



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

Case Reference : LON/00AU/LSC/2014/0568

Property : Flat 58, Prospect House, Donegal Street, London, N1 9QD

Applicant : The Governors of the Peabody Trust

Respondent : Ms Francisca Okeneme

Type of Application : Section 27A Landlord and Tenant Act 1985 (the 1985 Act). Determination of the reasonableness and payability of service charges.

Tribunal Members : Mrs HC Bowers BSc (Econ) MSc MRICS
Mr F Coffey FRICS

Date and venue of Hearing : 9th April 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 14th May 2015

DECISION

For the following reasons the Tribunal finds that:

- The Service Charges for 2010/11 to 2013/14 of £3,266.48 are determined to be reasonable and payable.
 - The Major Works Costs of £584.90 are determined to be reasonable and payable.
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DECISION & REASONS

Introduction:

1.) This matter arises from a transfer of a claim (under claim number A1QZ692D) from the County Court at Clerkenwell and Shoreditch. By an order of District Judge Sterlini dated 5th November 2014 this matter was transferred to the Tribunal. The application relates, amongst other matters, to section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) regarding the reasonableness and payability of service charges in respect of Flat 58, Prospect House, Donegal Street, London, N1 9QD (the subject property). These matters were considered at a case management conference (CMC) on 10th December 2014 and Directions were issued on that date.

Background:

2.) The CMC identified that in relation to the Applicant's claim at the County Court for the sum of £4,385.36 that this related to the service charge years 2010/11, 2011/12, 2012/13, and 2013/14. This was explored with the parties at the start of the hearing and as no additional applications had been made, the Tribunal was limited to only considering these service charge years. The sums in relation to the 2013/4 service charges were estimated amounts. At the time of the hearing the actual accounts had been produced for 2013/4. However it was explained that as all the figures had been rounded, there were some concerns about the accuracy of this information. Additionally no invoices for 2013/14 were available. Given that situation and the extent of what had been transferred from the County Court it was accepted that the Tribunal should only consider the estimated amounts being claimed. This was due to the extent of the matter referred to the Tribunal and also to the extent that both parties could properly plead the issues for the actual amounts for that year. Although it was not possible to identify which sums relate to which service charge years, it was possible to identify that a sum of £3,810.46 related to service charges for the relevant periods and £584.90 related to major works. In Appendix 1 is a table showing the disputed day-to-day service charges for each year in dispute. Finally there was an application under section 20C of the 1985 Act and an application in respect of the hearing fee of £190 paid by the Applicant.

The Law:

3.) A summary of the relevant legal provisions is set out in Appendix 2 to this decision.

The Lease:

4.) A copy of the lease for the subject property was provided in the trial bundle. The lease is dated 22nd December 2003 and the parties to the lease are The Governors of the Peabody Trust as the landlord and Francisca Okeneme as the tenant. The lease is for a term of 125 years from 24th June 1989.

5.) The lease provides that the tenant covenants to pay the service charge. Clause 5 sets out the relevant arrangements for the service charge mechanism. The relevant sections of clause 5 are reproduced below:

“THE Service Charge referred to in Clauses 1 and 3(1) shall consist of (so far as permitted by the Landlord and Tenant Acts 1985 and 1987 and the Housing Act 1985 as amended by the Housing and Planning Act 1986:

(1) Expenses which relate solely to the demised premises and referred to in Clause 5(3)(e)(ii) hereof; and

(2) Any expenses incurred by the Landlord in remedying any breaches of covenant (where appropriate) which shall be paid by the Tenant to the Landlord within 14 days of the date demand

(3) A proportion of the expenses and outgoings incurred or to be incurred by the Landlord on those items set out in the Third Schedule hereto and which comprise

(i) the repair maintenance renewal and improvement of the Building and any facilities and amenities appertaining to the Building and the Estate

(ii) the provision of services for the Building and the Estate (if any)

(iii) other heads of expenditure

PROVIDED THAT such expenses and outgoings may include expenses and outgoings incurred prior to the grant hereof SAVE THAT AND SUBJECT to the following:

(a) The amount of the Service Charge shall be ascertained on an annual basis in accordance with sub-clause 5(3)(f) hereof and certified by a certificate (hereinafter called “the Certificate”) signed by the Landlord’s Director of Finance or some other duly authorised officer (at the discretion of the Landlord) acting as an expert and not as an arbitrator in the manner hereinafter mentioned

(b) The Landlord’s current financial year (hereinafter referred to the “Financial Year”) shall mean the period from the First day of April in the year preceding the issue of the Certificate to the Thirty First day of March of the next year or such other period of accounting as the Landlord may from time to time determine

