10974

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00FC/LSC/2015/0004**
Property	:	**8 and 9 Wellington Court, Grimsby, DN32 7JY**
Applicant	:	**Mrs Vicki L Payne**
Represented by	:	**Mrs Hayley Browne, trainee legal executive of Wilkin Chapman LLP**
Respondent	:	**Kensington Vale Properties Limited**
Represented by	:	**Ms Rowena Meager, Barrister for Countrywide and the Respondent**
Type of Application	:	**Service charges, Section 27A and 20C of the Landlord and Tenant Act 1985.**
Tribunal Members	:	**Judge C. P. Tonge, LLB, BA.** **Mrs J. Brown MRICS**
Date	:	**18 June 2015**

DECISION

The background to the applications

1. This application came before the Tribunal by way of an application from Mrs Vicki L. Payne ("the Applicant"), the long leaseholder of flats 8 and 9 ("the properties") at the complex named Wellington Court, Grimsby, DN32 7JY ("the complex").

2. The application is dated 5 January 2015 and relates to various service charges for years 2006 to 2015. It does not relate to administration charges.

3. The Respondent freeholder of "the complex" is Kensington Vale Properties Limited ("the Respondent").

4. "The complex" contains nine flats, a car port area, an integral garage and two common entrance doors that give access to eight of the flats via common corridors and stairs.

5. "The Applicant" holds both flats on the remainder of leases letting the flats for a period of 99 years. It is common ground that where the content of these leases is relevant, they are all drafted in similar terms. "The Applicant" is required to contribute towards the service charges at "the complex" paying one ninth of the service charges per flat.

6. Directions were issued on 17 February 2015. As a result of these Directions a hearing bundle was prepared that is 783 pages in length.

7. The case commenced on 26 May 2015 with an inspection of "the complex" and a hearing at Grimsby Magistrates Court. The case was then adjourned for a second days hearing at the same court on 1 June 2015.

The inspection

8. The Tribunal inspected "the complex" between 10.05 am and 11.05am on 26 May 2015. Mr John Ryan, of HLM Property Management, management agent for "the Respondent", was present. Also present were "the Applicant" and her legal representative Mrs Hayley Browne, accompanied by Ms Samantha Stevenson of Stevenson's Lettings, "the Applicant's" property manager and Mr Michael Wray, "the Applicant's" property advisor.

9. "The complex" is a corner plot at the corner of Wellington Street and Rutland Street, Grimsby. Constructed about 1950 and thereafter converted into its present use. It has a concrete interlocking tiled roof and the walls facing onto the two streets referred to are mostly finished in render. The Tribunal was not given access to the rear of the complex and all parties at the inspection were satisfied that the Tribunal had inspected all that was relevant to the case.

10. "The complex" has a common entrance facing onto Wellington Street. There is a door bell buzzer plate fixed to the wall at this entrance with buttons for the five flats to which this door provides access. Inside this entry door is a corridor that was dimly lit by an emergency light that is designed to work only in an emergency.

If this light had not been lit the corridor would have been too dark to safely use. The exterior door is not well fitted and requires painting. The door is not fitted with a lock that would permit easy opening of the door from within, in the event of a fire or other emergency.

11. There is a light for normal use on the landing above the common stairway, this was operated by means of a push switch designed to light the landing and stairs area for a pre designated period after the button was pushed. The Tribunal operated the switch and the light did not illuminate although the Tribunal was told that the light had been working when the Tribunal arrived to commence the inspection. The Tribunal could not discern whether the failure to illuminate was a design fault or whether the bulb had just blown.

12. The Tribunal inspected the interior of flat 8, this being vacant due to the fact the sub lessors from "the Applicant" had been rehoused by the local authority.

13. The Tribunal noted that window frames in this flat are wooden and single glazed. There is a line of small holes drilled through each frame, these are clearly intended to provide ventilation, but were not adequate.

14. The kitchen area joins onto the living area. The kitchen area has an extractor fan in the ceiling. There is a substantial area of wall covered with black mould. The bathroom had an extractor fan. The major bedroom had further areas of wall covered with black mould.

15. The Tribunal was of the opinion that these areas of black mould were caused by a lack of ventilation resulting in condensation of moisture on the walls of the flat permitting mould to grow.

16. "The Applicant" had a sub tenant occupying flat number 9 and had not arranged in advance of the inspection for the Tribunal to be given access to the interior of this flat. Both parties were content that the Tribunal should note that there was a leaking sky light in flat 9 and that rain water could be seen to drip onto a window sill of the kitchen in that flat.

17. The Tribunal noted that there were four rubbish bins placed close to this common entrance door. The windows on this aspect were generally wooden and in need of painting. There was one uPVC double glazed window.

18. There is a second common entrance door off Rutland Street. This has a door buzzer system fixed to the wall next to the door. It gives access to three more flats via a corridor and stairs. The door lock is a mortice lock. This common area was well lit with common lighting and had emergency lighting which, properly, was not illuminated.

19. The corridor houses on one wall a board designed to accommodate the electricity meters for the complex. It was common ground that the board had always had room available for nine meters and that in the past there had been nine meters present on the board. It was also common ground that none of the meters on this

board had the serial number that Npower, the electricity supplier designates as being the serial number of the meter for the common electricity supply.

