

10377



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

Case reference : LON/00AG/LSC/2014/0125

Property : Flat 1, 222 Finchley Road, London
NW3 6DH

Applicant : Sybil Abrahams

Representative : Ms Mattson, barrister

Respondent : Antony Antonioni

Representative : Ms Screeche-Powell, barrister

Type of application : For the determination of the
reasonableness of and the liability
to pay service charges and
administration charges

Tribunal members : Ruth Wayte
Ian Thompson FRICS
Lucy West

**Date and venue of
hearing** : 22 September 2014
10 Alfred Place, London WC1E 7LR

Date of decision : 28 October 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the year end accounts prepared by the Applicant in respect of the service charges for the period from 1 October 2010 to 31 March 2013 do not comply with the terms of the lease and therefore do not trigger the Respondent's liability to pay.
- (2) The tribunal determines that the interim service charge demands do comply with the terms of the lease and therefore do trigger a liability on the part of the Respondent to pay such sums as the tribunal has determined are reasonable and as set out below.
- (3) The tribunal determines that £1,862.28 is payable by the Respondent for the period from 1 October 2010 to 31 March 2011.
- (4) The tribunal determines that £4,035.80 is payable by the Respondent for the period from 1 April 2011 to 31 March 2012.
- (5) The tribunal determines that £5,717.41 is payable by the Respondent for the period from 1 April 2012 to 31 March 2013.
- (6) The tribunal determines that £3,332.06 is payable by the Respondent in respect of the interim service charge for the period from 1 April 2013 to 31 March 2014.
- (7) The tribunal determines that £1,652 is payable by the Respondent in respect of the interim service charge for 2014/15 due on 28 March 2014.
- (8) The tribunal determines that legal costs in respect of the previous county court proceedings are not payable by the Respondent under the terms of the lease.
- (9) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (10) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Northampton County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration

charges payable by the Applicant in respect of the service charge period from 1 October 2010 to 28 March 2014.

2. Proceedings were originally issued in the Barnet County Court under claim no. 2YJ80472. The claim was transferred to the Northampton County Court and then in turn transferred to this tribunal, by order of District Judge Jones on 3 March 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Mattson at the hearing and the Respondent was represented by Ms Screeche-Powell.
5. Immediately prior to the hearing the parties handed in further documents, namely written submissions and cases for both parties, together with an additional witness statement for the Respondent. In the absence of any objections from either party the documents were accepted by the tribunal.

The background

6. The property which is the subject of this application is a ground floor flat in a three storey house converted into 5 flats, all let on long leases.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary.
8. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
9. Historically, the Respondent had managed the building pursuant to an informal arrangement with the Applicant's late husband, setting up a company called 222 Finchley Road Management Ltd ("the Company") to do so. For the avoidance of doubt, this Company has no status under the lease. Management had passed from the Respondent in or about 2007 but the Applicant and managing agents had continued to use the Company as a vehicle for demanding service charges without the consent or co-operation of the Respondent since 2011 through to 2013. No service charge accounts had been prepared since 2013 and nothing had been paid by the Respondent for the entire period in dispute.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the Applicant has complied with the terms of the lease in connection with the service and administration charges demanded;
 - (ii) The payability and/or reasonableness of service charges from October 2010 to 28 March 2014;
 - (iii) The payability and/or reasonableness of legal costs.

The Respondent had previously raised an argument in relation to whether the Applicant had complied with the consultation requirement under section 20 of the 1985 Act in connection with cleaning, management and major works demands. This point was conceded by his representative at the start of the hearing.

