



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

Case References : LON/00BK/LSC/2013/0525

Property : Ground Floor Flat, 146 Shirland Road,
London, W9 2BT

Applicant : Mr F Younus

Representative : In Person

Appearances for Applicant: : Mr F and Mrs S Younus

Respondent : Shirland Residence

Representative : In Person

Appearances for Respondent : (1) Dr H Slack, Director of Shirland Residence
and lessee of flat 2
(2) Mrs S Knott-Martin, Director of Shirland
Residence

Type of Application : An application under s.27A Landlord & Tenant
Act 1985

Tribunal Members : (1) Judge A Vance
(2) Mr J Barlow, JP FRICS

Date and venue of Hearings : 24.04.14 at 10 Alfred Place, London WC1E 7LR

Date of Decision : 12th May 2014

DECISION

Decision of the Tribunal

1. The tribunal makes the determinations as set out under the various headings in this Decision
2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant through any service charge.

Introduction

3. The Applicant applies under section 27A Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of his liability to pay service charge to the Respondent for the service charge years ending 2011 to 2013 inclusive.
4. Numbers appearing in square brackets in this decision refer to the hearing bundle unless stated otherwise.
5. The Applicant is a lessee of the ground floor flat at 146 Shirland Road, London, W9 2BT ("the Premises") which is situated in a five-storey mid-terraced property built around the early 20th century ("the Building"). There are five flats in the Building. Although there is a garden at the rear of the property, it is not a communal garden. The Applicant's flat was previously a shop and he has the benefit of having his own entrance door. There is a separate entrance door leading to the upper floor flats via a communal staircase. There are no other communal areas in the Building apart from this entrance way and staircase. There is no front garden.
6. The freehold interest in the Building is vested in the Respondent. In 2005, all of the lessees in the Building, with the exception of the lessee of the Premises at the time, exercised their right to collectively enfranchise and acquired the freehold of the Building. Dr Slack subsequently purchased her flat in 2006 and the Applicant purchased his in 2007. Mrs Knott-Martin was previously a lessee of a flat in the Building but sold her flat in December 2006 (although she retained a 10% share of the freehold of the Building and remains a Director of the Respondent Company). Dr Slack is also a Director and owns 20% of the freehold interest. The Applicant does not have a share of the freehold and is not a Director.
7. The Respondent previously engaged managing agents to deal with the day to day management of the Building. A written agreement to provide these management services was entered into by the Respondent and Integrity Property Management Ltd ("Integrity") commencing on 10.06.10, for a minimum period of one year, thereafter terminable by either party on three months' notice [115]. The Respondent gave notice to terminate the agreement on 14th August 2013 and currently performs the management function itself.

Case Management Hearings

8. An oral case management hearing took place on 30.08.13, attended by the Applicant and his wife, Mrs Younus, and Mrs Knott-Martin. At that hearing the Applicant

agreed to pay the Respondent £1,800 in respect of service charge by 27.09.13 (without admission of liability). The application was then stayed until 29.11.13 upon directions which included provision by the Respondent to the Applicant of a revised service charge budget for the 2013 service charge year together with amended service charge accounts and inspection of service charge invoices and insurance certificates for the 2011 and 2012 service charge years.

9. A further oral case management hearing took place on 16.01.14 attended by the Applicant and Dr Slack. Supplemental directions were issued to the parties on the same day.

Inspection

10. Neither party requested that the tribunal inspect the Premises and the tribunal did not consider this to be necessary or proportionate.

The Lease

11. The relevant lease is dated 07.10.03 and was entered into between George Warburton and Monitor Securities Limited for a term of 99 years from 25.12.85. The Applicant has the benefit of the unexpired residue of that term.
12. The relevant provisions of the lease can be summarised as follows:
 - (i) The lessee covenants to pay, by way of service charge, 20% of the costs, expenses and outgoings incurred by the landlord for those matters set out in Parts 1, 2 and 3 of the Fourth Schedule to the lease, together with the interim charge (and subject to the terms and provisions) referred to in the Fifth Schedule (*clause 4(d)*).
 - (ii) The costs, expenses and outgoings referred to in the Fourth Schedule includes the landlord's reasonable costs of management of the Building and its' costs of maintaining and keeping in good and substantial repair and condition the main structure of the Building; the installations servicing the Building; the stairs and landings of the Building (including painting and decorating the same when reasonably required); and all other parts enjoyed or used by the lessee in common with the other lessees of the Building.
 - (iii) Clause 3(f) contains an obligation on the part of the lessee to pay expenses, including surveyors and solicitors' costs in certain specified circumstances.