(c) The Certificate shall contain a summary of the Landlord’s expenses and outgoings incurred or to be incurred during the Financial Year to which it relates together with the relevant figures forming the basis of the Service Charge due credit being given therein for all payments made by the Tenant in accordance with Clause 5(3)(f) hereof in respect of the said year and furnishing such Certificate showing such adjustment as may be appropriate the Tenant shall pay to the Landlord the amount of the Service Charge as aforesaid or any balance found to be payable or the Landlord shall allow to the Tenant any amount which the Tenant may have overpaid as the case may require

(d)

(e) *The Tenant shall pay the Service Charge without any deductions whatsoever within 14 days of the date of demand PROVIDED ALWAYS THAT*
(i) *the Tenant shall if the Landlord so requires pay to the Landlord on each quarter day such sum in advance and on account of the Service Charge as the Landlord shall specify to be a fair and reasonable interim payment which such shall not exceed one quarter of the Landlord's estimate of the likely amount of the Service Charge for that particular Financial Year*
(ii) *Any expenditure other than insurance under Clause 7(2) hereof which both relates solely to the demised premises and is of a non-recurring nature shall be reimbursed by the Tenant on the quarter day next after such expenditure has been incurred by the Landlord*
(iii) *of the Landlord giving notice under sub-clause 5(3)(g) hereof the Tenant shall pay the amount of any payments there under in advance or in arrears or annually or any of the usual quarter days or otherwise at the absolute discretion of the Landlord*
(f)
(g)
(vii) *The Landlord shall not prior to the signature of the Certificate be entitled to re-enter under the provisions in that behalf contained in Clause 9 hereof by reason only of non-payment by the Tenant of the Service Charge or any part thereof PROVIDED THAT nothing herein contained shall preclude the Landlord from maintaining an action against the Tenant in respect of non-payment of the Service Charge or any part thereof as aforesaid notwithstanding that the Certificate had not been signed at the time of the proceedings subject nevertheless to proof in such proceedings by the Landlord that the amount of the Service charge or any part thereof or interim payment demanded and unpaid is of a fair and reasonable amount in accordance with the clauses hereinbefore contained”.*

6.) Dealing with the insurance the lease provides under clause 7(2):

“ At all times during the term (except only such times if any as such insurance may be avoided by the act or omission of the Tenant)

(a) to insure the demised premises in the joint names of the Landlord and the tenant in the full reinstatement value thereof against loss or damage by fire tempest flood or such other risks which the Tenant and Landlord may hereafter agree” .

Inspection:

7.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the subject development. However, the Tribunal understands from the papers that the flat is situated in Prospect House (described in the lease as the “Building”), a ten storey building comprising of 58 flats. Prospect House, together with Rodney House and Penton House makes up the OM Richards Estate (described in the lease as the “Estate”).

The Hearing:

8.) A hearing was held on 9th April 2015 at Alfred Place, London. Mr Glenister of counsel represented the Applicant. The Respondent attended and represented by her husband Mr Njoko.

9.) At the start of the hearing Mr Njoko raised a preliminary point in respect of the Applicant's conduct in respect of the Directions. Directions 7 required the Applicant to make its disclosure on 16th January 2015. The Respondent received the documents on 21st and 22nd January 2015. These documents did not include any spreadsheets. Likewise Direction 9 required the Applicant to send various documents to the Respondent by 13th February 2015. Those documents arrived on 15th February 2015 and did not include a statement of case. Direction 12 required the bundles to be sent by the 20th March 2015 and these were not received until 21st March. Mr Njoko also expressed his dis-satisfaction that Mr R Manickavasagan, the Applicant's initial witness, was not present at the hearing.

10.) Responding, Mr Glenister explained that there had been an attempt to courier the various documents in compliance with Direction 7 (p1089) and that due to the delay in receipt of the documentation the date for the Respondent's required response in Direction 8 had been extended. (p1091), therefore the Respondent had not suffered any prejudice. The Applicant's legal submissions had been included in the Scott Schedule and had been sent in the conventional post. An attempt had been made for the hearing bundles to be couriered on 20th March in compliance with the Directions, but there had been no response, so they had been sent in the conventional post and this is borne out by the Respondent's receipt on 21st March. In respect of the absent witness, this was unfortunate as the witness was on holiday. However, there was another witness who had adopted Mr Manickavasagan's evidence. It was suggested that this situation would be detrimental to the Applicant rather than the Respondent.