11. Having heard evidence and submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows.

Applicant's compliance with the lease – service charges

12. The Applicant's claim is for interim and/or actual service charges throughout the period in dispute. The Respondent argued that the service charge accounts were not in compliance with the terms of the lease and therefore nothing is payable at all – although accepted that should accounts be prepared now which complied with the lease, the liability to pay could still be triggered for the period in dispute. The Applicant, while accepting the accounts were not certified, relied on the provision in the lease allowing for an interim service charge.
13. It was agreed that the Respondent's obligation to pay the service charge is set out at clause 2(a) of the lease, which required a 40% contribution in relation to various expenses. Any objections to payment of the service charge on the basis that the expenses do not fall under this clause are dealt with below in the relevant service charge year.
14. Clause 2 (b) sets out the provisions in respect of payment of the service charge, with the following of particular relevance to this issue:

“ 2(b)(i) The amount of the service charge and other charges hereinbefore covenanted to be paid shall be ascertained and certified by a certificate (hereinafter called the certificate) signed by the

Lessor's Auditors or Accountants acting as experts and not as arbitrators annually and so soon after the end of the Lessor's financial year as may be practicable and which Certificate shall relate to such year in manner hereinbefore mentioned

2(b)(iv) The Certificate shall contain a summary of the Lessor's said expenses and outgoings incurred during the Lessor's financial period to which it relates together with a summary of the relevant details and figures forming the basis of the service charge and other charges hereinbefore covenanted to be paid and the Certificate...shall be conclusive evidence for the purpose hereof of the matters which it purports to certify

2(b)(v) The expression "the expenses and outgoings incurred by the Lessor" as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Lessor during the period in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made including a sum or sums of money by way of reasonable anticipated expenditure in respect thereof as the Lessor or its accountants or managing agents (as the case may be) may in their discretion allocate to the period in question as being fair and reasonable in the circumstances and which relates pro rata to the Flat

2(b)(vi) The Lessee shall with every half yearly payment of rent reserve hereunder pay to the Lessor such sum (hereinafter referred to as the "Interim Service Charge") or such other sum as the Lessor or its managing Agents may reasonably determine as being the estimated or anticipated expenditure in advance and on account of the service charge for the Flat and in default of payment thereof such sum shall be recoverable as if the same were rent in arrear. The Lessor shall prior to each of the said half yearly dates on which the Interim Service Charge shall become due deliver to the Lessee at the flat a statement of the amount of the Interim Service Charge that shall be payable on such date and such statement if sent by post shall be deemed to have been delivered on the day following the posting thereof."

15. The Respondent's argument was that the above clauses made the provision of a certificate signed by the Applicant's auditors or accountants a condition precedent to the liability to make payment of either the final service charge or of the payment on account. The latter proposition required clauses 2(b)(v) and (vi) to be read together. Ms Screeche-Powell set out authorities in support of her argument in her submissions, namely paragraph 7.180 in *Woodfall's Law of Landlord and Tenant* and the Upper Tribunal decision in *Akorita v Marina Heights (St.Leonards Ltd)* [2011]UKUT 255.

16. The Applicant had not dealt with this argument in her submissions, given the timing as set out above. Ms Mattson put her case shortly, accepting that there had been no certified accounts in accordance with the lease but relying on clause 2(b)(vi) which contained no such requirement in relation to the interim service charge. Both parties accepted that certified accounts could be produced in the future, for all the years in dispute, if necessary.

The tribunal's decision

17. The tribunal determines that the Company accounts produced in respect of the service charge years 2010/11 through to 2012/13 do not comply with the requirement in the lease for "*a certificate signed by the Lessor's Auditors or Accountants*". As this is a condition precedent to the Respondent's liability to pay, the tribunal determines that nothing is payable in respect of the year end demands as at the date of the hearing.
18. However, the tribunal does not agree with the Respondent's contention that the interim service charge demands require a similar certification. In particular, the tribunal considers that clause 2(b)(vi) stands on its own, meaning that the only requirements for the interim service charge demand are as set out in that clause. The tribunal has seen estimates for each service charge year in dispute, to which the Respondent made no objection. In the circumstances the tribunal determines that the interim service demands were valid and therefore triggered a liability on the part of the Respondent in accordance with his lease.
19. That said, throughout the period in dispute for which evidence is available, the interim demands are in excess of actual expenditure. Following the reasoning of the Lands Tribunal in *Warrior Quay Management Co Ltd v Joachim* (LRX/43/2006) the tribunal has therefore determined what is payable in respect of each service charge year in dispute based on such evidence of actual expenditure as was drawn to the attention of the tribunal and having made a determination of reasonableness as requested by the Respondent.