The Hearing

13. By the date of the hearing the Applicant had details of the actual service charge costs for 2013. Both parties wished the tribunal to reach its' determination on the actual figures for that year rather than the budgeted figures and it agreed to do so.
14. The Applicant challenged the following items of service charge expenditure:

- (i) Management Fees for the service charge years 2011, 2012 and 2013;
 - (ii) Accountancy Fees for the service charge years 2011, 2012 and 2013;
 - (iii) Professional Fees for the service charge years 2011, 2012 and 2013; and
 - (iv) The cost of a fire risk assessment included within the 2012 service charge year.
15. At the end of the hearing, and at the tribunal's request, the Respondent provided a copy of the specification of works relating to the Building prepared by Leonard Tridgell Associates in July 2011. The Applicant did not object to the Respondent being allowed to rely on this report despite its late provision.

Management fees

16. The sums in dispute, as set out in the Applicants' statement of case are as follows:

Year	Item	Amount	Applicant's contribution
2011	Management Fee	£1,125	£139.27
2012	Management Fee	£1,200	£240
2013	Management Fee	£1,181	£236.20

The Applicant's Case

17. The Applicant's case is that the service performed by Integrity was poor and that this had been conceded by the Respondent in its statement of case in these proceedings. At the same time, he says, the amounts demanded for management costs had escalated to unreasonable levels.
18. He contended that Integrity had included inappropriate costs within the annual budget such as the costs of cleaning (when no cleaning was ever carried out) and pest control (when no such works were carried out there was no evidence that these were, in fact, required).
19. It was also asserted that Integrity had inappropriately demanded a charge from him in order to allow him to inspect invoices underlying service charge demands and that it had demanded a large sum from him for major works without first complying with the statutory consultation procedure under s.20 of the 1985 Act.
20. The Applicant submitted that Integrity failed to respond to reasonable enquiries from him asking for explanations as to the service charges demanded and had instead wrongly commenced county court proceedings against him seeking to recover these sums as a debt.
21. He also contended that Integrity had commissioned surveys and fire risk assessments when these were not always necessary and that it had refused to attend to a leak from the flat above the Property until he paid outstanding service charges.

The Respondent's Case

22. The Respondent conceded in its statement of case [105] that the service provided by Integrity was “below expectations”. However, despite their “lack of attention to detail” they had performed their duties as managing agents and the Respondent had therefore paid their fees in accordance with the management agreement that provided for a fixed fee of £250 plus VAT per flat per annum plus disbursements [118].
23. The tribunal was informed that following termination of its engagement, Integrity failed to pass its files and documents to the Respondent until January 2014. Upon receipt of these documents the Respondents carried out a thorough review of the accounts with the help of a chartered accountant and reimbursed several charges to the lessee’s service charge accounts.
24. As part of this review the Respondent concluded that the major works consultation was flawed and that it was no longer seeking payment of the sum previously demanded from the Applicant. It was also identified that mistakes had been made by Integrity who had included charges within the service charge that were only payable by the Directors of the Respondent and not the Applicant
25. This review led to an amended service charge demand being sent to the Applicant in February 2014 [27] which removed all the charges that had previously been incorrectly included within the service charge accounts. The budget for 2014 was also reviewed and revised figures included within that demand. However, despite this review, the Applicant has not paid the amount due in respect of the 2014 interim service charge and delayed in paying the amount due for insurance of the Building for that year. Dr Slack asserted that the Applicant persistently delayed in paying the service charge and that he only made payment once legal action had commenced. She stressed the practical difficulties that this caused the Respondent in complying with its’ obligations given that there is no sinking fund in operation for this Building.