20. Further, the Tribunal noted that although these meters were behind a secure exterior door, they were open for any tenant or visitor to touch as they went past. This appeared to the Tribunal to be an unnecessary danger to persons using the corridor, when it must be possible to close the board area off from passers-by.

21. This corridor houses a fire alarm control board. That board was indicating that there was a fire in zone one. There was no bell ringing. There was clearly no fire.

22. At the top of the stairs entry to one of the flats was completely blocked by a settee that was standing in its end in the doorway to the flat on the common landing.

23. This side of the complex incorporates an in built "car port" area, in using this terminology the Tribunal adopts the description given by the management agent. The area was not occupied by cars, but did have rubbish deposited in it. It did not have any exterior lights and on a dark night it must be very dark indeed in this area. There was a further access to the final flat to the rear right of this area, but this flat was completely boarded up. The area also housed some of the gas meters for "the complex". These had all been subject to vandalism, in that the locking doors to their fronts had all been pulled off.

24. A general description of the exterior of "the complex" is that it is in poor condition. Where there is exterior woodwork, some sections of the wood have fallen off, it is all in need of repair and painting. The wooden window frames require attention and painting. There are a significant number of areas where the render on the walls has fallen away or cracked and repair is required. All gas meters are without their locking doors. For further detail see the report of E Houlton MSc of Alan Wood and Partners, (bundle, pages 528 to 549).

The Law

Landlord and Tenant Act 1985
S27A Liability to pay service charges: jurisdiction
(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,

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

S19 Limitation of service charges: reasonableness.
(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

S20C "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 an appropriate tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(b) in the case of proceedings before an appropriate tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any tribunal;

Relevant provisions of the lease

25. For all relevant purposes all 9 leases for the flats are drafted in the same terms.

26. Clause 1(b), page 1 of the lease (bundle, page 21), defines the common parts of "the complex", amongst other things as the roof, entrance ways and stairways already described as common areas during the inspection, the electrical system serving and lighting the common parts and any other parts of the development which are used by or set aside for the use of or shared by the tenants of more than one flat in the development. This includes the areas that are now covered in pebbles on either side of the common entrance facing onto Wellington Street.

27. The reservations on page 3 of the lease require the lessee to pay a one ninth share of the cost of insuring "the complex" against the usual risks. (Bundle, page 23).

28. Covenant 4(c) on page 4 of the lease requires the lessee to maintain the whole of the demised premises including the walls of the flat in good condition. . (Bundle, page 24).

29. Covenant 4(f) on page 5 of the lease requires the lessee to permit access for the purpose of inspecting the flat, the lessor then leaving a notice of any repair work that needs to be done. (Bundle, page 25).

30. Covenant 4(g) on page 5 of the lease requires the lessee to make those repairs at her own expense. (Bundle, page 25).

31. Covenant 4(p) on page 7 of the lease requires the lessee to pay one ninth of costs expenses and outgoings in relation to matters referred to in the Third Schedule. (Bundle, page 27).

32. Clause 7 (iv) (a) on page 9 of the lease requires the lessor to provide a copy of the certificate of building insurance when requested by the lessor. (Bundle, page 29).

33. Clause 7 (v) and (vi) on page 10 of the lease, subject to payment of service charges, requires the lessor to maintain the structure of the building including the roof, gutters, rain water down pipes, the entrance(s) and to decorate the exterior. Page 10 of the lease, (bundle, page 30).

34. The First Schedule defines the demised flat as including external walls, although the words "to the same level" appear to have been inserted by error in part 4. Page 12 of the lease, (bundle, page 32).

35. The Third Schedule requires the tenant to contribute towards the cost of the lessor complying with these requirements. Page 17 of the lease, (bundle, page 37).

36. The lease provisions in relation to the external walls of "the complex" are such that where a wall presents a face that is external to a flat and the exterior side of the wall faces an area of "the complex" reserved for the use of more than one tenant, "the Respondent" will be the responsible for maintenance and repair of that wall. Subject to payment of the service charge for so doing. "The Respondent" may decorate the whole exterior and maintain the common areas, subject to payment of the service charge for so doing. Otherwise, the external walls of flats are the responsibility of the tenant of that flat to maintain and repair, "the Respondent" having the right to require this work to done at the tenants expense by service of a notice after inspection.

Written evidence

37. The agreed bundle is 783 pages in length. The Tribunal will not attempt to set out the important written evidence before dealing with the hearing. This would create far too many cross references of paragraph numbers and would result in the Decision being more difficult to comprehend than is necessary. The Tribunal will refer to important written evidence when dealing with the evidence given on each point as the case proceeds. The Tribunal will also deal with evidence on each point, taking one point at a time and in doing so keep all the relevant evidence on each point together.

Summary of the written case on behalf of the Applicants

38. "The Applicant" claimed that some service charges over a nine year period were on occasion not payable at all, but the major part of the case was to allege that that

they have been unreasonable. In relation to 2015 "the Applicant" contends that "the Respondent" is planning to undertake major works, without carrying out the statutory consultation required by section 20 of the Landlord and Tenant act 1985.

