10694

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2014/0466**
Property	:	**43 Kelly Avenue, London SE15 5LA**
Applicants	:	**S Fiore (Flat 11), H Morris (Flat 6), R Corke (Flat 3), A Geer (Flat 9) and F Alvarez (Flat 2)**
Representative	:	**Mr Fiore in person**
Respondent	:	**Regisport Limited**
Representative	:	**Mr D Bland, in-house lawyer**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**Mr Morris, Ms Geer, Mr R James (supporting Mr Fiore), Mrs L Vidgeon (Branch Manager for Countrywide), Miss C Crawley (Property Manager for Countrywide), Mr Z Bhatti (observer), Mr L Stratton (observer – first day only) and Ms S Dawson (observer – second day only)**
Tribunal Members	:	**Judge P Korn (chairman) Judge S Brilliant Mr A Lewicki FRICS**
Date and venue of Hearing	:	**19th January & 9th February 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**16th March 2015**

DECISION

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Decisions of the Tribunal

(1) As accepted by the Respondent either at or before the hearing, the following charges are not payable by the Applicants (and have already been, or will be, credited back to them):-

- in relation to garden/estate maintenance costs for 2012/13, an amount for £120.00 which relates to a different property;

- in relation to general repairs for 2012/13, the sum of £69.00 which relates to an emergency call-out to Flat 10;

- in relation to bin hire for 2013/14, the sum of £661.44 (inclusive of VAT) which represents an accounting mistake;

- in relation to estate general repairs and maintenance for 2012/13, the sum of £235.00 referred to in paragraph 35 below;

- in relation to electricity charges for 2013/14, the sum of £74.56 referred to in paragraph 51 below;

- in relation to pest control charges for 2013/14, the sum of £145.20 referred to in paragraph 60 below; and

- the administration charge in the sum of £645.00 invoiced to the leaseholder of Flat 9, Ms A Geer, in August 2014 and relating to legal costs arising out of alleged unpaid service charges *[this point affects Ms Geer only]*.

(2) In relation to general repairs and maintenance for 2013/14, the Respondent concedes that it failed to go through the required section 20 consultation process in relation to the charge of £3,000.00 contained in an invoice dated 7th June 2013 and relating to the removal of graffiti, painting all common parts walls and painting the front and rear entrance doors and lower passage woodwork. Consequently, as accepted by the Respondent, the contribution payable by each of the Applicants towards this sum is limited to £250.00 (see paragraphs 52 and 53 below).

(3) The **aggregate** of the block and estate management fees is limited to £100.00 per Applicant per year for each of the years 2012/13 and 2013/14, and the aggregate of the estimated block and estate management fees for the year 2014/15 is also limited to £100.00 per Applicant.

(4) The current apportionment of block and estate service charges as between leaseholders is valid, the service charge percentages having

been varied by the Respondent in accordance with the terms of the leases.

(5) The remainder of the disputed amounts is payable in full.

(6) The Tribunal declines to make a section 20C order and notes that no other cost applications have been made.

Introduction

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged to them.

2. Their challenge is to a number of actual service charge items in respect of the 2012/13 and 2013/14 service charge years and to a number of estimated service charge items in respect of the 2014/15 service charge year.

3. The relevant statutory provisions are set out in the Appendix to this decision. The lease for Flat 11 of the Property ("**the Lease**") is dated 31st July 2003 and was made between Copthorn Homes Limited (1) and Sebastiano Fiore (2). The Applicants are the current leaseholders of their respective flats. It was common ground between the parties that all of the Applicants' leases were in the same form for all purposes relevant to these proceedings save where expressly stated otherwise in this decision.

4. During the course of the hearing a number of different points were raised, and the hearing bundle itself contains a large number of written submissions. Only those points considered by the tribunal to be most relevant and/or to have some potential merit will be specifically referred to in this decision. It should also be noted that – whilst this is not a comment on the quality of information provided – the Respondent has supplied a significant amount of documentary information (including copy invoices) in response to many of the Applicants' initial queries/concerns and that therefore queries/concerns need to be seen in the light of that further information.

Initial concessions

5. The leaseholder of Flat 9, Ms A Geer, had challenged an administration charge in the sum of £645.00 which was invoiced to her in August 2014 and related to legal costs arising out of alleged unpaid service charges. The Respondent has agreed in its written statement of case to waive these charges "as a gesture of goodwill".

6. In relation to garden/estate maintenance costs for 2012/13, in the Scott Schedule of disputed charges the Applicants state that the charges include an amount for £120.00 which relates to a different property. The Respondent accepts that this sum should not have been included in the service charge and states in its written statement of case that it has been "credited off".

7. In relation to general repairs for 2012/13, the Respondent accepts that the T Gilmartin Ltd invoice for £69.00 relates to an emergency call-out to Flat 10 and should not have been included in the service charge and therefore will be credited back.