11.) Compliance with Directions is essential to ensure that all the parties are treated fairly and to ensure that a case is effectively progressed. The Tribunal considered whether the Respondent had suffered any prejudice to her position as a result of any breaches of the Directions. The Tribunal concluded that no prejudice was caused. The various dates seemed to have been missed only by a couple of days and at the crucial stage the Respondent was given extra time to comply with Directions. How the Applicant presents its case or any witnesses it wishes to call or otherwise will not prejudice the Respondent and the Tribunal will place any appropriate weighting to the fact that the witness at the hearing has adopted the evidence of Mr Manickavasagan. It was therefore appropriate to proceed.

12.) As part of the preparation for the hearing a Scott Schedule was produced. This identified all specific items that were disputed by the respondent and provided an opportunity for the parties to set out their respective positions on an item-by-item basis.

Representations:

Applicant's Case

13. Mr Glenister directed the Tribunal to the relevant sections of the subject lease. It was stated that the appropriate proportions payable by the Respondent were 0.909% and 1.524% of the relevant Estate and Building costs, but there appeared to be no dispute on that point. The actual service charge demand for 2010/11 (p495) was signed by an accountant and as such is certified in accordance with the lease. It is accepted that the service charge demand for 2011/12 (p506) was not signed. Mr Glenister suggested that there were two ways around that problem. The first was reliance on clause 5(g)(iv) of the lease, which permits the landlord to pursue the tenant for non-payment of service charges whether or not the service charges have been certified. In the alternative the service charge demand was accompanied by a signed letter dated 25th September 2012 from Grant Thornton as the auditor of the landlord (p126-128). For 2012/2013 service charge year the appropriate certification is on p526 of the bundle. The actual service charges for 2013/2014 were signed by Tej Shukla, Head of Rents and Service Charges in a letter dated 27th September 2014 (p537). It was submitted that certification was only required on the sums actually demanded and not on the estimates.

14. OM Richards Estate Ltd, which is a Tenant Management Organisation (the TMO), provides the majority of the services with Peabody providing some additional services. Ms Angela Simmonds was called to give evidence and adopted the witness statement of Mr Manickavasagan. It was accepted that the TMO are not a party to the lease, but under the terms of the management agreement the TMO is responsible for the day-to-day management of the Estate. Peabody retains some residual contracts including pest control, lift maintenance, door entry system maintenance, the communal digital aerial maintenance and some structural repairs. The service charge regime is operated by Peabody and is undertaken with reference to the annual accounts provided by the TMO and from expenditure directly incurred by Peabody.

Major Works

15. In respect of the major works, the Tribunal were directed to the section 20 consultation documents in respect of the major works. The Notice of Intention was dated 29 March 2010 and the work was carried out after that date. The relevant invoice for the works was dated 18th August 2010 (p255). A section 20B Notice was sent out on 9th August 2011 (p116) and the invoice was sent out on

18th February 2013 (p117) and this was signed by Phil Hamlet, the Leasehold Compliance and Revenues Officer. The section 20B Notice was sent out within 18 months of when the relevant sums were incurred. The notice is not required to be in a specific form, it just needs to state that sums have been incurred and that the leaseholder will be subsequently invoiced.

Estate Management Fee and Management Fee

16. In the witness statement adopted by Ms Simmonds it was explained that there was no double charging on the management fee. The arrangement is that there is an estate management fee relating to the provision of security on the Estate. This charge is levied by the TMO. Additionally there is a management fee for the administration carried out by Peabody and this represents 20% of the service charges. It is suggested that figure is in line with industry practice and probably is less than the actual charges involved in providing a management service.

Cleaning and Caretaking

17. Regarding the cleaning and caretaking costs, whilst these are identified in the same clause in the lease, it is possible to separate these items out in the service charge accounts. The invoices demonstrate that there was regular caretaking and cleaning. There was no evidence supplied by the Respondent regarding the quality of the cleaning. Regarding the lack of cleaning in 2011/12 between January and March, the actual accounts reflected a lower charge.

Gardening

18. The gardening was carried out twice a month and invoices were produced. No evidence was provided by the Respondent as to the quality of the work.

Repairs and Maintenance

19. In respect of the repairs and maintenance, there was a mix in the provision of this work. The TMO provide the day-to-day work and Peabody retains the obligations to carry out the major works. The TMO management agreement (p345) sets out the contractual arrangements and this specifies the roles undertaken by both parties. The charges are not exorbitant. The spreadsheet indicates repairs were carried out in 2010/11. It was accepted that the Applicant was unable to produce the spreadsheets for 2011/12 and spreadsheets were provided for 2012/13 to show the repairs that were carried out during this period.