The payability and/or reasonableness of service charges from October 2010 to 28 March 2014

1/10/2010 -31/03/2011

20. Both parties agreed to use the year end figures in the Company accounts as the total expenditure claimed, together with the separate invoice for insurance, which the tribunal will deal with first. Clause 2 (2)(a)(i) of the lease entitles the lessor to recover "*the cost of insuring the Buildings and keeping the same insured throughout the term hereby created against loss or damage by fire storm tempest and (if*

possible) aircraft and explosion and such other risks normally covered under a comprehensive insurance”.

21. The Applicant relied on their witness Paul Robertson, Managing Director of Midway Insurance Services, whose first statement provided copies of the relevant Aviva insurance schedules from 2010 through to December 2014. In evidence, he confirmed that the Applicant’s son arranged the insurance through his company, Voteglen Ltd. He also confirmed that a commission was payable both to Midway and Voteglen, the latter being 15% of the premium.
22. Voteglen Ltd had produced an invoice for £6,593.11 for 2010/11. The schedule for that year, including the separate terrorism cover, came to £6,578.11. Where there is a conflict between the two demands, the tribunal prefers the insurance schedule as it is produced independently of the Applicant. Mr Robertson acknowledged that the premium was high but stated it was largely due to the poor claims history of the property, which included a substantial claim by the Respondent following the accidental flooding of his flat in or about 2005.
23. The Respondent had originally challenged the inclusion of terrorism cover in the policy but this objection fell away during the hearing. That left the challenge that the premium was too high, partly due to the failure to re-market the insurance throughout the period in dispute. The Respondent had provided witness statements from Dervish Mehmet Dervish, an Independent General Insurance Broker, who was unable to attend the hearing. Mr Dervish had provided an alternative quote from Zurich insurance giving a premium of £2,363.22. Another quote from AXA was produced later on in the hearing of £2,574.82. Neither quote included terrorism cover and in the circumstances the Respondent submitted that £3,000 was a reasonable amount for insurance for all the years in dispute.
24. Mr Robertson took issue with the quote from Zurich on the basis that the policy, effectively a home owner’s policy, was not suitable for a freeholder of a building with flats on long leases, some of which were likely to be sublet. He also attacked Mr Dervish’s evidence on the basis that he was unable to establish that he was indeed a registered broker. The AXA quote was not produced until after Mr Robertson left the tribunal but on its face it is a similar policy to Zurich. Mr Robertson conceded that the previous claims were now sufficiently historic to expect a lower premium of £4,500 for 2015/16 but maintained that the premium for 2010/11 and subsequent years was reasonable in the circumstances. Ms Mattson for the Applicant reiterated that claim, although conceded that a deduction of the commission to the freeholder may be due to reflect the liability in the lease.
25. The tribunal determines that a reasonable cost for insurance for the service charge year 2010/11 is the actual cost incurred through Aviva of

the premia less the freeholder's commission of 15%, that is £5,591.39. Where there was a conflict between the evidence of Mr Robertson and Mr Dervish, the tribunal preferred Mr Robertson. He attended court and was a credible witness. Mr Dervish did not make himself available for cross-examination and the tribunal accepts there are questions about his evidence and that the alternative quote was not suitable for a freeholder. The AXA quote obtained by the Respondent suffered from a similar problem and the tribunal considers it similarly unrealistic. The deduction of the freeholder's commission reflects the liability under the lease to pay for the "*cost of insuring the building*", as opposed to the cost of a commission. No evidence was provided to the tribunal as to the services provided by the freeholder in respect of management of the insurance policy and the tribunal concluded that the effect of this additional commission was to increase the cost to the leaseholders.