8. The Applicants had also challenged an invoice for £661.44 (inclusive of VAT) for bin hire between April 2012 and March 2013 charged in the 2013/14 service charge year. In the Respondent's statement of case, the Respondent states that this was an accounting mistake and that the sums had been credited back to the Applicants.

The parties' respective cases on the various service charge issues

Apportionment of service charge – Applicants' case

9. Mr Fiore referred the Tribunal to the definition of "Proportion" in the Lease and noted that the Lease requires the leaseholder to pay 1.38% of the Service Charge (in some leases it was 1.39% but the principle was the same). The Service Charge was defined as "the total cost of the Services" and the Services themselves were listed in the Fifth and Sixth Schedules to the Lease.

10. However, at some point during 2009 the Respondent through its managing agents decided unilaterally to change the method of computation of the service charge. It decided to split service charges into block costs (which it now refers to as "Schedule 1" costs) and estate costs (which it now refers to as "Schedule 5" costs). The estate costs are apportioned in the same way as before and therefore leaseholders continue to pay 1.38% or 1.39% as the case may be. However, in relation to block costs leaseholders are now required to pay 8.98% or 9.04% (as the case may be).

11. The Applicants were not informed about this change in the apportionment of the service charges until they received a letter dated 9th January 2015, and even then the letter itself was – in the Applicants' view – defective.

Apportionment of service charge – Respondent's case

12. Mr Bland for the Respondent accepted that it had unilaterally changed the method of apportionment. The key event was one of the blocks

within the estate exercising the right to manage, making it more logical and fairer to deal with block costs on a building by building basis, hence the re-apportionment.

13. Mr Bland referred the Tribunal to the following provision in paragraph 1 of the Fourth Schedule to the Lease: *"if the total number of properties in the Block or the Development as the case may be when the same has been fully developed is some number other than that referred to in the Proportion or if it should at any time otherwise become necessary or equitable to do so then the proportion payable shall be recalculated in such manner as the Lessor shall consider to be equitable and shall notify the lessees accordingly and in such a case as from the date specified in the notice (which for the avoidance of doubt can be a date prior to the date of the notice) the new proportion notified to the Lessee in respect of the Property shall be substituted for that set out in the Particulars and the new proportions notified to the other lessees in respect of the other properties shall also be substituted for those set out in the Particulars of their leases"*.

14. In Mr Bland's submission, the Respondent was entitled under the Lease to change the proportions in the manner in which they were changed in the circumstances in question and was entitled to do so retrospectively. As regards the notification of the change, this was achieved either by sending out service charge demands containing the new service charge percentages or by sending out the letter dated 9th January 2015 or by a combination of the two. When questioned on the point, Mr Bland and Mrs Vidgeon said that they believed that the letter when sent out had been accompanied by a service charge demand containing the new service charge percentages.

Cleaning of common parts 2012/13 – Applicants' case

15. In the Applicants' submission there was a mismatch between the amount charged and the amount of charges evidenced by the copy invoices supplied. In addition, one of the copy invoices supplied (in the sum of £81.00) seemed to relate to a different cost centre because a different cost centre number was used.

Cleaning of common parts 2012/13 – Respondent's case

16. In response, the Respondent accepted that there was a mismatch totalling £57.00. However, Mrs Vidgeon for the Respondent referred the Tribunal to a spreadsheet indicating, in her submission, that the £57.00 was initially included as an accrual but was then later credited back to the service charge account and therefore leaseholders were not charged for it.

17. As regards the £81.00 charge which the Applicants claimed related to a different cost centre, Mrs Vidgeon said that the cost centre number used was simply an error and that it was clear from the other details contained on the invoice in question that it related to the Property.

Garden/estate maintenance 2012/13

18. Again in the Applicants' submission there was a mismatch between the amount charged and the amount of charges evidenced by the copy invoices supplied. Again Mrs Vidgeon referred the Tribunal to the relevant spreadsheets for 2012/13 and 2013/14 indicating, in her submission, that the amount in question was initially included as an accrual but was then reversed in 2013/14 and therefore the net effect was that leaseholders were not charged for it.

General repairs 2012/13

19. The Applicants noted that these repairs included an amount of £4,152 for roof tile repairs necessitated by damage caused by bad weather. In their submission, this amount should have been recovered through the insurers and not put through the service charge.

20. In response, Mrs Vidgeon for the Respondent said that from her experience insurance companies will only cover this sort of weather-related damage where it can be demonstrated that the wind speed was above a certain level, although as she was not personally involved at the time she was unable to confirm was the precise circumstances were.

21. Mr Fiore for the Applicants said that, although he accepted that he was not an expert, he believed that the damage coincided with strong overnight winds. Mrs Vidgeon said that there was no evidence from the narrative of the relevant invoice that the damage was caused by an insured risk at all.