Electricity

20. Electricity is provided on a split basis, with Peabody responsible for the block costs and the TMO providing the estate costs. It appears that some of the

invoices were missing, although Peabody had sought to obtain the relevant invoices from the TMO. After lunch the Tribunal and the Respondent were provided with various documents that appear to relate to the electricity charges in the block.

Lifts/Aerials/Entry Phone System

21. In respect of the lift servicing the spreadsheets indicate that there were repairs to the lift in 2010/2011, in 2012/13 and in 2013/14 there were 31 call outs to the lift in addition to the routine maintenance. This is a service provided by Peabody under a direct contract. No invoices were available.

22. The spreadsheets indicate that there were four repairs carried out to the communal aerials in 2010/11 and one repair was carried out in 2012/13 and one repair in 2013/14.

23. The Respondent had not provided any evidence to suggest that the entry phone system was defective. No mention was made of any defect in the correspondence received from the Respondent for 2010/11 and there was nothing in the Respondent's letter of 30th November 2012, nor 20th November 2013. The repairs spreadsheet indicates that there were four call outs for the door in 2010/11.

Insurance

24. In respect of the insurance premiums, a copy of the summary of cover for 2012/13 is provided at p 260. It is accepted that the insurance was not in the joint names of the landlord and tenants and as such that is a breach of the lease. But the Respondent would have the right to a separate action against that breach. Such an action would be distinct from the provision of the service and the Applicant's claim for the service charge contribution.

Audit

25. The audit costs were incurred by Peabody. It is an element of the Applicant's management work and is identified separately in order promote transparency. It was accepted that there were no invoices for this expenditure.

Pest Control

26. Pest control is an activity retained by Peabody. This is an item of expenditure that only occurred in 2013/14. No invoices were available for this item.

27. In conclusion it is not possible to consider the detail of the accounts and the Tribunal should view the service charges on a summary basis. Grant Thornton had examined the accounts in 2011/12 and although not ideal, there had been some audit trail and they had considered a sample of transactions against the lease provisions. It is acknowledged that there have been some deficiencies but

that the Tribunal should take a global view in that expenditure has been incurred and are those costs reasonable.

Respondent's Case

28. Mr Njoko stated that there were some preliminary issues as to the payability of the service charges. He took the Tribunal through the service charge demands for each year. For each demand he stated that the Applicant had not complied with certain requirements. The estimated service charge demand for 2010/2011 (p485/pR68) was dated 28th February 2010 and was under the name of Sue Green, the Leasehold Services Manager, but was unsigned. The actual service charge demand for 2010/2011 (p485/pR72), dated 25th November 2011 and was signed by Ramesh Manickavasagan, Service Charge Accountant. In addition this service charge demand was dated 25th November 2011 and as this was not within six months from the end of the relevant financial year the sums were not payable. The estimated service charge demand for 2011/2012 (p490/pR77) was dated 21st February 2011 and was unsigned as was the actual service charge demand for 2011/12 (p506pR81), this was dated 27th September 2012.

29. The estimated service charge demand 2012/2013 (p501/pR86), was dated 24th February 2012 and was signed by Paul Ewart, Income and Service Charge Manager. The actual service charge demand 2012/2013 (p526/pR95) dated 27th November 2013, was signed by Fred Angole, Director Financial Services. The estimated service charge demand for 2013/2014 (p521/pR100) was dated 28th February 2013 and is unsigned.

30. Mr Njoko submitted that both the actual and estimated service charges had to be certified in accordance with clause 5(3)(a) of the lease. In interpreting this clause it was suggested that section 28(4)(b) of the Landlord and Tenant Act 1985 applied. As each of the demands were either unsigned or had been signed by an employee of the landlord, this was not in compliance with 28(4)(b) of the Landlord and Tenant Act 1985. He referred to the decision in Akorita v Marina Heights [2011] UKUT 255 (LC) that the requirements within a lease are condition precedent to the payment of the service charges.

Major Works

31. Turning to the invoice for the major works, Mr Njoko referred to the invoice for the works that had a tax point date of 18th August 2010 (pR206). The sum was demanded in an invoice dated 18th February 2013 that was signed by Phil Hamlet the Leasehold Compliance and Revenues Officer (pR208). It was again submitted that this had not been certified in accordance with the lease and section 28(4) of the 1985 Act. In addition it was suggested

that as the period between 18th August 2010 to 18th February 2013 was greater than 18 months, then section 20B of the 1985 Act applied and the sum was not payable. Responding to the section 20B Notice (pR207) that was dated 9th August 2011, Mr Njoko suggest that this is not a valid notice as it is stated in the first line that this is not a bill and no action needs to be taken.