Decision and Reasons

26. The tribunal considers that if Integrity had, in fact, properly carried out all of the services set out in Schedule A of the management agreement [116-8] the standard fee of £250 plus VAT was at the upper limit of what can be considered reasonable for a Building of this size and nature (having regard to the apparent lack of relevance of items numbered 4, 5, 11, 15, 17 in that Schedule; the fact that there are only five flats and very little by way of common parts)
27. However, as conceded by the Respondent, Integrity did not provide a proper service. Before the tribunal, Dr Hack stated that Integrity had carried out the “bare minimum” and that it was particularly poor at communicating with the lessees.
28. In the tribunal’s view the evidence indicates the following failings on the part of Integrity:

- (i) A substantial failure to respond to queries raised by the Applicant. The Applicant's evidence that communication between the Integrity and the lessees was poor was, for the most part, conceded by Dr Hack in oral evidence. The fact that the lessees had "*struggled with Integrity's communication, lay out of accounting and the negotiations on sorting out these issues....*" is referred to in an email from Dr Slack to the Applicant dated 14.08.13 [34].
- (ii) Failure to comply with the statutory consultation procedures under s.20 of the 1985 Act before demanding a large sum from the Applicant in respect of major works. Again, this point was conceded by the Respondents before the tribunal. Dr Slack stated that, in common with the Applicant, she did not receive an initial s.20 consultation notice from Integrity for proposed major works. The Respondent's acknowledgment that the consultation process was flawed also appears in its' statement of case [107].
- (iii) Sums had been included within service charge budgets without any evident consideration of the likely anticipated costs and actual expenditure from previous years. Furthermore, costs were included for services that were not being provided. The Respondent agreed that no cleaning of the common parts had been undertaken and removed these charges as part of its review once the contract with Integrity was terminated. No pest control was provided and nor was there any evidence before us to indicate that this was required. The budgeted amounts for utilities seem to the tribunal to be excessive in light of both parties agreement that the only relevant utility cost was that of three electricity light bulbs in the common staircase. Sums had been included for estate maintenance but with no evidence of any communication to the Applicant as to any planned maintenance.
- (iv) It had not sought to undertake any repairs or redecoration to the common parts despite all parties agreeing that the common parts were in a shabby condition.
- (v) It has inappropriately demanded the sum of £70 in order to allow the Applicant access to inspect invoices. The Applicant's evidence appears to be corroborated by another lessee who was also asked to pay this sum [67].
- (vi) It had responded inappropriately to the query raised by the Applicant in respect of the leak from the flat above the Property [57-58]. Whilst, this leak may have been due to the default of the lessee in the flat above the response was inappropriate.

29. In light of the poor standard of service provided, the tribunal concludes that the management fees for each year have been unreasonably incurred and that the amount that it is reasonable for the Applicant to pay (allowing for a modest inflationary uplift) is as follows:

Year	Item	Amount	Applicant's contribution
2011	Management Fee	£875	£175

2012	Management Fee	£900	£180
2013	Management Fee	£925	£185

Accountancy Fees

30. In its' revised calculation [279] the Respondent states that the sums due from the Applicant are as follows:

Year	Item	Amount	Applicant's contribution
2011	Accountancy Fee	£977.69	£195.54
2012	Accountancy Fee	£840	£168
2013	Accountancy Fee	£720	£144

The Applicant's Case

31. The Applicant contended that the fee charged by the accountants in these years also included work relating to the Respondent's company accountants that should not be charged to the service charge account. He also points out that the sums stated in the relevant invoices from the accountants are at odds with the fees being charged to the lessees [12]