26. The first item in the schedule to the Company accounts relates to management charges, set at £2,085. Throughout the period in question the agents were Pemberton Property Management. The objection by the Respondent is both in relation to the amount and the actual level of service which he submitted was poor in terms of the failure to provide proper records of account and supervise works. The Respondent submitted that £500 was a reasonable amount. He did not produce any alternative quotes.
27. The Applicant submitted that the charges were reasonable. Ms Taylor and Ms Chua both of Pembertons Property Management gave evidence at the hearing, mainly in relation to other items in dispute. The tribunal agrees with the Respondent that the failure to provide management accounts is relevant to the reasonableness of the charge but otherwise does not consider that the evidence supports any additional reduction in what in the tribunal's experience is a market rate, albeit at the higher end. In these circumstances the tribunal determines that £2,085 is a reasonable charge for the year in question, to include an allowance for £500 for accountancy/audit services as set out below. The tribunal considers that for the rate sought service charge demands in accordance with the lease should have been provided without additional accountancy costs.
28. The next item in the Company accounts is £31 for light and heat. On receiving confirmation that the charges were in respect of lighting only, the Respondent accepted that this amount was reasonable.
29. The next item is £811 for cleaning. It was accepted by both parties that this related to the common parts and took no more than 1 hour, twice a month. The Respondent's objections for this period were based on the cost and quality of the cleaning. He provided an alternative quote of £20 per hour, which on a fortnightly clean made a total of £240 for the year.

30. The Applicant relied in part on the evidence of another leaseholder, Mr Paul Satchell. He conceded that the cleaning had been "somewhat sporadic" but had no issue until recently with the general standard. Ms Taylor of Pembertons maintained the charges were reasonable. Her statement conceded that cleaning had stopped for a period in 2010 and altogether since October 2012, although she confirmed that her personal knowledge dated from August 2012 when she started managing the property. On further examination of the evidence, the tribunal notes that the cleaner at the relevant time was Great Scapes, charging £30 per hour. Doing the best it can on the evidence available, the tribunal determines that a reasonable amount for this period is 6 x 2 x £30, accepting that a fortnightly clean was provided for 6 months as claimed by the Respondent but upholding the £30 actually charged as a reasonable rate. This makes a total of £360 in respect of cleaning.
31. The next item is £1,063 for repairs and maintenance. The evidence in the bundle which appears to relate to the period in question, is an invoice for £615.25 from GPF Lewis in relation to "making safe a hole to the side elevation", what appears to be a duplicate invoice from PMC for £399.50 in respect of works to the steps and a further invoice in relation to similar works for £264. The Respondent disputed that the works were undertaken, although was clear that he was not alleging the invoices were false. He had no recollection of the works to the elevation and maintained the works were to the same step and therefore should be disallowed on that basis. He submitted £200 was reasonable for the year, in part relying on quotes obtained from his own builder. Mr Paul Satchell confirmed that works had been undertaken to the front steps and disputed that the works were to the same area.
32. The invoices identified above actually exceed the sum claimed. Making the best of the evidence available the tribunal determines that the work was done and that a reasonable cost is the sum claimed of £1,063.
33. The next item is accountancy, claimed at £1,188. As explained above, the company accounts prepared on behalf of the freeholder were not in compliance with the lease and were in fact irrelevant, as the company in question is the company of the Respondent with no role in management of the property for the period in dispute. The Respondent proposed £500 per annum was a reasonable amount which the tribunal accepts as a generous payment for what needs to be no more than a certified list of expenditure. As stated above, the tribunal considers that given the relatively modest requirements in the lease, the managing agents should be able to produce the certificate without recourse to external accountants and therefore determines that an allowance of £500 is to be made within the sum considered reasonable for management, meaning that no additional sum is due.
34. The final item in the Company accounts for 2010/11 is £1 for sundry expenses which is not disputed by the Respondent. This makes a total

of £9,131.39 as the amount which the tribunal determines is reasonable to pay for the service charge year 2010/11. Divide by half to reflect the period claimed in these proceedings makes £4,565.70, with the Respondent's share being £1,826.28.

