submitted that there is actually no security cost and that the Respondent had accepted that this related to maintenance at the building and that his accountant had used the term "security". Mr James indicated that there was no evidence as to where the costs of £3328 come from, there being no evidence of a contractor having been paid or of an employment contract or of National Insurance or PAYE.

The Respondent submitted a hardback book which contained details of payments made to a "caretaker" on the basis of a payment of £64 per week, which equated with £3328 per annum. The employee concerned was a Mrs Hilda Yankey (or Yankee). The book records that Mrs Yankey was employed until June 2012, having moved on to a monthly payment of £277.34 in November 2011 and that a Mr Nichola (sic) Powell had assumed the role in July 2012 at a similar rate of pay. Mr Hoolash told the Tribunal that Mr Powell was self-employed.

The Tribunal has recorded its decision in relation to this head of cost at paragraph 18 above.

22. Repairs & Renewals

The Applicant indicated her concern that there was no proper explanation or substantiation of the sum £1913 sought to be charged and points to a lack of supporting documentation.

The Respondent pointed to a number of invoices and told the Tribunal that Mr White, the contractor named on a number of these invoices, is a builder known to him through work at a residential home he used to own and is known as a good and reasonably priced worker. Mr Hoolash described the various issues which had required repair and renewal.

The Tribunal noted that the aggregate of the invoices submitted was £1833.82. It was satisfied that there could be a measure of reassurance about Mr Ben White's work, there being proper headed bills which were particularised and had reasonable costs for the work described. It was not, however, reasonable for the Respondent to alter the parking arrangements which are set out in the lease without the agreement of the lessees, particularly when the result was that cars would be parked partly on the grass and that this would cause mud and affect the amenity of the property. To disaggregate that element of work from Mr White's invoice of 16 June 2009, the Tribunal determined that a one third reduction would be reasonable (i.e. £85.31).

There was also an unheaded invoice from an unnamed person in the sum of £125 which appears wholly associated with a leak relating to 2 individual flats, there being no reference to any common area. Accordingly, such a charge could not fall to the lessees of all of the flats as a service charge. An invoice of 9 April 2009, which again appeared to have come from Mr Hoolash's pad and again had no heading with details of the contractor, was for £15 for cleaning of wheelie bins. This was the only occasion on which such a charge was sought and the Tribunal could see no reason why such a task could not have been performed by the caretaker as part of the maintenance payments and accordingly finds the charge neither reasonable nor payable. In summary, therefore, the Tribunal finds that £1608.51 is reasonable and payable, being the sum of £1833.82 minus the 3 disallowed items.

23. **Lighting & Heating**

The Applicant noted the Respondent's concession that there is no heating and questioned the charge of £166.

The Respondent submitted that the £166 might be found in the bank statements but did not indicate these to the Tribunal. Mr Hoolash indicated that there were 6 or 7 internal light bulbs and an alarm system and that there were costs associated with mowing the grass, hoovering and cleaning.

The Tribunal noted that there is communal internal and external lighting and a fire alarm and that there would be the use of a lawn mower and Hoover. However, without a supporting invoice, the Tribunal cannot conclude that the sum of £166 is payable and the Tribunal disallows this charge as any estimate would be complete guesswork. Indeed, even the electricity bill for July to November 2011 within the documents submitted was an estimate and appears to relate to a landlord's supply. Earlier payments, again estimated, were far lower in value than the £166 claimed.

Year to 31 December 2010

24. **Insurance**

The Applicant did not pursue the challenge in relation to this payment.

25. **Security Costs/Maintenance & Cleaning**

The Applicant submitted that there is actually no security cost and that the Respondent had accepted that this related to maintenance at the building and that his accountant had used the term "security". Mr James indicated that there was no

evidence as to where the costs of £3328 come from, there being no evidence of a contractor having been paid or of an employment contract or of National Insurance or PAYE.

The Respondent submitted a hardback book which contained details of payments made to a “caretaker” on the basis of a payment of £64 per week, which equated with £3328 per annum. The employee concerned was a Mrs Hilda Yankey (or Yankee). The book records that Mrs Yankey was employed until June 2012, having moved on to a monthly payment of £277.34 in November 2011 and that a Mr Nichola (sic) Powell had assumed the role in July 2012 at a similar rate of pay. Mr Hoolash told the Tribunal that Mr Powell was self-employed.