Estate Management Fee and Management Fee

32. Mr Njoko then addressed the specific day-to-day service charge headings and explained that his comments related to all the various service charge years. The Respondent had queried the Estate Management fee and it appeared that there were two fees, but the lease only provides for the recovery of one fee. It was stated that the fee included security, but Mr Njoko stated that there was no security on the site and the CCTV had been removed. In a letter from Peabody dated 12th December 2013, reference was made to a management fee of 20% for Peabody's involvement with the Block for issues such as pest control, lift maintenance, door entry maintenance and the communal digital aerial maintenance. The 20% was considered to be high when the neighbouring boroughs charge 10%. For 2012/2013 the fee was £161.41. In addition the TMO charged an estate management fee of £21.89 for the 2012/3 year for providing estate services. Mr Njoko had no specific comment in respect of the audit fee, but it was explained that the audit role was part of the management function and the charge should be included in the management fee.

Cleaning and Caretaking

33. Regarding the cleaning and responding to the comment in the witness statement of Mr Manickavasagan that cleaning was undertaken on a regular basis, Mr Njoko referred to a letter from Peabody dated 28th March 2011. This letter refers to the lack of cleaning services from 4th January 2011 and states "*the reduction of costs for this service will occur when the final accounts for that financial period are released in September 2011.*" It was suggested that the cleaning was irregular; that there was no cleaning service at the weekend; previously there had been two people carrying out the cleaning; that a cost of £45,000 is high and that sometimes the Building is dirty. In response to questions from the Tribunal, Mr Njoko acknowledged that he had no specific evidence on these points and no photographs. However, he did refer to a letter sent by Ms Okeneme dated 9th November 2011. This letter queried the duplication of the cleaning and caretaking services and stated that the floors were filthy. In respect of the caretaking charge it was stated that for the majority of the time agency staff undertook the work. The accounts should reflect the lease and there should only be one heading for caretaking and cleaning.

Gardening

34. Mr Njoko made no comment about the gardens and grounds costs, although on the Scott Schedule it is stated that the charge is too high considering the irregular service.

Repairs and Maintenance

35. As to the repairs and maintenance, reference was made to the overlap in the services provided by the landlord and by the TMO and that the TMO will not deal directly with the leaseholders. The TMO is not a party to the lease and it was suggested that it was unreasonable for the Respondent to deal directly with the TMO. It was explained that the charges were exorbitant and there was no evidence to support the figures.

Electricity

36. Regarding the electricity invoices Mr Njoko had been chasing the TMO for the invoices from EDF. He had no comment to make in respect of the amounts invoiced.

Lifts/Aerials/Entry Phone System

37. In respect of the costs relating to the lifts it was stated that there were no invoices from the lift engineers. Mr Njoko was not aware of any communal TV aerials on the roof. Regarding the communal entry phone system it was stated that the system was not working in 2008/9 and for over four years. There was no evidence presented on this matter.

Insurance

38. In respect of the insurance he stated that as the landlord had not complied with clause 7(2)(a) by insuring the Building in joint names of the landlord and tenant, then the landlord should not be able to recover the premium via the service charges. It was explained that in the current circumstances the tenant had no direct access to the insurer and any claim had to go through the landlord. Mr Njoko accepted that the Respondent did have the capacity to take a separate action directly against the Applicant for any breach of the lease.

Pest Control

39. Finally he stated that there were no invoices in support of the pest control charges in 2013/2014.

Discussion and Decision

40. Mr Njoko is correct in stating that following the case of Akorita v Marina Heights [2011] UKUT 255 (LC) any condition precedent needs to be satisfied before the service charges becomes payable. Mr Glenister did not suggest that the wording in the service charge mechanism was not in the form of a condition precedent and in fact he went on to demonstrate that in certain years the Applicant had followed the requirements of the lease that the service charge accounts should be certified. The Tribunal determines that the clear wording of the lease at clause 5(3)(a) requires that the service charge is to be certified by the signature of the Landlord's Director of Finance or some other duly authorised officer and that this is a condition precedent.

41. However, the Tribunal considers that Mr Njoko's suggestion that the interpretation of this clause relies on section 28(4) of the 1985 Act is wrong. The wording of section 28 (the meaning of "qualified accountant") and in particular section 28(4) that lists those individuals who are disqualified as acting as a "qualified accountant" relates to the specific provisions of section 21(6) (certification of summary of information about relevant costs) of the Act. It is not appropriate to use this section as a means to interpret the service charge mechanism set out in the subject lease.

42. The requirements are those set out in the lease and this states that the certification can be carried out by the Landlord's Director of Finance or some other duly authorised officer (at the discretion of the Landlord). Accordingly, employees of the landlord could be used to complete the certification process. In 2010/11 and 2012/13 the actual service charges are signed off by employees of the Applicant and as such the condition precedent is satisfied.