Service charge year 2011/12

35. Again the parties agreed to use the year end figures in the Company accounts as the claim for items other than insurance. Using the same reasoning as set out above, the tribunal determines that a reasonable amount for insurance is £5,830.91, being the premia as set out in the Aviva insurance schedules less the freeholder's commission.
37. Management fees also follow a similar pattern. The tribunal allows £2118 as a reasonable amount to include an allowance of £500 in respect of accountancy/audit services.
38. Light and heat is claimed at £103. In his evidence the Respondent claimed the invoices provided as evidence of this expenditure amounted to £83.23. That claim was not disputed by the Applicant and in the circumstances the tribunal determines that £83.23 is a reasonable amount for this item.
39. Cleaning is claimed at £1,758. The Respondent submitted that no cleaning was done during this period, although he again did not claim the invoices were false. The Applicant relied on the evidence of Mr Satchell that there was cleaning during this period, albeit sporadically. By this time the cleaning company had changed to Just Cleaning which charged an hourly rate of £75. Taking into account the previous cleaners charged £30 an hour and the Respondent's quote of £20, the tribunal determines that £30 is a reasonable hourly rate. Given the actual invoices provided by the Applicant the tribunal determines that cleaning was provided during this period and therefore allows £720 as a reasonable amount, based on a fortnightly clean of one hour.
40. Repairs and maintenance are claimed at £1,154. Again the Respondent disputed that some of the works were carried out and others were too expensive, submitting that £117.36 was a reasonable amount. He also challenged payability in respect of the gardening invoice as the only garden was in his demise and therefore fell outside the freeholder's costs for which service charges could be claimed. Again, the Respondent made it clear that he was not alleging any of the invoices were false. Going through the invoices in turn, which added up to more than the total claimed, the tribunal agrees with the Respondent that the invoice from Green Life Landscapes for gardening is not payable by the Respondent as the work relates to the Respondent's garden and is not recoverable under the terms of the lease. The tribunal does consider that the invoices in respect of replacement of the window, electrical

works and the painting of the front door are reasonable making a total of £1,004.36 under this heading for this year.

41. Accountancy is claimed at £1,000. For the same reasons as set out above, the tribunal accepts the Respondent's offer of £500 is a reasonable amount for accountancy services as an allowance within the total charge for management, therefore no additional sum is considered reasonable.
42. The Respondent accepted bank charges of £3. That left sundry expenses of £702 which were challenged by the Respondent on the basis that nothing was due. The expenses were stated in the witness statement of Ms Chua of Pembertons to be made up of an invoice for pest control, a health and safety inspection and more accountancy fees for company accounts. The tribunal agrees with the Respondent that on its face the invoice in respect of pest control relates to Flat B and is therefore not recoverable as part of the service charge. The tribunal also disallows the claim in relation to the cost of company accounts as not reasonably incurred for the reasons given above. However, the tribunal does allow the health and safety report at £330 as a reasonable amount. This makes a total of £10,089.50 as the amount which the tribunal determines is reasonable to pay for the service charge year 2011/12, with the Respondent's share being £4,035.80.

Service charge year 2012/13

43. Again the parties agreed to use the year end figures in the Company accounts as the claim for items other than insurance. Using the same reasoning as set out above, the tribunal determines that a reasonable amount for insurance is £5,021.53, being the premium as set out in the Aviva insurance schedule for that year and the premium for terrorism cover charged the previous year in the absence of a separate schedule for this year, less the freeholder's commission.
44. Management fees this year were charged at just £1,102. There was no explanation provided by the Applicant but given the agreement to use year end figures as the starting point the tribunal considers this to be a reasonable amount for the reasons explained before.
45. No charge was recorded for light and heat in this period, making the next item cleaning, claimed at £450. The Respondent again submitted that no cleaning was done during this period, although he again did not claim the invoices were false. The Applicant relied on the evidence of Mr Satchell that there was cleaning during this period, together with that of Ms Taylor who gave evidence that cleaning continued until October 2012. The claim would appear to be for three months on the basis of Just Cleaning's hourly rate of £75 and a fortnightly clean. Making the best it can of the evidence available the tribunal determines

that a reasonable amount for cleaning for this period would be £180, reducing the hourly rate to £30 for the reasons stated above.