The Tribunal has recorded its decision in relation to this head of cost at paragraph 18 above.

26. **Repairs & Renewals**

The Applicant indicated her concern that there was no proper explanation or substantiation of the sum £2487 sought to be charged and points to a lack of supporting documentation.

The Respondent appeared at a loss to inform the Tribunal to what this figure of £2487 related. He made reference to works covered by insurance in the sum of £2780 and pointed to his withdrawal of a sum of £2000 from his HSBC account. In the end, he told the Tribunal that he had reached the figure by adding up all of the bills featuring in his bundle for this year.

The Tribunal examined the invoices indicated by Mr Hoolash but was unable to reach the figure claimed by adding together the totals from the various invoices. A plug-in air freshener could not be described as repairs and renewals and Mr Hoolash was unable to explain what “Blued Tacks” were, let alone what they were used for; these 2 items are accordingly not payable. The Tribunal found that the sum of £70 for cleaning of carpets was reasonable and payable; that a charge of £21 for printer ink was reasonable and payable, but as a part of a management charge and not as part of repairs and renewals; that a charge of £19.99 for an electric grass trimmer was reasonable and payable and that works by Mr White to the roof in the sum of £340 were reasonable and payable. Accordingly, the aggregate payable under this head for this year is £429.99 rather than the £2487 sought by the Respondent.

27. **Internal Repairs**

The Applicant submitted that Mr Hoolash had been sued in his own name by the Applicant and not as landlord following damage which he had caused to fixtures in one of the Applicant’s flats whilst effecting a repair, following water damage within the Applicant’s flat, and without her permission. He had been acting as the owner of the flat above from which the water had emanated rather than as the landlord of the building.

The Respondent argued that Mr Hoolash had offered to do the work after being approached by Executive Lets on behalf of the Applicant. He told the Tribunal that his ladder fell and the shower screen broke. Mr Hoolash argued that the flat was part of the building such that he was entitled to claim this sum as part of the service charge.

The Tribunal noted that a Country Court Judge had awarded compensation against Mr Hoolash as the owner of the flat above the Applicant’s and not as landlord of the building. It was not proper and therefore not reasonable for Mr Hoolash to pay himself this figure from funds maintained for the upkeep of the

building and his subsequent attempt to recover that money from all of the lessees was not reasonable and such sum of £1782.75 is not payable. Mr Hoolash accepted that a sum of £100 in relation to legal and professional fees was similarly not payable by the lessees and the Tribunal so finds.

Year to 31 December 2011

28. Security Costs/Maintenance & Cleaning

The Applicant submitted that there is actually no security cost and that the Respondent had accepted that this related to maintenance at the building and that his accountant had used the term "security". Mr James indicated that there was no evidence as to where the costs of £3328 come from, there being no evidence of a contractor having been paid or of an employment contract or of National Insurance or PAYE.

The Respondent submitted a hardback book which contained details of payments made to a "caretaker" on the basis of a payment of £64 per week, which equated with £3328 per annum. The employee concerned was a Mrs Hilda Yankey (or Yankee). The book records that Mrs Yankey was employed until June 2012, having moved on to a monthly payment of £277.34 in November 2011 and that a Mr Nichola (sic) Powell had assumed the role in July 2012 at a similar rate of pay. Mr Hoolash told the Tribunal that Mr Powell was self-employed.

The Tribunal has recorded its decision in relation to this head of cost at paragraph 18 above.

29. Repairs & Renewals

The Applicant indicated her concern that there was no proper explanation or substantiation of the sum £2362 sought to be charged and points to a lack of supporting documentation.

The Respondent was unable to substantiate the sum claimed, save by reference to an invoice for £180 misfiled in an earlier year in Mr Hoolash's bundle of documents.

The Tribunal found that the sum of £180 in an invoice of 14 December 2011 for water ingress work was reasonable and payable but was unable to find that there was evidence of any further works during the year which would be payable by the lessees.

Year to 31 December 2012

30. Insurance

The Applicant submitted that the Respondent had failed to produce the insurance certificate and proof of payment of £1581, which sum seemed excessive when compared with earlier charges of £565.