39. "The Applicant" seeks to challenge four charges that are clearly administration charges (bundle page, 553, paragraph 10.)

Summary of the written case on behalf of the Respondent

40. "The Respondent's" case generally is that all charges (with one exception) are payable and are reasonable, seeking to put "the Applicant" to prove her case.

41. "The Respondent" seeks an order of the Tribunal that the first three years of "the Applicants" case be struck out because they are too old to be fairly dealt with. "The Respondent" stating that the company is not required to keep records back that far. (Bundle, page 63, paragraph 13.)

42. "The Respondent" submits that in relation to the four charges referred to in paragraph 39 above, one is in fact a repayment of another. There are only two charges that are in issue. "The Respondent" further contends that these two items should not be considered at all by the Tribunal as they are not service charges, but are administration charges. The application is very clearly brought for the Tribunal to consider only service charges (bundle, page 644, paragraph 10.)

The hearing

43. The hearing commenced at 11.30am on 26 May 2015, at Grimsby Magistrates Court and continued on 1 June 2015. The persons present at the inspection were present throughout both days of the hearing and in addition the Respondent was represented by Ms Rowena Meager, a barrister, who was taking instructions throughout the hearing from Mr Ryan, the management agent.

44. The Tribunal directed that the case would be dealt with year by year with "the Respondent" and then "the Applicant" dealing with each point in turn, giving evidence where required, relying on documentary evidence where necessary and making legal submissions, if required, on a point by point basis. This was done in order to expedite the case, with the agreement of the parties, who understood that it was their responsibility to bring to the attention of the Tribunal any matter that they considered to be of importance to their case.

45. This procedure had the added advantage that "the Respondents" management agent could hear the case from both sides on each point and upon realising that the case that was being presented on behalf of "the Respondent" was not likely to succeed he could decide to concede the point on "the Respondent's" behalf, if he so wished. This happened on numerous occasions and where appropriate the Tribunal will recount the concession, without going into detail as to the evidence. This will reduce the length of this Decision.

Preliminary points

46. Counsel on behalf of "the Respondent" took the point that the Tribunal might decide not to hear the case in respect of the first three years of the application, relying on a lack of documentation going back that far. In developing this submission Counsel on behalf of "the Respondent" agreed that if the Tribunal adopted an approach to the early years of the application that the evidential burden fell on "the Applicant" to establish why it was that the service charge in question was not payable or unreasonable, there would be no real prejudice to "the Respondent", if the whole time period were to be considered.

47. "The Applicant" submitted that the case should be heard in its entirety. The Respondent should have documentation to support each service charge and should be able to demonstrate that each charge was both payable and reasonable. This management agent had been the management agent throughout the period in issue.

48. The Tribunal decided that it would hear the entire case as set out in the application. The Tribunal noted that this application was going back further than would normally be the case and that documents had been disposed of when perhaps it might have been better to keep them. However, the Tribunal did not want to act to the prejudice of the Respondent and so decided that where it was possible that any prejudice might be caused to "the Respondent" the Tribunal would avoid that possibility by keeping the burden of proof upon "the Applicant".

The evidence

49. Service charge year 2006 is dealt with in the profit and loss account (bundle, page 179.)

50. In relation to service charges in respect of the insurance for the building against the usual risks, "the Applicant" indicated that she did not challenge payability or reasonableness. "The Applicant" did however want the Tribunal to note that there had been a breach of the lease Clause, 7 (iv) (a), in that "the Applicant" had requested a copy of the certificate of insurance, which had not been provided.

51. "The Respondents" did not agree that this clause had been breached but submitted that it did not matter as to the question of whether the service charge was payable or reasonable.

52. "The Applicant's" evidence was to the effect that she had requested a copy of the certificate of insurance every year and they were not produced until 2013. "The Applicant" started to develop the argument that this had caused her to suffer additional expense (bundle, page 557, paragraph 25). However, later "The Applicant" decided not to pursue this allegation of her loss further.

53. Accountancy fees are not challenged by "The Applicant".

54. The remaining four heads of service charges are challenged generally by "the Applicant", but without any specific allegation being made that the charges were not payable or unreasonable.

55. There were no invoices or any other documentary evidence for the Tribunal to consider, on these four heads. "The Applicant" agreed that she had not requested that invoices be produced at the time and had paid the service charge invoice. "The Respondent" submitted that the charges had been placed upon the accounts, so the accountant who drew up the accounts must have seen documents to support the charges.

56. "The Respondent" conceded that the service charge demand for this year and for service charge years 2007, 2008 and 2009 had not contained the name and address of the freeholder landlord of "the complex", contrary to section 47 of the Landlord and Tenant Act 1987.

57. "The Applicant" gave evidence that the service charge demand for this year and for years, 2007, 2008, 2009, 2010, 2011, 2012, 2013 had not been accompanied by a document setting out the tenant's rights and obligations, contrary to section 21B of the Landlord and Tenant Act 1985.