The Respondent's Case

32. The Respondent states that the sum of £977.69 for 2011 is made up of a reversal of the sum of £830 originally allocated as a provisional sum for accountancy fees together with payments made to the accountants' Ryan & Co (£900) and the company who replaced them (Glazers) of £907.69 [281].
33. For 2012, the sum of £840 includes a £240 fee paid to Glazers in the 2013 accounts plus a provision of £600 [283].
34. For 2013, the sum of £720 was, it says, arrived at by "*debiting the pre-payment of £1,500 accounted for in the 2012 Company accounts and adding an accrual for accountancy fees going forward in the amount of £600 + VAT per annum*".
35. Dr Slack's evidence was that the Respondent had been reassured by Glazers that the accounts that had been prepared were proper service charge accounts. In a letter dated 13.03.14 [257] Glazers had confirmed that separate non-trading accounts had been prepared as well as the service charge accounts.
36. In that letter it is stated that the service charge accounts prior to 2013 reflected transactions carried out by the managing agent and that Glazers certified these accounts in the format recommended by the Institute of Chartered Accountants in England and Wales. It is also stated that for 2013, as the block was being managed

by the directors of the Respondent company it was “*appropriate to prepare trading accounts for that year to which the details of service charge expenditure along with our certificate have been appended as ‘management information’*”

37. She also pointed out that there are several items of expenditure identified in those accounts that were not passed on to the lessees. This includes a late filing fee with Companies House and other charges identified as not applicable to leaseholders as set out in the table at [279]
38. Dr Slack also indicated that the accountancy fees were higher than usual in 2011 as Glazers encountered difficulties in getting information from Ryan & Co.

Decision and Reasons

39. The tribunal is unable to ascertain how the Respondent had arrived at the amounts that it considers are payable by the Applicant for the service charge years in question. The amounts set out in the table above (and indeed the accounts themselves) do not reflect the sums set out in the actual invoices from the accountants for preparation of the service charge accounts for those years.
40. It appears to the tribunal that the Respondent's reference to accruals and prepayments relates to the method of accounting followed by the accountants when preparing service charge accounts and not the actual amount of the accountants' fees charged to the service charge accounts.
41. There are three invoices relating to Glazers' fees included in the bundle. The first invoice, dated 31.07.12 [207] is in the sum of £240 and relates to two items of work. Firstly, the preparation of the accounts of Shirland Residents Limited in respect of the year ending 31.12.11. Secondly, work carried out in relation to ongoing matters concerning the service charge accounts.
42. The second invoice is dated 22.01.13 [237] and is in the sum of £900. That sum relates, firstly, to preparation and certification of the service charge accounts for the year ending 31.12.11 and, secondly, to preparation of the accounts of Shirland Residents Limited in respect of the two years ending 31.12.12. There is also reference to “*dealing and generally with the affairs of this property to date*”.
43. The third invoice is dated 26.3.13 and is in the sum of £600. The work carried out by Glazers is described in the invoice as being the preparation and certification of the service charge and major works fund accounts for the year ending 31.12.12.
44. The tribunal finds the descriptions in these invoices to be unsatisfactory in the following respects:
- (i) The first two invoices do not apportion the fee charged between work carried out in respect of preparation of service charge accounts (which is properly recoverable from the Applicant through the service charge) and preparation of the Respondent's company accounts (which, in the tribunal's view is not recoverable from the Applicant).
 - (ii) It is unclear if the reference to “*dealing and generally with the affairs of this property to date*” in the second invoice relates to preparation of the service charge accounts.