43. In respect of 2013/14 the Tribunal is examining the estimated service charge. In considering the application of clause 5(3)(a) it is the Tribunal's opinion that this is a stand-alone provision in the lease that is only relevant to the actual service charges. Clause 5(3)(e)(i) sets out the arrangements for an interim service charge. This clause makes no reference to certification. Accordingly, there is no condition precedent for this year.

44. The 2011/12 year provides more of a challenge in respect of the condition precedent. There is a request for the payment of an interim service charge. As considered in paragraph 43 there is no condition precedent for a certification for the interim charges. Therefore the estimated service charge for 2011/12 of £678.71 (p490) is payable under the terms of the lease and subject to any further findings that this Tribunal makes. The question arises is whether the balancing charge that is identified by the actual service charges of £603.23, has satisfied the condition precedent and is therefore payable?

45. The Applicant initially relies on a signed letter dated 25th September 2012 from Grant Thornton as the auditor of the landlord. In examining that letter it is headed as "Service Charge Statements – Peabody Trust Report of the Auditor to the Landlord". The letter explains that the report is made for issue with the service charge statements. The letter describes the process undertaken which appears to be a through investigation of the service charges accounts. The Tribunal considers that this letter is sufficient to satisfy the requirements of clause 5(3)(a) and is sufficient to provide the necessary certification. Accordingly the Applicant has met the condition precedent for the actual service charges for this year. Having reached this decision, the Tribunal makes no determination as to the interpretation of clause 5(g)(vii) that the Applicant relies upon in the alternative.

Major Works

46. In respect of the major works, the Tribunal considers that Mr Njoko is wrong about the status of the section 20B Notice. The wording at the top of the notice, namely "*This is not a bill and you need take no action now*", does not invalidate the notice. The notice satisfies all the relevant requirements and is an accepted tool to allow a landlord to recover service charges outside the 18-month time limit as set by section 20B. In this case the landlord has clearly followed the process and accordingly, the subsequent invoice for £584.91 is payable. Again the Tribunal are satisfied that as the letter seeking the Respondent's contribution is signed off by an employee of the Applicant, the condition precedent has been satisfied.

47. The next stage for the Tribunal is to consider the specific day-to-day service charges. The Tribunal has significant experience in dealing with such service charge issues. However, in this case it found that consideration of the figures a difficult task as the documents provided were not complete and those that were provided were difficult to access and the Applicant provided no proper follow through. If the Tribunal found such difficulties, it is no wonder that the Respondent found it a challenge. It is accepted that given the amount in dispute it was not proportionate or appropriate to carry out a full audit.

Estate Management Fee and Management Fee

48. The Tribunal appreciates that the distinction between the Estate Management, undertaken by the TMO and the Management Fee incurred by Peabody. Looking at the total of these fees for the relevant years, then the costs were £137.49 in 2010/11(Estate Management - £137.49); £506.46 in

2011/12 (Estate Management - £311.46 and Management Fee £195.00); £183.33 in 2012/13 (Estate Management £21.89 and Management Fee and £200.12 in 2013/14. The Tribunal finds no merit in Mr Njoko's suggestion that there should only be one management fee that should include the audit activity. Whilst slightly confusing, it is apparent in this development that there is a split in the management function between the TMO and Peabody and as such two fees that reflects their involvement in the management of the development would be appropriate.

49. Mr Glenister had explained that Peabody had retained a role in respect of certain services. These services were the pest control, lift maintenance, door entry maintenance and the communal digital aerial maintenance. It was claimed that Peabody's Management Fee was 20% of the costs of the services that were provided. For the four years under consideration the total costs of those services plus the insurance was £108.04 in 2010/11; £108.20 in 2011/12; £143.09 in 2012/13 and £162.37 in 2013/14. Although the Respondent object to a 20% Management Fee there was no evidence produced and in the experience of the Tribunal this percentage is found in many social landlord development. If the 20% rate is applied to the services provided by Peabody then the appropriate Management Fee for the relevant years would be £21.61 in 2010/11; £21.64 in 2011/12; £28.62 in 2012/13 and £32.74 in 2013/14. Accordingly the Tribunal finds that the Management Fee suggested by Peabody is excessive against their own criteria and reduces the charges as set out above. In total the Management Fee being claimed of £648.59 is reduced to £104.61 for the four years in dispute.