46. Repairs and maintenance are claimed at £820. The invoices for this period again exceeded the sum claimed in the Company accounts. They included three invoices from PMC Ltd, which the Respondent objected to on the basis that the work appeared to relate to specific flats, rather than the lessor's liability under the lease. He proposed £120 as a reasonable amount for the year. Looking at the PMC invoices it is clear that the works are either to the roof or structure of the building and therefore within the landlord's responsibility. The tribunal also considered the amount claimed to be reasonable. Since these invoices alone exceeded the claim in the Company accounts the tribunal determines that £820 is a reasonable amount for repairs and maintenance for this period.
47. Accountancy is claimed at £600. Again, no explanation was provided by the Applicant and for the same reasons as set out above, the tribunal determines that no additional fee is reasonable over and above the management charges claimed.
48. Bank charges were claimed at £169, the Respondent maintained that there was no evidence to support the large increase and offered to pay £3, the same amount as claimed the previous year. The Applicant did not address this point specifically and given the rather poor account for this year, as set out above, the tribunal determines that £3 is a reasonable sum. That left sundry expenses of £129 which were accepted by the Respondent as reasonable.
49. In addition to the usual repeat items, the Applicant also sought a payment in respect of major works. As indicated earlier, the Respondent's objection to the consultation process was withdrawn at the start of the hearing, leaving objections in terms of payability under the terms of the lease and reasonableness of the amount sought. In terms of payability, the tribunal determines that this claim falls within clause 2(b)(vi) above, as part of the Interim Service Charge and is therefore payable on demand, subject to reasonableness.
50. The Applicant claim for the major works was £5,750 plus VAT, plus 2% described as an Admin Fee and a fixed cost of £2,000 in respect of surveyors fees. No detail of the works was provided in the documents but the Applicant confirmed that they were to cover internal decorations of the common parts including re-carpeting. Mr Satchell gave evidence that this work was long overdue, which was not disputed by the Respondent. His main argument was that the cost was too high, proposing an alternative of £2,000 in total, although he had not obtained an alternative quote to support that sum. The tribunal does not consider that internal decoration and re-carpeting requires the services of a surveyor and in the circumstances determines that a

reasonable cost for the payment in advance of the major works on the basis of the consultation is £5,750 plus 2% plus VAT, making a total of £7,038.

51. This makes a total of £14,293.53 as the amount which the tribunal determines is payable for the service charge year 2012/13. The Respondent's share is £5,717.41.

Interim Service Charge for 2013/14

52. No year end accounts have been prepared in relation to this period but given that this period has expired, the parties agreed it was appropriate to use the actual evidence of expenditure when considering the reasonableness of the estimated charges. Taking insurance first and applying the same reasoning as set out above, the tribunal determines that £5,261.16 is reasonable, being the premia as set out in the schedules for that year less the freeholder's commission of 15%.
54. The next item is electricity, previously described in the Company accounts as light and heat. The estimated cost is £100, the Respondent offered £50 as a reasonable amount. The previous accounts are too inconsistent to set a reliable benchmark but the invoices provided by the Applicant would appear to support a figure of £100 as a reasonable estimate.
55. It was agreed that no cleaning was provided during this period and Ms Taylor for Pembertons conceded that the charges for landscaping and maintenance of fire protection equipment would be withdrawn as neither was required for this property, making the next item general repairs estimated at £1,500. The Applicant relied on three invoices from PMC (London) Ltd which came to £678 in total. The Respondent proposed £500 as a reasonable sum, disputing in particular the invoice for repairs to the garden gate as excessive. He had provided alternative quotes for a lower amount. Looking at the work described in the invoices the tribunal determines that the costs are reasonable and therefore determines that a reasonable estimate under this heading is £678.
56. That leaves management and accountancy fees, estimated at £3,291 (£2,291 plus £1,000 respectively). The Respondent proposed £500 for each, as previously. The tribunal does not consider £500 is a reasonable fee for management of 5 flats and for the reasons stated above determines that the fee sought by Pembertons is reasonable, to include an allowance for £500 in respect of accountancy services, making a total under this heading of £2,291.
57. This amounts to a total of £8,330.16. 40% or £3,332.06 is payable by the Respondent.