Management fees 2012/13 – Applicants' case

22. In the Applicants' submission, the contract pursuant to which the managing agents were taken on was a qualifying long term agreement for the purposes of section 20 of the 1985 Act and the Service Charge (Consultation Requirements) (England) Regulations 2003 ("**the 2003 Regulations**") and therefore the Respondent had been under an obligation to consult with leaseholders prior to entering into it. The Respondent had not consulted and therefore could not charge leaseholders more than £100 each per year by way of management fees.

23. In addition, the Applicants felt that the standard of management had been very poor and that therefore the management fees should be reduced by 30% to reflect this. The figure of 30% was selected because

this was the level of reduction awarded by a previous tribunal in a case of poor management.

24. As a separate point, Mr Fiore noted that management fees accounted for 27% of the service charge, and the Applicants felt that this was too high a proportion.

25. As regards specific concerns about the standard of management, Mr Fiore referred the Tribunal to an exchange of correspondence regarding the front door lock. The front door remained unlocked for several days despite requests that it be dealt with urgently, and then when it was repaired the job was carried out defectively. There was no proper management of the contractors throughout the process. As regards the damage to the roof tiles referred to earlier, it took the Respondent 6 months to repair the roof and the Applicants were worried that this would lead to more serious damage, for example from water ingress. In addition, the Applicants felt that debris in the estate common parts was not cleared frequently enough, and the Tribunal was referred to relevant copy photographs in the hearing bundle.

26. Mr Fiore also made reference to a previous case relating to the Property, back in 2009, as evidence that the management of the Property was poor.

Management fees 2012/13 – Respondent's case

27. Dealing first with the photographs of debris, Mr Bland said that first of all they were not dated (and it was therefore unclear how long ago they had been taken) and secondly the areas concerned were not even believed to be part of the estate. On this latter point Mr Bland referred the Tribunal to an estate plan and compared certain features on that plan with the relevant photographs. Regarding the door lock issue, in Mr Bland's submission the correspondence shows proactive management and quick responses.

28. Mr Bland added that management also involves many other issues that have to be dealt with and therefore much of the fee is attributable to these other issues. He believed the fee to be low, and no comparable evidence had been offered by the Applicants to demonstrate otherwise. The fees were not calculated as a percentage of expenditure but as a charge per flat.

29. Regarding the 2009 case, this mainly related to the previous landlord and mainly to a different managing agent, and in any event it was settled by mediation.

30. On the question of whether the contract for the managing agents is a qualifying long term agreement, in written submissions the Respondent

has stated that the contract is renewed annually for a period of 364 days and that therefore consultation is not required. The Respondent has further stated that the managing agents have a generic agreement with the Respondent for a number of properties that they manage on the Respondent's behalf and has attached an extract from that agreement showing the services covered by the management fee.

Window-cleaning 2012/13

31. The Applicants' submission was that there had been no window-cleaning whatsoever since April 2006. The Respondent accepted that window-cleaning had not been carried out frequently but said that the charges were based on an invoice from the window-cleaning company received on 4th July 2012 and that it was believed that this invoice reflected actual window-cleaning.

Accounting fees 2012/13

32. The Applicants' position was simply that they had not seen any invoice for this charge. In response, Mrs Vidgeon said that it represented an accrual which was then actually invoiced during the 2013/14 year. Mrs Vidgeon referred the Tribunal to a copy invoice dated 25th February 2014 for the same amount in the hearing bundle.

Balancing charge 2012/13 on Mr Fiore's service charge account

33. In Mr Fiore's submission he should not have to pay a balancing charge of £400.76 which he understood to represent an accounting error on the part of the managing agents. Mr Fiore referred the Tribunal to email correspondence on this point, culminating in an email dated 7th April 2014 from Neysha Webb of Countrywide to Mr Fiore stating that the balancing charge was due to an audit which had been carried out on 4 years' worth of accounts. That email contains an apology for previous mistakes and a statement that Countrywide would "erase the recent balancing charge that was allocated to [his] account".

34. However, at the hearing Mr Bland said that this initial concession in email correspondence on behalf of the Respondent was based on a misunderstanding. The balancing charge of £400.76 was in his submission properly payable because it was based on a review which identified a hole in the finances. As was apparent from email correspondence between 5th and 13th June 2014, Ms Webb had initially understood that as a result of a previous tribunal judgment the Respondent would be unable to recover this amount, but she was subsequently advised that this sum was not affected by that tribunal judgment and therefore was still payable.

Estate general repairs and maintenance 2012/13

35. Initially the Applicants believed that there was a discrepancy of £735.00 between the amounts charged and the amount of the copy invoices provided, but subsequently they accepted that they had seen a further invoice for £500.00, leaving a discrepancy of £235.00. The Respondent accepted that this £235.00 charge appeared to represent a management error and conceded that it was not payable. Therefore there was no further dispute on this issue.