The Respondent was unable to clarify this issue at the hearing. Mr Williams indicated that there might have been 2 payments and Mr Hoolash told the Tribunal that he may have added 2 years. He told the Tribunal that he had paid £1400 for insurance in 2005.

The Tribunal adopts but does not repeat the detail contained in paragraph 17 above. There was evidence of insurance by Abacus within the Respondent's papers at a premium of £883.38 from 10 August 2012 following a letter from CIA of 17 July 2012 offering renewal at £932.02. The sum insured was £520,000. Although the premium was higher than in earlier years, there had been no real increase for 3 years and the Tribunal is aware that there has been significant increase in insurance

premiums and the Applicant produced no evidence to suggest that a premium of £883.38 in 2012 for an insured sum of £520,000 was not a reasonable premium. Accordingly the Tribunal finds the sum of £883.38 to be reasonable and payable.

31. **Security Costs/Maintenance & Cleaning**

The Applicant submitted that there is actually no security cost and that the Respondent had accepted that this related to maintenance at the building and that his accountant had used the term "security". Mr James indicated that there was no evidence as to where the costs of £3328 come from, there being no evidence of a contractor having been paid or of an employment contract or of National Insurance or PAYE.

The Respondent submitted a hardback book which contained details of payments made to a "caretaker" on the basis of a payment of £64 per week, which equated with £3328 per annum. The employee concerned was a Mrs Hilda Yankey (or Yankee). The book records that Mrs Yankey was employed until June 2012, having moved on to a monthly payment of £277.34 in November 2011 and that a Mr Nichola (sic) Powell had assumed the role in July 2012 at a similar rate of pay. Mr Hoolash told the Tribunal that Mr Powell was self-employed.

The Tribunal has recorded its decision in relation to this head of cost at paragraph 18 above.

32. **Repairs & Renewals**

The Applicant indicated her concern that there was no proper explanation or substantiation of the sum £847 sought to be charged and points to a lack of supporting documentation.

The Respondent pointed to the payment of a £250 excess and to a cost of £570 for painting of bargeboards. The Respondent had taken the opportunity presented by insurance works to one set of bargeboards to paint a further set whilst the scaffolding was in place.

The Tribunal noted that a Complete Works invoice of 16 February 2012 had a manuscript reference to a £250 excess for works to two bargeboards for which an insurance claim was met. There was not, however, any evidence within the bundle of documents produced by the Respondent to show that there was any excess of £250 on the insurance at that time or that £250 had been paid by the Respondent. Accordingly, the Tribunal finds the sum of £250 not to be payable. So far as the painting of the bargeboards was concerned, although Mr Gerrard suggested that there might have been some scaffolding costs, it was clear that scaffolding costs had already been claimed as part of the insurance claim. The Complete Works invoice makes no reference to more than one coat of paint on the bargeboards and the Tribunal could not see how this work could properly have cost more than £200 + VAT from a professional company such as Complete Works and accordingly finds that only £240 is payable.

33. **Management Fee**

The Applicant was concerned that the sum of £1600 was recorded in the accounts and yet the actual cost of the contract was only £1100. The Applicant was also concerned that the functions carried out by the management company Freehold Management Services (FMS) exceeded those required by the lease and included works personal to the landlord. There was also concern about the quality of the works undertaken.

The Respondent accepted that there was an issue here. Mr Gerrard conceded that the correct figure was £1100 and not £1600 and that, whatever the agreement reached with Mr Hoolash might say about costs associated with individual flats, the £1100 must be divided equally amongst the 8 flats. Mr Gerrard refuted a suggestion of lack of communication on the part of FMS and pointed to his introductory letter dated 28 November 2011 and to attempts to engage with the Applicant's representatives. He accepted that he did collect the ground rent for the landlord, but could not think of anything else he did especially for the landlord. He averred that he provides services only relevant to the lease and that a generic form of agreement which appeared to exceed the requirements of the lease had now been updated.