58. The management agent agreed that this should be done and he thought that it had been done. However, he could give no direct evidence on the point because he did not see the service charge demands that were posted out to the long leaseholders by a separate office.

59. It was clear that "the Applicant" had not sought to withhold payment of the service charges and had been served with details of the name address of the Freeholder landlord subsequently. No issue was taken nearer to the time.

60. "The Applicant" did not seek to persuade the Tribunal that these failings in relation to the service charge demands could now effect the question of whether the service charges were payable.

61. Service charge year 2007 is dealt with in the profit and loss account (bundle, page 187.)

62. The £17 charge for light and heat is challenged. It is common ground that there is no common heating at "the complex". There are five invoices referred to on the profit and loss account (bundle page 189) from the electricity supplier Npower. These all refer to a meter that "the Respondent" has been unable to locate.

63. "The Applicant" gave evidence that the electricity meter for her flat 9 used to be a pre-payment meter and that she has seen the pre-paid electricity bought by a coin run out and that caused the common lighting at "the complex" to go out. "The Applicant" contends that her sub-tenants have been paying for the electricity used in the common parts of "the complex", by error, all along and that Npower are charging for electricity being used somewhere else. Recently the prepayment

meter has been removed and replaced by a standard meter, but there is no evidence that the electricity supply has in any way been rewired.

64. Both parties were able to refer the Tribunal to numerous complaints and contact between the party concerned and Npower in an attempt to resolve this matter. It has still not been resolved.

65. "The Respondent's" management agent made the point that Npower had invoiced them for various amounts over the years and they had until recently paid those amounts, in good faith, whist at the same time continuing with their complaint to Npower, challenging the invoices. As such the invoices paid by them are chargeable service charge amounts and are reasonable.

66. Further, the management agent stated that there were nine slots on the meter board and nine breaker switches, eight of which are for flats 2 to 9. There is a landlord's breaker switch, but the meter that Npower are charging as providing supply to the common parts has a serial number and a meter with that serial number cannot be found. The complaint to Npower had gone as far as the ombudsman. The management agent stated that electricity is being used in the common entrance areas and stairs, by the door entrance door buzzer systems, the fire alarm, two emergency lights and three normal lights.

67. The Tribunal notes that in the early years the Npower invoices were for modest amounts. This has however changed dramatically, to such an extent that by estimation of consumption Npower on 20 October 2013 stated that the cost of electricity over the year following that date was expected to be £3,475.57 (bundle, page 495).

68. In subsequent years the Decision will simply note the amount that is in issue between the parties.

69. Repairs and maintenance - an invoice for £282 (bundle, page 202) is challenged on the basis that there is no glass next to the common entrance door in question, but "the Applicant" conceded this point when shown a photograph (bundle, page 650).

70. An invoice for £123.38 is challenged (bundle, page 203) on the basis that the invoice relates to flat 2 and therefore cannot be an invoice relevant for service charges.

71. The management agent gave evidence that this probably related to the common entrance door giving access and next to flat 2, rather than the common entrance door on the other side of the building.

72. Sundry expenses of £70 are challenged. There is no invoice available for this expense. It had not been challenged at the time of the demand for payment of the service charge.

73. Insurance claim repairs £50 is challenged. There is no invoice available for this expense. It had not been challenged at the time of the demand for payment of the service charge.

74. Professional fees £1538 are challenged. The management agent gave evidence that this had been itemised incorrectly. The charge is for management fees from May 2005 to 31 January 2007. It was pointed out that "the Applicant" had not purchased flat number 9 until May 2006 and "the Respondent" conceded that £99.85 including VAT was not payable by "the Applicant".

75. Further, "the Respondent" conceded that because of a breach of section 20B of the Landlord and Tenant Act 1985, £19.19 including VAT was not payable by "the Applicant", in respect of flat 8.

76. "The Respondent" conceded that £189 claimed as bad debts written off were not a service charge item and "the Applicant" had therefore wrongly been charged £21 in respect of flat 8 and £21 in respect of flat 9.

77. Service charge year 2008 is dealt with in the profit and loss account (bundle, page 212.)

78. Light and heat £101, is challenged. There is no invoice.

79. Repairs- building, an invoice for £167.04 (bundle, page 226.) is challenged. The management agent gave evidence that this was an invoice for court costs following "the Respondent" being taken to court for non-payment of a bill (bundle, page 221). "The Respondent" takes the view that is properly charged to service charges.

80. Credit charges, late payments £12, is challenged. There is no invoice or explanation available as to what this charge was for, but no evidence from "the Applicant", either to challenge why it is payable or whether it is reasonable. No complaint had been made earlier.

81. Sundry expenses £90 are challenged. These are three separate invoices (bundle, page 229, 230, 231). The management agent gave evidence that he thought that these related to investigation of title, or something of that nature. "The Respondent" takes the view that these are properly charged to the service charge account.

82. Service charge year 2009 is dealt with in the profit and loss account (bundle, page 248.) The Tribunal is now dealing with the time period for which "the Respondent" accepts that he should have full records for.

83. Light and heat £21, is challenged. Invoices (bundle, page 254 to 269).

84. Bad debt written off £55 is challenged. There is no invoice and the management agent is unable to assist the Tribunal with any evidence as why this has been charged to the service charge account or as to what the bad debts were.