Estate management fees 2012/13

36. The Applicants submitted that the invoices did not seem to tally with the amounts charged. In response, Mrs Vidgeon for the Respondent referred us to the 2012/13 spreadsheet in the hearing bundle and said that in fact it showed that the individual invoices in aggregate added up to more than the total charges. Therefore, an amount was deducted so that the actual charge reflected the budgeted charge of £1,786 which was believed to be reasonable.

Health & safety and asbestos 2012/13

37. Mr Fiore said that there was no asbestos and therefore no need for any expenditure on this. Mr Bland said that it was a charge for a health & safety survey and he referred the Tribunal to the copy survey and copy invoice in the hearing bundle. The purpose of the survey was to ensure compliance with the Respondent's legal obligations.

Out of hours service 2012/13

38. Mr Fiore said that the service has never been advertised and he was unclear how it worked. Mr Bland said that there were signs in the internal common parts advertising the service and that the service was also referred to in the explanatory notes accompanying each year's budget. Mr Fiore maintained that there were no signs in his block until 15th January 2015. Mr Bland disputed the statement that Mr Fiore did not know about the service and referred the Tribunal to an email in the hearing bundle from Mrs Vidgeon to Mr Fiore dated 31st May 2013 containing the statement "Please find attached an example of what we would send in respect of the Out of Hours Emergency Service".

Pest control 2012/13

39. On reflection, the Applicants decided to withdraw their objection to this charge.

Credit due but not applied to Flat 11

40. Mr Fiore argued that a credit of £167.97 had been applied to other leaseholders arising from amendments to the accounts for previous years it had not been applied to his account and should have been.

41. Mr Bland for the Respondent said that this was because the Respondent had entered into a settlement agreement with Mr Fiore to settle a previous dispute and that the settlement agreement in question comprehensively covered the relevant period and could not be re-opened. With the agreement of both parties the Tribunal was shown a copy of the settlement agreement. Mr Fiore disagreed with Mr Bland's interpretation of the effect of the settlement agreement.

Building insurance and administration of insurance

42. Mr Fiore said that the insurance premiums have increased year on year by a significant amount. He noted that the current annual insurance premium was a little over £24,000 in aggregate and he referred the Tribunal to an alternative quotation in the hearing bundle for just over £23,000.

43. In response Mr Bland said that by sourcing a quotation which was only slightly lower than the existing insurance the Applicants had in fact demonstrated that the cost of the current insurance was reasonable.

44. Mr Fiore also argued that the administrative element of the insurance charge should not be payable as this type of administration should be included within the management fee.

45. In response Mr Bland said that the administrative element was an administration charge and therefore could not be challenged as part of a service charge application under section 27A of the 1985 Act. In any event he considered it to be a reasonable charge for dealing with associated administration such as sending out information.

Insurance premium proportion

46. On a separate issue in relation to the building insurance, the Applicants were questioning why the **percentage** payable by each leaseholder had increased. Mr Bland said that it was as a result of exactly the same recalculation exercise as took place in relation to the estate service charge.

Parking space insurance

47. Mr Fiore asked why there was a separate insurance charge for this. Mr Bland said that it was to cover risks such as personal injury.

Credit note due

48. The Applicants sought an explanation regarding the credit note due in relation to overcharged management fees. Mrs Vidgeon explained by reference to the relevant spreadsheet that management fees were on a set cost per unit and therefore a credit was needed at the end of the year to bring the total actual charges in line with the fixed amount that the Respondent was charging leaseholders.

Block 45 RTM contribution

49. Mr Fiore said that he could not see a reference to the RTM's contribution towards the estate service charge in the service charge accounts. Mr Bland agreed that it was not specifically stated, but he pointed out that it was clear from the Service Charge Reconciliation statements that each leaseholder only paid 1.38% or 1.39% (as the case may be). Leaseholders of the RTM block received similar demands – i.e. to pay 1.38% or 1.39%.

Reserve funds

50. There was some discussion regarding the reserve funds but ultimately this did not lead to an objection being crystallised as to the reasonableness of the reserve funds contributions being demanded.

Electricity charges 2013/14

51. Mr Fiore said that there was a mismatch between the invoices and the charges. In response Mrs Vidgeon accepted that there seemed to be a slight discrepancy and conceded the sum of £74.56 out of a total of £271.06. The Applicants were also querying a further sum of £102.90, but Mrs Vidgeon referred the Tribunal to the relevant pages of the hearing bundle and said that the relevant invoice was received after the 2012/13 accounts had been finalised and the charge was therefore added to the 2013/14 year.