50. Giving the limited management role of Peabody the remainder of the management activity seems to be undertaken by the TMO and appears to come under Estate Management. It was explained that the Estate Management included site security. No further explanation was given about this aspect and the Respondent's case was that there was no site security and that all CCTV had been removed. It is appreciated that there may be some personal involved in the security of the site, but it is anticipated that such costs would come under the caretaker heading considered below. However the activities within Estate Management would be wider than security and would appear to involve the management of the majority of the contracts and dealing with reactive activities. In this respect, whilst the cost for 2011/12 seems high, there is no specific objection against this cost and in the absence of any evidence or submissions the Tribunal determines that these costs are reasonable and payable.

Cleaning and Caretaking

51. Regarding the cleaning and caretaking costs there is no specific evidence from the Respondent on these issues. It is noted that correspondence does refer to cleaning problems. However the Tribunal accepts Mr Glenister's explanation that there were some adjustments to the cleaning charges to reflect the lack of provision. In this respect the Tribunal notes that the cleaning costs for the first two years are significantly lower than in the later years. Given the absence of specific evidence the Tribunal determines that the costs are reasonable and payable.

Gardening

52. In respect of the gardening, there was no specific evidence produced by the respondent in support of his contention that the gardening and grounds maintenance was excessive. Given the lack of evidence and given the Applicant's explanation the Tribunal determines that the amounts claimed by the Applicant are reasonable and payable.

Repairs and Maintenance

53. Although Mr Njoko expressed the Respondent's frustration as the TMO was not a party to the lease. He considered it inappropriate that the Respondent should have to deal directly with the TMO in relation to the management of the building and in particular to the repairs and maintenance.

54. However, it is a frequent feature in residential developments that a landlord delegates its management role to an external managing agent who deals with day-to-day issues. Other than this objection and seeking clarification of the roles of the TMO and the landlord, there was not specific criticism of the repair and maintenance charges. Accordingly, the Tribunal finds that the costs are reasonable and are payable.

Electricity

55. In respect of the electricity charges, Mr Njoko's main complaint was the absence of the electricity invoices. On behalf of the Respondent no specific evidence or arguments were raised to suggest that the sums involved were unreasonable. Some invoices were produced and the Tribunal is of the opinion that electricity charges are to some extent audited by the means of electricity meters so that usage can clearly be identified. In the absence of any evidence to the contrary the Tribunal finds the charges are reasonable and payable.

Lifts/Aerials/Entry Phone System

56. The subject property is located in a ten-storey block and it is anticipated that a lift would be an essential services to most of the occupants in the block. The Respondent provided no evidence to suggest that the charges for the lifts were unreasonable. Indeed looking at the level of the call outs on the spreadsheets and the annual maintenance, it would appear that the charges relating to the lifts are not excessive. Accordingly, the Tribunal determines that the sums are reasonable and payable.

57. In respect of the communal aerials, the sums claimed are small amounts and although the Respondent queried the amounts and questioned the presence of the aerials, he had no evidence to suggest that these costs were not incurred or that they were unreasonable. In consideration of the lack of evidence the Tribunal determines that the sums claimed in respect of the aerials are reasonable and payable.

58. The Respondent indicated that the entry phone system had not worked for four years. He produced no specific evidence on this point and the Applicant suggested that there was no mention of this defect in any of the correspondence. It is noted that there were call out charges in 2010/11. Given these call outs and the relatively low cost for the first two service charge years under consideration and the lack of any specific evidence, the Tribunal determines that these costs are reasonable and payable.

Insurance

59. In respect of the insurance, the Respondent made no submissions about the level of the premiums. The only aspect of dispute was whether the premiums were payable in light that the Applicant was in breach of its obligations by failing to insure in joint names. Although this is a breach by Peabody, the Tribunal accepts the Applicant's position that the Respondent could address this issue by a separate claim. Essentially the development was insured fro the relevant periods and although any claim that had to be made would have gone through the Applicant, this would not prevent a claim being made. Insuring in joint names is not a requirement for the payment of the premium and as such the Tribunal determines that the insurance premiums are payable by the Respondent.

Audit

60. In respect of the audit costs the Tribunal does not accept Mr Njoko's position that there should only be one charge to reflect the overall management costs. The Management Fee determined in paragraph 49 is a relatively small amount of money and at this level it would not be reasonable to assume that these costs would incorporate an audit fee. Accordingly given that position and the relatively small amount being claimed for the audit fee, the Tribunal finds that the audit costs are reasonable and payable.

Pest Control

61. Pest control only occurs in the estimated charges for the 2013/14 year. As an estimated sum, it would not be anticipated that invoices would be available at this stage. Taking a broad-brush approach, the sum does not seem excessive and accordingly it is determined to be reasonable and payable.