85. Sundry expenses £540, is challenged. The management agent gave evidence that this relates to an invoice (bundle, page 273). A demand for payment of that sum from North East Lincolnshire Council in respect of their costs for enforcement action at "the complex", dated 11 August 2009. The management agent stated that this enforcement action was due to an absence of emergency lighting at "the complex". The management agent stated that this is chargeable to the service charge account as it relates to expenditure at "the complex".

86. Service charge year 2010 is dealt with in the profit and loss account (bundle, page 278.)

87. Light and heat £138 is challenged. There are various invoices (bundle, pages 283 to 314).

88. Service charge year 2011 is dealt with in the profit and loss account (bundle, page 329.)

89. Electricity £23 is challenged, there is a reference to three invoices with a total cost to "the complex" of £13.39 (bundle, page 333.)

90. Fire system maintenance £360. This was actually the cost of obtaining a Health, Safety and Fire Risk Assessment Report (bundle, pages 336 to 376).

91. "The Applicant" agreed that this report was a necessary expense, chargeable to the service charge account, but alleged that there were 34 hazards referred to in the report that required action by "the Respondent", who had not attended to the work that was required.

92. The management agent stated that there were no high risk hazards, some of the hazards were not the responsibility of "the Respondent" to put right, "the Respondent" accepts responsibility for some of the required work and has attended to some of those, finances permitting.

93. Directors and officers insurance £184.89, is challenged. The management agent gave evidence that this had been given an incorrect title in the accounts, by using the wrong input code. They thought that the sum was actually management fees. He referred to other managers accounting documents (bundle, pages 334, 74 and 134). He agreed that the figure did not correspond to the monthly management fees being charged at that stage and could not explain the figure.

94. Sundry expenses £367.64 is challenged. The management agent gave evidence that this related to figure that "the Respondent" had paid into the service charge account at some point before he took over as management agent, probably paid in during 2005. He did notice a reference to the figure in an email from "the Respondent", when his firm was appointed. Prior to his firm being appointed "the Respondent" had been managing "the complex" himself.

95. In 2011 "the Respondent" had asked that he be repaid the sum and the management agent had paid "the Respondent" £367.64, charging it to the service

charge account as a chargeable expense. The management agent did not know what the money had been spent on in 2005 and did not think he would be able to provide any further information about the expenditure. He agreed that there must be reference to this happening in 2011, because that was when the charge had been added to the service charge account and was given until 2pm on that day, the second day of the hearing, to provide any document that might help to explain this charge further. No documents were provided to the Tribunal.

96. Service charge year 2012 is dealt with in the profit and loss account (bundle, page 394).

97. Electricity for this year did not result in any charge to the service charge account. There were four invoices, but the final result was that the electricity account was already able to settle this amount with approximately £96 remaining (bundle, page 398). Npower invoices (bundle, pages 405 to 421).

98. General repairs and maintenance £330 invoice from The Positive Cleaning Company (bundle, page 404). A concession is contained in "the Respondent's" Reply, paragraph 29 (bundle, page 646). The full amount is not chargeable to the service charge account.

99. General repairs and maintenance this also contains charges for the excess on two insurance claims. One of these claims (bundle, page 400) appears to be for damage to a demised flat and not caused by any negligence of "the Respondent". A concession was made that the £250 excess charge was not a service charge expense.

100. Contribution to the reserves £500 is challenged. This is the first year in which such a charge has been levied.

101. Counsel for "the Respondent" agreed that there is no express term within the lease that provides for a reserve fund to be established or charged as a service charge expense. Counsel suggested that this could be implied into the service charge provisions of the lease.

102. The management agent gave evidence to the effect that lack of funding is a major problem at "the complex", preventing repairs being carried out. A reserve fund would permit "the Respondent" to deal with repair work as it becomes necessary.

103. The management agent agreed (whether or not the Tribunal agrees with the submissions of Counsel) that in these circumstances he should make sure that the long leaseholders of all nine flats are informed by letter that he intends to establish a reserve fund as a service charge expense. He believed initially that a letter had been sent in this regard. His evidence was later amended to the effect that no such letter had been sent, however, it had been made clear in service charge demands and attached budgets that the reserve was being established.

104. Further, the management agent gave evidence that the service charge monies as paid over by the long leaseholders, including the reserve fund was being properly

managed in accordance with the RICS code. Countrywide and therefore his own firm was subject to audit and spot checks by RICS.

105. There are two £8 expenses charged to the service charge account, one of these was not challenged, there was a concession that the other should not have been charged to the service charge account.

106. Service charge year 2013 is dealt with in the profit and loss account (bundle, page 440).

107. Electricity £300 is challenged. The Tribunal notes that invoices are for much larger amounts (bundle, pages 447 to 462).

108. Contribution to reserves £500 is challenged.

109. "The Applicant" raised the issue of the sub-tenants of her flat 8 being rehoused by the local authority, contending that failure to keep "the complex" in good repair was a reason. On behalf of "the Respondent" it was submitted that there was no evidence as to why the rehousing had taken place. Further, the walls of flat 8 were not the responsibility of "the Respondent", the walls and windows in the walls had been demised by the lease, now being the responsibility of "the Applicant".