The Tribunal noted the issue relating to the correct division of the £1100 and that a division by 8 would equate to £137.50 per flat. It was apparent that there had been work for the landlord distinct from the requirements of the lease; there was the example of collecting ground rent and the Tribunal noted that the FMS bundle held some of the landlord's gas and electricity accounts. FMS had also continued to account on the incorrect basis adopted by the Respondent, using August rather than December as the end of the accounting year. The Tribunal was not shown a copy of the contract said to be the new contract specific to the lease of this property. However, the only evidence which the Tribunal heard of charges likely to be made by other providers of management services in the area came from Mr Gerrard who opined that others might charge £70 to £100 more. There was a dispute between the parties as to who was to blame for a lack of communication, which is a feature common to cases where there is poor communication; each side tends to blame the other. In the circumstances described, the Tribunal has taken £137.50 as a fair starting point for management fees for a flat in a building of this nature in Plymouth and reduced that figure by £7.50 to exclude the minor items identified as personal to the landlord. The Tribunal notes that there are proposals for the management contract to be in a more transparent document and welcomes this and encourages greater communication.

34. **Legal & Professional Fees**

The Respondent conceded that the sum of £215 was not payable and **the Tribunal** so finds.

Section 20c Application

35. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(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.

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

36. Because the Applicant appears to have been forced before the Tribunal by the landlord's threat of forfeiture and failure to comply with the terms of the lease and because many of the challenges made by the Applicant to payability have been endorsed by the Tribunal's determination, the Tribunal has no hesitation in allowing her application under Section 20c of the Landlord and Tenant Act 1985. It directs that the landlord's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge for the current or any future year.

Costs

37. Paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 reads as follows:

10.(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within subparagraph (2).

(2) The circumstances are where-

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

38. The Tribunal heard an application by Mr James for costs on the basis that the Respondent had acted unreasonably. He argued that the Respondent had operated a shambles, had not complied with the lease or statute, had not complied with the Tribunal's directions and had been oppressive when he instructed solicitors to threaten forfeiture if the service charges demanded of the Applicant were not paid, which threat had led to this application. Mr James submitted that, but for the behaviour of the Respondent, the hearing could have been shorter or avoided.
39. Mr Hoolash submitted that he had wanted to resolve the issues between the parties, but that the Applicant had been unwilling to meet his accountant or have a meeting. "We both have to take the blame."
40. The Tribunal reminds itself that this jurisdiction is generally a "no costs" jurisdiction. The Tribunal allows the application for costs in part. It has had regard to the phrase "*otherwise unreasonably*." That phrase must be construed as following the words which precede it, and the test is whether the behaviour permits of reasonable explanation: HH Judge Huskinson in **Halliard Property Company Limited and Belmont Hall and Elm Court RTM Company Limited LRX/130/2007 LRA/85/2008**. The Tribunal followed a two-stage approach. First to find whether the Respondent acted unreasonably and then, if we so found, to exercise our discretion whether to order costs having regard to all of the circumstances.
41. The Tribunal finds that the Respondent has acted unreasonably. The Applicant was entitled to challenge service charges going back to 2007. The Applicant was entitled to ask the Tribunal to determine if charges are reasonable; in the event, the Tribunal has determined that a number of the service charge elements are not reasonable and payable. The Tribunal finds that it was unreasonable for the Respondent to threaten forfeiture when its demands for payment did not comply with the terms of the lease

and, for 2007, the terms of statute. It was clear too that the Respondent's own paperwork and records were shambolic. The Respondent has failed to provide a coherent account of expenditure and the hearing was longer than it needed to be as a result. When Mr Hoolash was asked to account for charges, he often led the Tribunal on a "wild goose chase", almost certainly due more to ignorance than intent. Indeed, the Tribunal concluded that the Respondent, particularly in the person of Mr Hoolash, has demonstrated a lack of organisation and a lack of knowledge of legal requirements. Had the Respondent been better organised, it is likely that it would have been able to substantiate some of the expenses which the Tribunal has had to find were not reasonable and payable. Taking a rounded view, the Tribunal orders the Respondent to pay costs to the Applicant in the sum of £500. (Because the application was made before the 1st July 2013 when the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 came into force, and which replaced the provisions of Paragraph 10 Schedule 12 of the Commonhold and Leasehold Reform Act 2002, the transitional provisions limit the amount of costs that the Tribunal can award to £500.)

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.