Interim Service Charge for 2014/15

58. This is a claim for 50% of the estimated service charge for the year, due on 28 March 2014. Again, the parties agreed to use the estimate in the bundle and apply the same principles as set out above in relation to 2013/14, although no actual expenditure is in evidence.
59. The first item is insurance, estimated at £7,011. As set out above, the Applicant's insurance broker gave evidence that a reasonable budget for this year's premium in his view would be £4,500 and the tribunal determines that is a reasonable amount.
60. Electricity has been estimated at £200 which seems high, although it includes bulb replacement for the first time. On the basis of the previous years the tribunal considers that £100 is a reasonable sum.
61. No cleaning has taken place yet but the tribunal considers it is reasonable to budget for the reinstatement of fortnightly cleaning going forward at an hourly rate of £30, making £300 a reasonable estimate for the last 5 months of the year.
62. As before, the Applicant withdrew the claim in respect of landscaping and maintenance of fire protection equipment, making the next item general repairs estimated at £1,500. Again, the Respondent offered £500. Looking at the average of past expenditure the tribunal considers that a reasonable estimate would be £1,000 for the year.
63. That leaves accountancy and management fees. For the same reasons as set out before the tribunal allows the management fee claimed as a reasonable sum to include an allowance of £500 in respect of accountancy services, making this item £2,360.
64. This makes a total for the year of £8,260, meaning £4,130 would be a reasonable amount for the interim payment due on 28 March 2014, the Respondent's share of that sum being £1,652.

Legal Costs

65. The Applicant's claim was for costs incurred over and above fixed court costs in relation to previous proceedings for unpaid service charges, as an administration charge. She relied on clause 2(8) of the lease under which the lessee was "*to pay to the Lessor all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessor on or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925*" and the decision of the Court of Appeal in *Freeholders of 69 Marina v Oram* [2011] EWCA Civ 1258.

66. The Respondent argued in written submissions that the costs were unreasonable and since the Applicant had already had the benefit of fixed costs, that was sufficient. Ms Screeche-Powell developed her arguments at the hearing to deny liability for costs prior to forfeiture proceedings on the basis that the lease was to be construed at the date of grant, which predated the requirement to obtain a determination of breach before a forfeiture notice could be served. The tribunal determines that the real question here is whether the costs were indeed incurred in contemplation of forfeiture proceedings. In the Applicant's statement she confirms that the previous judgment debt had been paid following a charging order, the only reference to forfeiture is in the submissions provided by Ms Mattson shortly before the hearing in relation to these proceedings. Given that the previous proceedings were simply a county court debt action enforced by way of a charging order and in the absence of any evidence that forfeiture of the lease was contemplated by the Applicant at that time, the tribunal determines that no additional legal costs are due in relation to those proceedings under the lease.
67. At the hearing, the Respondent applied for an order under section 20C of the Landlord and Tenant Act 1985 to prevent the Applicant from passing on the costs of these proceedings in the service charge. Ms Mattson on behalf of the Applicant confirmed that there was no general power to pass the costs on and in the circumstances the tribunal does not make an order. Had there been a power, the tribunal would not have considered it just and equitable to make an order in any event, having regard to the determinations made and the Respondent's failure to make any contribution to the service charge throughout the period in dispute.

The next steps

68. This matter should now be returned to the Northampton County Court.

Name: Ruth Wayte

Date: 28 October 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 27A

- (1) An application may be made to the appropriate 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

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

- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.

- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).