110. Service charge year 2014 is dealt with in the profit and loss account (bundle, page 483).

111. Electricity- common parts is challenged and is estimated at £100. Npower invoices demand huge amounts and estimate usage at £3475.57 for the year (bundle, pages 491 to 514).

112. Health and safety/fire risk/asbestos £374 is challenged by "the Applicant" because no such report has ever been produced and is not contained within the bundle of evidence.

113. The management agent gave evidence that he thought a report had been obtained, but he might be mistaken. He did not offer any reason as to why the report was not in the bundle of evidence. He further stated that there was no mention of the report within his statement of case or reply. There is no invoice demanding payment of any amount for this report in the evidence bundle for this year.

114. The management agent referred to the report of E Houlton MSc on behalf of Alan Wood and Partners (bundle, pages 528 to 540). He stated that the work required would be carried out when funds permit. The management agent further stated that the service charge account was in deficit, as at 30 September 2014 long leaseholders at "the complex" owed £10,796 (bundle, page 484). The management agent confirmed that "the Applicant" was up to date with her payments to the service charge account.

115. Insurance-valuation fee £225. No invoice is in the bundle in respect of this. The management agent stated this was money needed to pay for a revaluation of "the complex" for insurance purposes. As such the expense is not challenged.

116. Contribution to reserves £4146. This is challenged.

117. Service charge year 2015. On behalf of "the Respondent" it was submitted that there was nothing within the Tribunals jurisdiction to be considered. No service charge demand had yet been made. "The Respondent" was aware of the need to carry out consultation before he embarked upon major works (already referred to in paragraph 114, above).

The deliberations

118. The Tribunal notes that it is an agreed fact that the relevant terms of all 9 long leasehold leases are drafted in the same terms. Each of the nine long leaseholders of the flats at the complex contributing a one ninth share, per flat, to the service charges.

119. The Tribunal having inspected the exterior walls of "the complex", facing Wellington Street and Rutland Street, decides that under the terms of the lease some of the ground floor exterior walls and all of the first floor exterior walls have been demised to the long leaseholders of the flats at "the complex".

120. The Tribunal decides that the black mould seen on the walls of flat 8 is caused by condensation due to a lack of ventilation.

121. There is no evidence before the Tribunal as to exactly why the residents of flat 8 were rehoused, but bearing in mind the decisions already made, the Tribunal does not find "the Respondent" to be directly at fault in this regard. However, the Tribunal notes that "the Respondent" could have required "the Applicant" to repair and maintain exterior walls to flat 8.

122. The Tribunal decides that "the complex" is in a poor condition. The Tribunal has indicated already in the inspection the areas that need attention and it is clear that work needs to be carried out by "the Respondent". The Tribunal notes the debt of £10,796, which can only be due to one or more of the other seven long leaseholders, because we have been told by the management agent that "the Applicant" is up to date with her payments. The Tribunal disagrees with the Respondent that a reserve fund is needed, what is needed is tight credit control.

123. The Tribunal decides that there is no express clause or provision within the lease for a reserve fund to exist or for contributions to such a fund to be charged as a service charge expense. The Tribunal will not imply the existence of such a clause when the parties to the lease did not expressly include it. To do so would destroy the sanctity of contact within the lease.

124. The Tribunal further notes that "the Respondent" has not sent a letter to the long leaseholders explaining what was being done and why. It is possible that the long

leaseholders might have agreed to the formation of a reserve fund if they had been consulted, but they were not. The Tribunal determines that this is not an expense that can be included in calculating the service charges at "the complex". "The Applicant's" service charge account must be credited with the sum of £571.78 in respect of each of her flats (bundle, page 647).

125. The Tribunal next considered the evidence in relation to the cost of electricity used to light three lights, two emergency lights, two door buzzer systems and a fire alarm.

126. It is common ground that the meter for which Npower is providing invoices for electricity used in the common areas cannot be found at "the complex".

127. The Tribunal agrees with the management agent that such bills should be small, less than £1 per day, whereas they have now reached huge estimated figures. This leads the Tribunal to conclude that the meter in question is not actually recording the use of common electricity at "the complex".

128. The Tribunal notes that there are 9 slots available for meters on the meter board at "the complex" and with 9 flats, the Tribunal would expect to see 10 slots, providing for a meter to record electricity used in the common areas, especially so when there is a landlord's breaker switch. This suggests that there is no meter recording the use of electricity used in the common areas of "the complex".

129. It became clear that there was a problem with the absence of a meter for the electricity used in the common areas in 2006, it is now 2015 and this problem has still not been resolved. This is an unreasonable length of time to resolve such a fundamental management problem.

130. The Tribunal accepts the evidence of "the Applicant" that she has seen a pre-paid coin expire in the pre-payment meter for her flat 9. This causing the lights in the common area to switch off. There is no evidence that when the meter was changed there was any rewiring of circuits done. If rewiring had been undertaken all concerned would have to be told and their consent obtained.