45. In the tribunal's view the Respondent is not entitled to recover sums relating to the preparation of the accounts of Shirland Residents Limited from the Applicant through the service charge. The Applicant's obligation under Fourth Schedule of the lease is to contribute towards '*all costs and expenses incurred by the Lessor for the purpose of complying with or in connection with the fulfilment of his obligations [under the lease]*' as well as '*The reasonable cost of management of the building*'.
46. Whilst the Respondent is obviously entitled to engage accountants for the purpose of performing the lessor's covenants in the lease, clause 5(6) of the lease states that this is where it is '*necessary or desirable for the proper maintenance safety and administration of the Building*'. This cannot extend to the preparation of the company accounts for the Respondent. Work carried out by Glazers in preparation of those accounts is for the benefit of the directors of the Respondent company and is too remote from the management or administration of the Building for it to be recoverable through the service charge,
47. The tribunal's function, as far as this dispute is concerned, is to determine whether or not the sums sought by the Respondent in respect of accountant's fees have been reasonably incurred. In the tribunal's view the disparity between the amounts included in the accounts and the actual invoices from Glazers had not been satisfactorily explained. Nor is the tribunal able to identify how much of the sums sought are attributable to the preparation of the Respondent's company accounts.
48. Given the above conclusions, the tribunal is of the view that the sums sought from the Applicant for these service charges have not been reasonably incurred. The tribunal is therefore required to determine the amount that it is reasonable for the Applicant to pay.
49. This is five-storey mid-terraced property containing five flats. The only communal area is the staircase to the upper floor flats which is not heated. All parties agreed that no repairs or cleaning have been carried out to the Building during the years in question. There are, in the tribunal's view few invoices that the accountants would need to consider when preparing these accounts. This is reflected in the accounts which identify the minimal cost of lighting the communal stairway; the costs of insurance; management fees and little else by way of expenditure apart from accountancy fees.
50. In the tribunal's view, given the size and nature of the Building and the limited amount of work likely to be required by the accountant a reasonable sum for the Applicant to pay for the years ending 2011 and 2012 is his apportioned share of £500 plus VAT (£600) in each year.
51. As for the year ending 2013, the Respondent seeks the sum of £720 by way of an interim payment on account. In the tribunal's view, given its' determination in respect of the two previous service charge years a reasonable sum is £525 plus VAT (£630), allowing for a modest inflationary uplift.

Professional Fees

52. The sums in dispute were as follows:

Year	Item	Amount	Applicant's contribution
2011	Chartered Surveyors' Fee	£626.46	£125.29
2012	Legal Fees	£631.00	£631.00
2013	Legal Fees	£600.00	£600.00

The Applicants Case

53. The Applicant contended that the fee for the chartered surveyor's report was not reasonably incurred as it concerned a survey in respect of a major works exercise that was later aborted [182]. Nor had the lessees been made aware of the contents of this survey until it appeared in the accounts.
54. As for the 2012 legal fees, these were incurred by Brethertons solicitors in respect of county court proceedings [76] brought against the Applicant for non-payment of service charge and comprise a court fee of £95 [197] and solicitors' fees of £536 [201]. The Applicant's position was that these proceedings should not have been pursued given the flawed approach to accounting and demand of service charges followed by Integrity. As such, the costs had been unreasonably incurred.
55. In respect of the 2013 legal fees, these were incurred by Anthony Gold & Co. Their invoice [242] refers to advice given in respect of unpaid service charges by the Applicant. A copy of their letter of advice to Ms Martin dated 23.08.13 [342] is described as being advice ahead of the first Case Management Conference. The Applicant argued that these costs related to advice concerning this Application and he was not liable to pay them. He also pointed out that he had made an application under s.20C of the 1985 Act in respect of the Respondent's legal costs.

The Respondent's Case

56. The Respondent's position is that these sums were properly recoverable through the service charge. The chartered surveyors report was obtained so that the Respondent was in a position to understand the current state of the Building and to plan for any required repairs.
57. As for the legal costs incurred, the Respondent relied on clause 3(f) of the lease and argued that it was entitled to recover solicitors costs incurred in relation to any breach of covenant by the Applicant. It was therefore seeking to recover the whole of these charges from the Applicant alone

Decision and Reasons

58. The tribunal determines that the sum of £626.46 in respect of the surveyor's fee is payable by the Applicant in his apportioned share and that it was reasonably incurred. It considers that it was reasonable for the Respondent to obtain this report to identify the condition of the Building. Whilst a copy of the report was not in the

Bundle the specification of works handed to the tribunal at the hearing is evidence that a report was obtained.