General repairs and maintenance 2013/14

52. Mr Fiore referred the Tribunal to an invoice in the hearing bundle dated 7th June 2013. It was for the sum of £3,000.00 and related to the removal of graffiti, painting all common parts walls and painting the front and rear entrance doors and lower passage woodwork. He argued

that it should have been allocated to the previous year and that the Respondent should have conducted as section 20 consultation as the charge was more than £250.00 per leaseholder (his own share was £269.40).

53. In response, Mr Bland said that the invoice was received in July and that was why it was allocated to 2013/14. However, he accepted that no consultation took place and that the Respondent should have consulted. He therefore accepted that the charge should be limited to £250.00 per leaseholder.

Window-cleaning 2013/14

54. The Applicants believed that the window-cleaning charges were exorbitant, that there was a mismatch between the invoices and the charges and that in any event no window-cleaning actually took place.

55. Mr Bland replied that the Respondent believed the charges to be reasonable. As regards the apparent mismatch, Mrs Vidgeon referred the Tribunal to the relevant spreadsheet in the hearing bundle and said that the accounts included two accruals which were included on the assumption that cleaning takes place quarterly; if no further invoices are in fact received then the Respondent will include a credit in the following year.

56. As regards the allegation that no window-cleaning has taken place, the Respondent does not accept this. As there are invoices for window-cleaning this amounts to an allegation of fraud, and the Applicants would need a high level of proof to demonstrate fraud.

Garden/estate maintenance ('Schedule 5' costs) 2013/14

57. The Applicants were concerned that two of the invoices (reference: A2-19 and A2-24) referred to 49 Kelly Avenue, not to 43 Kelly Avenue. Another invoice (reference: A2-20) seemed to relate to the previous year. In relation to another invoice (reference: A2-21), the Applicants could not tell what work had been carried out.

58. In response, Mr Bland accepted that A2-19 and A2-24 referred to 49 Kelly Avenue but said that if one looked at the narrative it was clear that it related to estate costs, to which all leaseholders were obliged to contribute. Regarding A2-20, the invoice was not received by the Respondent until September 2013 and this was why the charge was put into the 2013/14 year. Regarding A2-21, having checked the position with the office Mr Bland said that this was believed to be an invoice for works to paving slabs and fence posts and that these were believed to be estate costs.

Refuse bin hire charges 2013/14

59. The disputed issue is covered by paragraph 8 above.

Pest control 2013/14

60. Mr Fiore challenged an invoice for £145.20 (inclusive of VAT) for baiting works between December 2013 and March 2014. In response, Mr Bland referred him and the Tribunal to paragraph 88 of the Respondent's statement of case in which it is accepted that this sum is not chargeable. The sum has been credited back to leaseholders.

Reserve funds 2013/14

61. The Applicants were confused by how the reserve funds operate and by their description in the accounts. Mr Bland said that each block has its own sub reserve fund, but Mr Fiore countered that this was not apparent from the accounts. This point did not, though, lead to an objection being crystallised as to the reasonableness of the reserve funds contributions being demanded.

Confusion re identity of freeholder

62. There was some discussion as to the identity of the current freeholder. As a result, Mr Bland obtained up to date office copy entries during a break in proceedings and confirmed that the freeholder remained Regisport Ltd.

Management fees 2013/14 – Applicants' case

63. Mr Fiore referred the Tribunal to correspondence about further problems regarding the front door lock. There was no secure locked door for a couple of days. He was also concerned about his parking space from time to time being taken by others and maintained that the management had taken no action when he had complained. Other leaseholders had experienced similar problems.

64. The car park gate broke in September 2013 but was not repaired until November 2014, which affected security and (in his view) the level of insurance premiums. Regarding roof repairs required as a result of tiles coming off the roof, communication and response times from the managing agents were very poor. In addition, there was scaffolding on the estate which was unused for months and – as well as the fact that it was unsightly – this gave rise to security concerns as the scaffolding could be used by burglars etc to access the building.

Management fees 2013/14 – Respondent's case

65. Regarding the front door lock, in Mr Bland's view it was neither uncommon nor unreasonable for it to take a couple of days to deal with the issue, especially as the managing agents had to ensure that a situation did not arise in which a new lock was fitted and residents did not themselves have access. Regarding parking spaces, Mr Bland said that the Respondent could not simply remove cars and referred the Tribunal to an email dated 8th May 2014 summarising what the managing agents were doing.

66. Regarding the car park gate, a part needed to be imported from Italy, and also there were repeated problems caused by people trying to force the gate. Regarding the roof, this was an insurance claim and therefore a loss adjuster was instructed who looked into ways of keeping the cost down and this slowed up the process. Regarding the scaffolding, there was no security issue as the upper windows were just as secure as the ground floor windows. In addition, it was unclear from the Applicants' evidence how long the scaffolding was in place as the copy photograph referred to by them was undated.