131. The Tribunal concludes that the electricity used in the common areas of "the complex" has been, in the past and is still being, paid for by the occupant of flat 9. The Tribunal therefore determines that the service charge accounts for flat 8 and 9 must both be credited with the amount of £385.50 (bundle, page 647).

132. In relation to service charges for insurance, "the Applicant's" complaint is that from 2006 until 2013 despite requests that a copy of the certificate of the insurance for "the complex" be produced, it was not. The Tribunal accepts the evidence of "the Applicant" in this regard.

133. Having heard legal argument on both sides and considered the content of the lease, the Tribunal decides that there has been a breach of Clause 7 (iv) (a) in respect of failing to provide a copy of the certificate of insurance, for each year that its production was requested and it was not produced. However, this had no

effect on whether or not the service charge in respect of the insurance was payable.

134. The Tribunal decides that in 2007, 2008 and 2009, there have been breaches of section 47 of the Landlord and Tenant Act 1987 (paragraph 56, above). This is evidence of poor management.

135. The Tribunal accepts the evidence of "the Applicant" to the effect that she did not receive a copy of the tenants' rights and obligations form with her service charge demands from 2007 to 2013, breaches of section 21B of the Landlord and Tenant Act 1985. This is evidence of poor management.

136. This application deals only with service charges. The Tribunal agrees with "the Respondent" who takes the point that the four charges referred to (paragraphs, 39 and 42, above) are administration charges and are therefore outside the ambit of this application, being governed by different legislation. Namely, paragraph 1 of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

137. The Tribunal now deals with the remaining service charges costs (other than management costs) challenged by "the Applicant" on a year by year basis.

138. In 2006 "the Applicant" challenges the last four service charge expenses in the list (bundle, page 179). There are no invoices, there are no reasons given as to why the expenses may not be payable or reasonable. Due to the lack of evidence before the Tribunal and the age of the expenses challenged, the Tribunal decides that these expenses are payable and reasonable (paragraphs, 48, 54 and 55, above).

139. In 2007 "the Applicant" challenges an invoice for £123.38. The Tribunal decides that the evidence of management agent provides a plausible explanation for the way that this expense has been invoiced and that it is payable and reasonable (paragraphs 70 and 71, above).

140. "The Applicant" challenges two service charge expenses in (paragraphs, 72 and 73, above). There are no invoices, there are no reasons given as to why the expenses may not be payable or reasonable. Due to the lack of evidence before the Tribunal and the age of the expenses challenged, the Tribunal decides that these expenses are payable and reasonable (paragraphs, 48, above).

141. The Tribunal will give effect to the three concessions made by "the Respondent" for this year (paragraphs 74, 75 and 76, above). "The Applicant's" service charge accounts must be credited accordingly; flat 9, with £99.85 (including VAT) (paragraph 74, above), flat 8 with £19.19 (including VAT) (paragraph 75, above) and flat 8 and 9 £21 per flat (paragraph 76, above).

142. In 2008 "the Applicant" challenges a service charge for late payments £12. There is no invoice or explanation available, there are no reasons given as to why the expense may not be payable or reasonable. Due to the lack of evidence before the Tribunal and the age of the expense challenged, the Tribunal decides that these expenses are payable and reasonable (paragraphs, 48 and 80, above).

143. "The Applicant" challenges a service charge for £167.04 (paragraph 79, above). The Tribunal decides that this is not a cost that "the Applicant" can be required to contribute to. It is a cost that "the Respondent" had to pay because "the Respondent" failed to pay an invoice due for work at "the complex". The long leaseholders were not provided with a service, this was the freeholder being pursued through the County Court for a debt. "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £18.56 per flat.

144. "The Applicant" challenges a service charge for Sundry expenses of £90 (paragraph 81, above). The Tribunal decides that this is not a cost that "the Applicant" can be required to contribute to. The expense is made of three items that clearly relate to "the Respondent" investigating title in the course of conveyancing and these costs should have been dealt with in that matter. "The Applicant" was not provided with a service and her service charge accounts for both her flats must be credited with a one ninth share of this cost per flat, being £10 per flat.

145. In 2009 "the Applicant" challenges a service charge for a bad debt written off £55 (paragraph 84, above). The management agent could not explain why this was an expense that could be charged as a service charge. The Tribunal decided that this is probably an administration charge that should have been perused against the person owing the debt and had wrongly been charged as a service charge. "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £6.11 per flat.

146. "The Applicant" challenges a service charge for a Sundry expenses £540 (paragraph 85, above). This is the cost attaching to local authority enforcement action brought to protect residents from a risk that should have already have been dealt with by "the Respondent". This is not service to "the Applicant". "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £60 per flat.

147. In 2010, there are no expenses that remain at issue.

148. In 2011 "the Applicant" challenges a service charge for Directors and officers insurance £184.89 (paragraph 93, above). The management agent stated that this had been recorded with the wrong title and the Tribunal is satisfied that the management agent had no idea what the expense related to. It is a recent charge that is not supported by any evidence that it relates to a service being provided to "the Applicant". "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £20.54 per flat.