Section 20C Application/Costs-

62. Mr Glenister stated that the Applicant opposed the section 20C application as in preparation of this case the Respondent had challenged every item of the service charges, hence the need for the four bundles. The lease allows the recovery of service charges and the Applicant has followed the lease in this respect. The Applicant is also seeking the re-imburement of the hearing fee of £190. There had been no narrowing of the issues and it had been necessary to proceed to the hearing.

63. Mr Njoko submitted that the Tribunal should make an order under section 20c as the Applicant had not complied with the lease in trying to recover the service charges as such there was no merit to their case. A similar position was taken regarding the Applicant's claim for the hearing fee.

Decision

64. The Respondent has raised some interesting legal aspects but in general has been unsuccessful in her position. Additionally she has disputed every single item of the service charge accounts for the four disputed years. This is not a necessarily reasonable position given that undoubtedly services have been provided during this period. Accordingly the Tribunal does not make an order under section 20C. However, the delegation of some of the management activities by the Applicant to the TMO is confusing. This position was compounded by the lack of certain invoices and a clear audit trail. In these circumstances, the Tribunal does not think that it would be reasonable for the

Applicant to be reimbursed for its hearing fee and therefore the Tribunal makes no such order.

Conclusions and the next steps

65. The sum in dispute is £4,385.36 and comprises £3,810.46 for day-to-day service charges for the relevant periods and £584.90 related to major works. The Tribunal reduces the day-to-day service charges to £3,266.48 as reasonable and payable, for the reasons set out in paragraph 49. The major works sum of £584.90 is confirmed as reasonable and payable for the reasons set out in paragraph 46.

66. This matter should now be returned to the County Court situated in Clerkenwell and Shoreditch.

Chairman: *Helen C Bowers*

Date: 14th May 2015

Appendix 1

Year Ending	31/03/2011	31/03/2012	31/03/2013	31/03/2014
Estate Management		£311.46	£21.89	£45.46
Caretaking	£416.64	£229.00	£222.68	£236.40
Cleaning	£47.05	£37.63	£148.27	£40.92
Garden/Grounds	£119.42	£52.29	£96.43	£90.92
Repairs/Maintenance	£59.60	£315.23	£219.11	£291.32
Electricity	£17.38	£39.21	£37.24	
Lift Services	£15.36		£38.07	£38.07
Communal TV	£5.51		£2.73	£2.72
Entry Phone	£6.34	£5.89	£19.28	£19.27
Management Fee	£137.49	£195.00	£161.44	£154.66
Insurance	£80.83	£102.31	£83.01	£102.31
Audit Fee	£9.00	£9.00	£8.50	£9.00
Pest Control				£8.18

Appendix 2

LANDLORD AND TENANT ACT 1985

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 provision of services or the carrying out of works, only of 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 a leasehold valuation tribunal for a determination whether a service charge is payable and if it is, as to -

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

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation 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 subject of determination by a court, or
- (d) has been 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.

20B.— Limitation of service charges: time limit on making demands.

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service

charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [, residential property tribunal] or leasehold valuation tribunal [or the First-tier 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 [the county court] ;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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 [the 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.

28.— Meaning of “qualified accountant”.

(1) The reference to a “*qualified accountant*” in section 21(6) (certification of summary of information about relevant costs) is to be a person who, in accordance with the following provisions, has the necessary qualification and is not disqualified from acting.

(2) A person has the necessary qualification if he is eligible for appointment as a [statutory auditor under Part 42 of the Companies Act 2006] .

(4) The following are disqualified from acting—

(b) an officer [, employee or partner] of the landlord or, where the landlord is a company, of an associated company;

(c) a person who is a partner or employee of any such officer or employee.

(d) an agent of the landlord who is a managing agent for any premises to which any of the costs covered by the summary in question relate;

(e) an employee or partner of any such agent.

(5) For the purposes of subsection (4)(b) a company is associated with a landlord company if it is (within the meaning of [section 1159 of the Companies Act 2006] the landlord's holding company, a subsidiary of the landlord or another subsidiary of the landlord's holding company.

(5A) For the purposes of subsection (4)(d) a person is a managing agent for any premises to which any costs relate if he has been appointed to discharge any of the landlord's obligations relating to the management by him of the premises and owed to the tenants who may be required under the terms of their leases to contribute to those costs by the payment of service charges.

(6) Where the landlord is a local authority, [National Park authority] [or a new town corporation] —

(a) the persons who have the necessary qualification include members of the Chartered Institute of Public Finance and Accountancy, and

(b) subsection (4)(b) (disqualification of officers and employees of landlord) does not apply.

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1169

Rule 13.— Orders for costs, reimbursement of fees and interest on costs

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

- (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.