Estimated service charges 2014/15 – Applicants' case

67. Mr Fiore said that many items were higher than in previous years, but it became apparent that what he really meant was that they were higher than the charges would be in previous years if the charges for those years were to be reduced to a level which the Applicants believed to be reasonable.

68. More specifically, the Applicants felt that the estimated charges for refuse bin hire, pest control and general repairs were too high a jump from the previous year. The water & sewerage charge was a new item. Regarding estate window cleaning, there were no 'estate' windows.

Estimated service charges 2014/15 – Respondent's case

69. The estimated refuse bin hire charges represent an increase of 25% to allow for an uplift by the Council. The estimated pest control charges are the same as the budget for 2013/14 and are based on the fact that ongoing pest control is clearly needed on the estate.

70. Regarding general repairs, the budget has increased due to the lack of funds in the previous year which prevented the managing agents from organising various repairs as listed in the Respondent's statement of case. Water & sewerage is, in the Respondent's view, chargeable under clause 1 of the Fifth Schedule and clause 4 of the Sixth Schedule to the Lease and the budgeted amount (merely £100.00) is a provision for any such costs that may arise.

71. The budgeted charges for estate window cleaning had been wrongly allocated and would be re-allocated to the windows within the common parts of each block.

Further comments

72. There was a discussion as to how well the Respondent and its managing agents know the estate, given certain comments made by them regarding the level of security afforded by the outer gate.

Tribunal's determinations

73. The various concessions made by the Respondent are noted and are summarised at the beginning of this decision. The Tribunal has also noted the parties' respective written and oral submissions and taken them into account in reaching its decision.

Cleaning of common parts 2012/13, accounting fees 2012/13 and garden/estate maintenance 2012/13 and 2013/14

74. The Respondent has dealt with the concerns raised by the Applicants to our satisfaction and we accept that the evidence does not show that there is a mismatch between invoices and charges or that sums were wrongly allocated to the Property or not payable for any other reason.

General repairs 2012/13

75. In our view there is insufficient evidence to demonstrate that the charge for roof tile repairs should have been put through as an insurance claim (and would have been successfully pursued as such), such that the Respondent was not entitled to include the cost as part of the service charge.

Window-cleaning 2012/13 and 2013/14

76. It is common ground between the parties that the windows have not been cleaned on a frequent basis. However, the Respondent was able to produce some copy invoices for window-cleaning and the Applicants have failed to discharge the heavy burden of proving that these have been fabricated. In addition, even if it is the case that none of the Applicants has personally witnessed windows being cleaned it does not follow that it has never happened.

77. The Applicants assert that the charges are exorbitant but have brought no comparable evidence or other evidence to substantiate their assertion, and in our view the charges are reasonable on the basis that the window-cleaning did take place. We also consider that the evidence

does not show there to be a mismatch between the invoices and the charges for 2013/14 on the basis of the Respondent's evidence regarding its accounting system using an accruals method and Mrs Vidgeon's assurance that if no further invoices are received the Respondent will allow a credit in the following year.

Balancing charge 2012/13 on Mr Fiore's service charge account

78. Mr Fiore has some justification for being unhappy about the way in which this issue was handled. The Respondent's managing agents first accepted that the sum concerned was not payable and then changed their mind without explaining their change of mind in a particularly coherent matter. Mr Fiore had reason to be concerned by the managing agents' initial failure to provide the reassurance that he was seeking and then by their change of mind.

79. However, in our view, despite the poor manner in which the managing agents dealt with this matter, the charge is properly payable. The Respondent was entitled to correct past mistakes in undercharging leaseholders, if indeed mistakes had been made, subject to the leaseholders raising any valid legal or factual objections. On the balance of probabilities on the basis of the evidence provided, this sum is properly payable and Mr Fiore has not raised any valid argument which counters the Respondent's evidence in an effective manner.

Health & safety and asbestos 2012/13

80. We consider the challenge to this item to be weak and are satisfied with the Respondent's explanation regarding the need to incur these charges.

Out of hours service 2012/13

81. In our view the evidence shows, on the balance of probabilities, that the service was advertised and that the Applicants could and should have known about it. There is no suggestion by the Applicants that the charge itself is unreasonable and therefore it is fully payable.

Credit due but not applied to Flat 11

82. Mr Fiore has argued that a credit of £167.97 arising from amendments to the accounts for previous years, which was applied to other leaseholders, should have been applied to his account too. Mr Bland for the Respondent in response has referred the Tribunal to a settlement agreement between the Respondent and Mr Fiore, settling a previous dispute, which in his view comprehensively covered the relevant period and therefore no further claims could be made in respect of that period.