149. "The Applicant" challenges a service charge for sundry expenses £367.64 (paragraph 94 and 95, above). This relates to expenditure by "the Respondent" in 2005 that is said to have been for the benefit of "the complex" and was claimed as repayable in 2011. There is no evidence in the bundle of evidence capable of explaining why this was originally an expense chargeable as a service charge

expense. The management could not assist with oral evidence on this point and after being given extra time during the hearing, could not produce anything from 2011, when the decision was taken to repay this amount to "the Respondent".

150. The Tribunal decides that this was not a service to "the Applicant". "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £40.85 per flat.

151. There having been three concessions made by "the Respondent" in respect of 2012, there are no matter remaining at issue.

152. The Tribunal gives effect to these three concessions.

153. General repairs and maintenance £330 (paragraph 98, above). "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £36.67 per flat.

154. General repairs and maintenance £250 insurance excess charge (paragraph 99, above). "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £27.78 per flat.

155. An £8 charge (paragraph 105, above). "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being 89 pence per flat.

156. In 2013 there are no expenses remaining at issue.

157. In 2014 "the Applicant" challenges a service charge £374 for health and safety (paragraph 112 and 113, above).There is no evidence within the bundle to substantiate the fact that a report has been completed or paid for. The management agent thinks one has been completed, but readily accepts he may be mistaken.

158. The Tribunal cannot accept that such an important report can have completed without a report to add to the bundle, without an invoice to add to the bundle and without confident oral evidence from the management agent. The Applicant has not received a service "The Applicant's" service charge accounts must be credited with a one ninth share of this cost per flat, being £41.56 per flat.

159. In relation to 2015, there having been no service charge demand, there is nothing for this Tribunal to consider.

160. In relation to management costs and the costs of copying and postage (however described within the bundle). The Tribunal notes that management charges in 2006 were £56.25 per month for "the complex" and in 2014 are £83.81 per month for "the complex". The Tribunal notes that there have been significant incidences of poor management, but the Tribunal never the less considers the management charges throughout the whole period covered by this case, where they are payable by "the Applicant", to be reasonable.

161. The Tribunal next considered the issue of the application for an order to be made under section 20C of "the Act". The Tribunal notes that significant orders are to be made to the effect that "the Applicant" will have credits into her service charge accounts. The Tribunal further notes that management of "the complex" has been poor and that "the complex" is in a poor condition, whilst contributions to an unauthorised reserve fund are being demanded at what is now a high level. The Tribunal is satisfied that "the Applicant" had little option but to bring this case before the Tribunal.

162. In these circumstances the Tribunal considers it to be just and equitable to make an order that the Landlord may not regard any of the costs incurred in connection with these proceedings before this Tribunal as relevant costs to be taken into account in determining the amount of any service charge payable by "the Applicant" tenant.

The Decision

163. The Tribunal Decides that forthwith the following sums must be credited to the service charge accounts of "the Applicant":

- Flat 8 (reserve fund, paragraph 124, above) £571.78
- Flat 9 (reserve fund, paragraph 124, above) £571.78
- Flat 8 (electricity, paragraph 131, above) £385.50
- Flat 9 (electricity, paragraph 131, above) £385.50
- Flat 9 (back dated management, paragraph 141, above) £99.85 inc VAT
- Flat 8 (back dated management, paragraph 141, above) £19.19 inc VAT
- Flat 8 (bad debts written off, paragraph 141, above) £21
- Flat 9 (bad debts written off, paragraph 141, above) £21
- Flat 8 (Court costs, failure to pay debt, p.143, above) £18.56
- Flat 9 (Court costs, failure to pay debt, p.143, above) £18.56
- Flat 8 (sundry expense £90, paragraph 144, above) £10
- Flat 9 (sundry expense £90, paragraph 144, above) £10
- Flat 8 (bad debt written off, paragraph 145, above) £6.11
- Flat 9 (bad debt written off, paragraph 145, above) £6.11
- Flat 8 (sundry / enforcement notice p. 146, above) £60
- Flat 9 (sundry / enforcement notice p. 146, above) £60
- Flat 8 (directors and officers £184.89 p.148, above) £20.54
- Flat 9 (directors and officers £184.89 p.148, above) £20.54
- Flat 8 (repayment of £367.64 2005, p. 150, above) £40.85
- Flat 9 (repayment of £367.64 2005, p. 150, above) £40.85
- Flat 8 (positive cleaning company, p. 153, above) £36.67
- Flat 9 (positive cleaning company, p. 153, above) £36.67
- Flat 8 (insurance excess, paragraph 154, above) £27.78
- Flat 9 (insurance excess, paragraph 154, above) £27.78
- Flat 8 (an £8 charge, paragraph 155,above) 89 pence
- Flat 9 (an £8 charge, paragraph 155,above) 89 pence

- Flat 8 (health and safety report, paragraph 158, above) £41.56
- Flat 9 (health and safety report, paragraph 158, above) £41.56

164. The Tribunal makes an order under section 20C of "the Act". The Landlord may not regard any of the costs incurred in connection with these proceedings before this Tribunal as relevant costs to be taken into account in determining the amount of any service charge payable by "the Applicant" tenant.