59. The Respondent's case was that it wanted to identify if any urgent repairs were needed to the Building. Given that no repairs had been carried out to the Building since the Applicant had purchased his flat in 2007, securing a report was not unreasonable. The Applicant did not challenge the cost of the report itself and it appears to the Tribunal that the hourly rate charged and total cost is not unreasonable in any event.
60. As for the legal costs, what the Respondent is seeking to do is to recover these costs in full from the Applicant. It cannot do so through the service charge because if such expenditure was recoverable through the service charge the Applicant would only be liable for his apportioned share and not the full amount. Moreover, an examination of the construction of this lease is that the expenses referred to in clause 3(f) are not specifically included within the service charge costs and expenses identified in the Fourth Schedule of the lease. It could possibly be argued that they amount to costs of management of the Building but this was not suggested by the Respondent. On the case advanced by the Respondent the tribunal determines that these costs are not payable by the Applicant through the service charge.
61. If the Respondent wishes to recover the full amount of these legal costs from the Applicant then it needs to consider whether or not to seek to recover them as an administration charge. What amounts to an administration charge is set out in Paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("CLARA") and it includes an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly in connection with a breach (or alleged breach) of covenant.
62. However, the Respondent should bear in mind that recovery of legal costs such as these directly from a defaulting tenant as an administration charge are subject to a test of reasonableness (Paragraph 2 of Schedule 11 of CLARA) and that the provisions of Section 158 and Schedule 11(4)(1) of CLARA, require that a demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges. It will also wish to consider the limitation provisions of s.20B of the 1985 Act and the tribunal's decision below relating to the Applicant's s.20C application given that the costs incurred by Anthony Gold, appear, on the evidence of their letter of advice, to relate to advice in respect of these tribunal proceedings.

Fire Risk Assessment

63. The Applicant challenged the cost of a health, safety and fire risk assessment apparently carried out on 26.01.12 [199] in the sum of £318.00.

The Applicants Case

64. The Applicant's case was that the same company had carried out a health, safety and fire risk assessment on 10.11.10 and there was no need for another one to be carried out so soon. As a result the cost was unreasonably incurred.

The Respondent's Case

65. The Respondent's position was that it would rather err on the side of caution and have regular health and safety inspections. It contended that the sum was properly recoverable through the service charge.

Decision and Reasons

66. The tribunal does not consider it reasonable to incur the costs of this report less than 15 months after the report carried out on 10.11.10. There is no evidence before the tribunal to indicate a pressing need for this report so soon after the previous one. Whilst it is clearly appropriate for regular health and safety inspections to be carried out, in the tribunal's view a bi-annual inspection is normally sufficient and to do so more frequently may amount to an unreasonable expense.
67. In this case, the invoice indicates that some additional signage was applied at a total cost of £30 and the tribunal considers that this is the sum that it reasonable for the Applicant to pay (in his apportioned share).

Application under Section 20C , Reimbursement of Fees and Legal Costs

68. The Applicant sought an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Respondent incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by him.
69. Dr Hack indicated that apart from the costs of Anthony Gold & Co she had incurred £200 of costs in dealing with this Application and that she would like to recover these through the service charge.
70. When exercising its' discretion as to whether or not to make a s.20C order the tribunal has to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the degree to which the Applicant has succeeded in this application.
71. The tribunal bears in mind that the Respondent depends on the income recovered through the service charge in order to maintain the Building and that to make an order under s.20C may have the effect of depriving it of its contractual right under the lease to recover costs incurred in respect of this Application from the Applicant.
72. The tribunal also considers that the evidence indicates that there is merit in the Respondent's assertion that non-payment of service charge by the Applicant meant that it was reasonable for it to pursue county court proceedings against him. The Applicant informed the tribunal that he stopped making payments towards the service charge in June 2011 and that the next payment he made was in the sum of £921.25 in March 2012, after the county court proceedings had been issued on 01.02.12. He had received demands but stopped making payments during the intervening period. Whilst there were clearly problems with the service provided by

Integrity it would, in the tribunal's view, have been preferable for the Applicant to pay something towards his service charge as opposed to withholding payment altogether until court proceedings were issued. It is also noteworthy that he paid a lump sum of £1,800 following the case management hearing on 30.08.13 as reflected in Judge Dickie's order made that day.