83. The settlement agreement states that Mr Fiore no longer challenges the service charges previously disputed by him in relation to the service charge years 2003/04 to 2011/12 inclusive. The settlement agreement also states that certain sums were accepted by Regisport Limited (the Respondent in this case) in full and final settlement of its claims for those service charge years.

84. In our view, Mr Fiore would be on stronger ground if he were challenging an actual service charge claim or demand by the Respondent relating to any of the service charge years in question. However, instead his challenge is to a failure on the part of the Respondent to credit to his account an amount which he states should be so credited.

85. Therefore, on the basis of the information and evidence supplied, we consider that this sum falls within the category of sums no longer being challenged by him. It seems to be a sum which formed part of the service charges for one of the years in question which he is arguing is not payable and therefore should be credited back to him. On that basis it would seem to be covered by the settlement agreement and he therefore already entered into a binding agreement not to challenge it and therefore we do not have jurisdiction to make a determination.

Building insurance, administration of insurance and parking insurance

86. In our view, the Applicants' evidence on this issue is poor. It is established law that a landlord is not under an obligation to obtain the cheapest insurance available. As Mr Bland suggests, the comparable evidence sourced by the Applicants actually strengthens the Respondent's case as the quotation obtained by them is very similar to the actual cost of insurance. On the basis of the evidence provided we consider that the building insurance costs for 2012/13 and 2013/14 were reasonably incurred and that the estimated building insurance costs for 2014/15 are reasonable.

87. As regards the administrative element of the insurance premium, we accept that it is an administration charge as defined in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and that therefore it cannot technically be challenged as part of a service charge application under section 27A of the 1985 Act, but in any event we consider the charge to be a reasonable one on the basis of the information provided.

88. We accept the Respondent's explanation for the separate parking insurance.

Block 45 RTM contribution

89. We accept the Respondent's explanation on this point.

Apportionment of service charge

90. The leases envisage each leaseholder paying a specific percentage (either 1.38% or 1.39%) of the service charge and do not distinguish between a block (or building) service charge and a separate estate service charge. If the leases did not contain any mechanism permitting the Respondent to vary the service charge percentage then it would not be able to do so otherwise than by (in appropriate circumstances) either successfully applying to the Tribunal for a variation of the leases or successfully applying to court for rectification.

91. However, these leases do contain a mechanism permitting the Respondent to vary the service charge percentage in appropriate circumstances. The relevant part of paragraph 1 of the Fourth Schedule to the Lease has already been set out in paragraph 13 above. The key elements of that wording for our purposes are as follows: *"if it should at any time ... become necessary or equitable to do so then the proportion payable shall be recalculated in such manner as the Lessor shall consider to be equitable and shall notify the lessees accordingly and in such a case as from the date specified in the notice (which for the avoidance of doubt can be a date prior to the date of the notice) the new proportion notified to the Lessee in respect of the Property shall be substituted for that set out in the Particulars".*

92. The wording quoted above allows the landlord to recalculate the proportion if necessary or equitable to do so and allows it to apply the change as from a date which is earlier than the date on which leaseholders were notified of the change.

93. The Respondent's justification for the change is the fact that an RTM company took over the management of a specific block and that therefore it became more equitable to create a two-tier service charge with all leaseholders continuing to pay their share of the cost of estate services as before but block costs being divided just between the leaseholders of the relevant block. As regards the notification of the change, the Respondent argues that this was achieved either by sending out service charge demands containing the new service charge percentages or by sending out the letter dated 9th January 2015 referred to in paragraph 11 above or by a combination of the two.

94. In the absence of any evidence from the Applicants to counter this particular point, we accept that the change in service charge proportions was either necessary or equitable in the circumstances outlined by the Respondent and – again in the absence of evidence to the contrary – the new proportions seem fair and reasonable.

95. As regards the notification itself, in our view this could have been handled better. Leaseholders would not normally expect to be informed about a major change in the way in which service charge

proportions have been calculated simply by receiving a service charge demand containing a new method of apportionment but no explanation, therefore the sending out of the new service charge demands does not seem to us by itself to meet the requirement to notify leaseholders pursuant to the abovementioned provisions. The letter itself does at least make explicit reference to the provisions in the Lease entitling the landlord to recalculate the proportion in appropriate circumstances and indeed it quotes the relevant provisions verbatim. However, the letter does not go on to state what the new proportions will be and therefore arguably it does not do the job either.

96. Are the sending out of the letter and of the new demands between them sufficient? On balance the evidence seems to indicate that the letter was sent out together with a demand setting out the new percentages. Whilst it is arguable that it would have been clearer if all of the information had been contained in the letter, in our view the combination of the two was sufficient to constitute a valid notification for the purposes of paragraph 1 of the Fourth Schedule to the Lease. We are also influenced by the fact that, slightly unusually, the relevant provisions allow for retrospective notification. As a result, if we were to rule that the notification was defective the Respondent would still be able to serve a fresh notification and could apply it retrospectively, and therefore it is hard to see what such a ruling would achieve.