73. The tribunal also commends Dr Slack and Mrs S Knott-Martin for the manner in which they approached this Application. They were refreshingly honest about the shortcomings of Integrity when addressing the tribunal and the impression created was that they were trying as best they could to get the management of the Building back on track for the benefit of all the lessees, including the Applicant. It is clear that this has involved a great deal of time and effort on their part.
74. However, the Applicant has, to a large degree, been successful in this Application and weighing up all the above factors the tribunal determines that it is just and equitable for it to make an order under section 20C of the 1985 Act so that the costs the Respondent has incurred in connection with these proceedings should not be regarded as relevant costs in determining the amount of service charge payable by the Applicant.
75. However, the Applicant has not been wholly successful and having regard to the undoubted difficulties that his non-payment of service charges caused the Respondent as well as the fact that the Respondent company is primarily comprised of lessees in the Building who are dependent on service charge income to remain solvent, the tribunal does not order the Respondent to refund any fees paid by the Applicant.
76. Nor does the tribunal make any order in respect of the costs that the Applicant sought from the Respondent in the sum of £800 for legal advice and the costs of preparing the hearing bundle. The tribunal has no general power to award costs against a losing party. Under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the tribunal may make an order against the Respondent in respect of costs if it has acted unreasonably in defending or conducting the proceedings. However, the tribunal is not satisfied that the Respondent has conducted itself unreasonably in these proceedings.

Name: Amran Vance

Date: 09.05.14

Annex
Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of “service charge” and “relevant costs”

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent –
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of service charges: reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A – Liability to pay service charges: jurisdiction

- (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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

SCHEDULE 4

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Regulation 7(4)

Part 1

Consultation Requirements for Qualifying Works for Which Public Notice is Required

Notice of intention

1

- (1) The landlord shall give notice in writing of his intention to carry out qualifying works--
 - (a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
- (c) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for carrying out the works is that public notice of the works is to be given;
- (d) invite the making, in writing, of observations in relation to the proposed works; and
- (e) specify--
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.

Inspection of description of proposed works

2

(1) Where a notice under paragraph 1 specifies a place and hours for inspection--

- (a) the place and hours so specified must be reasonable; and
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3

Where, within the relevant period, observations are made in relation to the proposed works by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's contract statement

4

- (1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a statement in respect of the proposed contract under which the proposed works are to be carried out.
- (2) The statement shall set out--
 - (a) the name and address of the person with whom the landlord proposes to contract; and
 - (b) particulars of any connection between them (apart from the proposed contract).
- (3) For the purpose of sub-paragraph (2)(b) it shall be assumed that there is a connection between a person and the landlord--
 - (a) where the landlord is a company, if the person, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the amount of the relevant contribution to be incurred by the tenant attributable to the works to which the proposed contract relates, that estimated amount shall be specified in the statement.
- (5) Where--
 - (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and
 - (b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed contract relates, the total amount of his expenditure under the proposed contract,

that estimated amount shall be specified in the statement.

- (6) Where--

- (a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and
- (b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the works to which the proposed contract relates,

that cost or rate shall be specified in the statement.

- (7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the reasons why he cannot comply and the date by which he expects to be able to provide an estimated amount, cost or rate shall be specified in the statement.
- (8) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the statement shall summarise the observations and set out his response to them.

Notification of proposed contract

5

(1) The landlord shall give notice in writing of his intention to enter into the proposed contract--

- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

- (a) comprise, or be accompanied by, the statement prepared in accordance with paragraph 4 ("the paragraph 4 statement") or specify the place and hours at which that statement may be inspected;
- (b) invite the making, in writing, of observations in relation to any matter mentioned in the paragraph 4 statement;
- (c) specify--
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.

(3) Where the paragraph 4 statement is made available for inspection, paragraph 2 shall apply in relation to that statement as it applies in relation to a description of proposed works made available for inspection under that paragraph.

Landlord's response to observations

6

Where, within the relevant period, the landlord receives observations in response to the invitation in the notice under paragraph 5, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Supplementary information

7

Where a statement prepared under paragraph 4 sets out the landlord's reasons for being unable to comply with sub-paragraph (6) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)--

- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 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 sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.