97. Therefore, in the absence of any other legal or other arguments having been advanced by the Applicants, the current apportionment of block and estate service charges as between leaseholders is valid, the service charge percentages having been successfully varied by the Respondent in accordance with the terms of the leases.

Management fees

98. The Applicants argue that the contract for the services of the managing agents is a qualifying long term agreement on which the Respondent has failed to consult. The Respondent accepts that it has not consulted leaseholders but denies that the agreement is a qualifying long term agreement. It has not applied for dispensation.

99. The Respondent's position is that the managing agents are taken on for 364 days at a time and then their contract is renewed for a further 364 days. In its written statement of case it states that the managing agents have a generic agreement with the Respondent for a number of properties and they have attached to their statement of case a single sheet which they state is an extract from that agreement and lists some of the services provided.

100. This issue was raised in a detailed and clear manner by the Applicants in the application itself, and therefore the Respondent was clearly on notice that this was a major issue with which it would need to deal

properly. In addition, it ought to be apparent to the Respondent that there was a risk that an agreement described as a renewable 364 day agreement might be regarded as potentially being a sham arrangement primarily designed to avoid the need for consultation.

101. In the circumstances, we consider the Respondent's evidence on this issue to be weak. The extract from the generic agreement is not enlightening and – the Applicants having made a prima facie case on a technical issue despite not being represented – the onus was on the Respondent to provide persuasive evidence to demonstrate that this is not a qualifying long term agreement. This might have included providing a signed and dated copy of the full agreement (perhaps having blanked out any genuinely confidential information) and/or copy correspondence or other evidence as to the process gone through and/or more detailed witness statements on the point and/or any more detailed legal arguments.

102. In our view, on the balance of probabilities on the basis of the evidence provided, the agreement is a qualifying long term agreement on which the Respondent has failed to consult. Therefore, the Respondent is not entitled to recover more than £100.00 per Applicant per year for each of the years 2012/13 and 2013/14, nor is it entitled to charge an estimated management fee of more than £100.00 per Applicant per year for the years 2014/15. For the avoidance of doubt, for these purposes the distinction between block and estate management fees is irrelevant, and therefore it is the **aggregate** of the block and estate management fees that must not exceed £100.00 per leaseholder in each of these years.

103. The Applicants have also raised certain concerns regarding the management of the Property. We do not accept the validity of all of these concerns, as the Respondent has in our view successfully defended the management of the Property on a number of points. However, in our view some of the Applicants' concerns are valid. The notification of the new service charge proportions was not handled well, nor was Mr Fiore's request for clarification regarding the balancing charge of £400.76, nor the way in which the various reserve funds are explained or referred to in the accounts. The Applicants have managed to identify a number of mistaken charges (albeit that these only represent a small proportion of the total). There also seems to be an arguable basis for the Applicants' concerns regarding the length of time taken to deal with the defective gate and the roof repairs. Window-cleaning seems to have been sporadic.

104. However, the management failings – such as they are – would not in our view justify a reduction in management fees below £100.00 per Applicant per year. In addition, the fee is in our view in line with market norms and therefore there is no reason to reduce it further on this account.

105. Therefore, the aggregate of the block and estate management fees is limited to £100.00 per Applicant per year for each of the years 2012/13 and 2013/14, and the aggregate of the estimated block and estate management fees for the year 2014/15 are also limited to £100.00 per Applicant (but it is not reduced any further).

Estimated service charges for 2014/15

106. Same as stated above (and for the reasons given above) in relation to management fees, none of the Applicants' challenges to the estimated charges for 2014/15 is considered to be persuasive. To some extent they rest on the false premise that the actual charges for 2012/13 and 2013/14 are at a much higher level than is reasonable. To the extent that specific other objections have been raised, in our view the Respondent's responses deal satisfactorily with the Applicants' challenges, on the understanding – in the case of window-cleaning – that the estimated charges are re-allocated to specific blocks.

Cost Applications

107. The Applicants applied for a section 20C order, this being an order that the Respondent may not include in the service charge any costs, or a proportion of the costs, incurred in connection with these proceedings. At the end of the hearing Mr Bland for the Respondent said that the Respondent had no intention of including these costs in the service charge. For the avoidance of doubt, having been asked to make an order, we decline to make such an order. The Respondent has been successful on most issues and, on the basis of what we have seen and heard, it has conducted itself in a reasonable manner. It would therefore be inappropriate in our view to make such an order.

108. No other cost applications were made.

Name: Judge P Korn **Date:** 16th March 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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

(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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either – (a) complied with in relation to the works or agreement, or (b) dispensed with ... .

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

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

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

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

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.