



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

Case Reference : **CHI/29UN/LIS.2015/0011**

Property : **7e Arlington House, All Saints
Avenue, Margate, Kent CT9 1XR**

Applicant : **Deritend Investments (Birkdale)
Limited**

Representative : **Mr K Lees, Counsel**

Respondent : **Mrs Rita Pengelly**

Representative : **Mr J Moss**

Type of Application : **Determination of service and
administration charges**

Tribunal Members : **Judge E Morrison
Mr C C Harbridge FRICS**

**Date and venue of
Hearing** : **13 -14 October 2015 at Dover
Magistrates Court**

Date of decision : **15 December 2015**

DECISION

The Applications

1. Following a transfer from the county court, the Applicant sought a determination under section 27A Landlord and Tenant Act 1985 (“the Act”) as to whether certain service charges are payable, and under schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether certain administration charges are payable.
2. The Tribunal also had before it an application under section 20C of the Act that the Applicant’s costs of these proceedings should not be recoverable through future service charges.

Summary of Decision

3. The overall service charge recoverable for 2009 is £145,504. The Respondent’s share of this is £1105.83. Whether the sum of £569.85 claimed in the county court is payable will depend on how much she has already paid on account for 2009.
4. The overall service charge recoverable for 2010 is £188,157. The Respondent’s share of this is £1430.00. Whether the sum of £211.28 claimed in the county court is payable will depend on how much she has already paid on account for 2010.
5. The overall service charge recoverable for 2011 is £135,529. The Respondent’s share of this £1030.02. Whether the sum of £556.48 claimed in the county court is payable will depend on how much she has already paid on account for 2011.
6. The overall service charge recoverable for 2012 is £168,300. The Respondent’s share of this £1279.08 and she has made no payments on account. Therefore the sum claimed in the county court of £1246.13 is payable.
7. The on account demands for 2013 in the total sum of £1311.54 are payable. However, due to non-compliance with section 47 Landlord and Tenant Act 1987, £655.77 of this total was not payable until 12 September 2015 and thus was not due at the time the county court proceedings were commenced.
8. The on account demands for 2014 in the total sum of £1287.96 are payable.
9. The administration charges claimed in the county court proceedings are not payable.

The Inspection

10. The Tribunal inspected Arlington House on the morning of 13 October 2015, immediately before the hearing, accompanied by the parties and their representatives. Arlington House is a 1960s tower block, occupying a prominent position on the Margate seafront. There are 142 flats over 18 floors. Above the 18th floor are areas housing the water tanks, the machinery for various commercial telecom aerials and other communication equipment erected on the roof, and machinery for the two lifts. On the ground floor beyond the entrance area is a porter's office and store room and a meter room, and there is external access to a bin store, and the pump room. Arlington House was built as part of a larger development which includes Arlington Square, comprising some 50 shop units (all closed), and a large multi-storey car park most of which is now fenced off. The Tribunal did not view the Respondent's flat or any of the other flats internally.

The Leases

Superior Leases

11. The freehold of Arlington House is owned by Thanet District Council. By a lease dated 19 May 1965 Arlington House, Arlington Square, and the car park were demised for a term of 199 years from 1 October 1961. Metropolitan Property Realisations Limited ("Metropolitan") acquired the leasehold interest in 1969.
12. By a concurrent lease dated 3 April 2014 between Metropolitan and the Applicant, Arlington House (save for certain ground floor areas including the pump room and bin store) was demised to the Applicant for a term of 199 years less 3 days from 1 October 1961. It is accepted that the Applicant ("Deritend") became the Respondent's landlord, in place of Metropolitan, on that date and became entitled to receive any outstanding service charges. Metropolitan and Deritend are both part of the Freshwater group.

The Respondent's lease

13. The Tribunal had before it a copy of the lease for Flat 7e. The lease is for a term of 114 years from 1 October 1961.
14. The relevant provisions in the lease may be summarised as follows:
 - (a) The lessee is liable to pay 0.76% of the service charge covering the costs described in clause 2(a) (i) – (xv) (these costs will be referred to in more detail below as necessary)

- (b) On account payments towards the service charge are payable by the lessee on each 25 March and 29 September in such sum as the lessor or its managing agents may determine
- (c) The service charge year runs from 1 January to 31 December and as soon as practicable after the end of each year the amount of the service charge for that year shall be ascertained and certified by the lessor's accountants or auditors
- (d) The certificate shall contain a summary of the lessor's expenses together with a summary of the relevant details and figures forming the basis of the service charge
- (e) As soon as practicable after the certificate is signed the lessor shall give the lessee an account of the service charge payable by the lessee, credit given for the on account payment, and the lessee shall pay any balance owed or the lessor shall credit the lessee's account with any overpayment as appropriate
- (f) Clause 2(7) provides that the lessee will pay to the lessor "all costs... which may be incurred by the Lessor in or in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925"
- (g) The lessee's repairing obligations include "the windows and window frames" of the flat – clause 2(9)
- (h) The lessor's repairing and insurance obligations are set out at clause 5.

Procedural Matters

15. Following the transfer from the county court in proceedings in which the sum claimed was £5894.24 plus interest, and following a case management hearing on 11 May 2015, Directions were given. In summary these provided for the Respondent to serve a statement of case and other evidence, for the Applicant to serve a statement of case in response together with copies of the invoices disputed by the Respondent and other evidence, and the Respondent was then permitted to serve a reply. At that stage the time estimate for the hearing was two days, and arrangements were made on this basis.
16. The initial statement of case from the Respondent was lengthy and detailed. The response from the Applicant, together with a supporting witness statement, copy invoices and other documents, ran to 2900 pages. The Respondent's Reply was almost 90 pages long, and exhibited further documents. The result was that the Bundle initially prepared by the Applicant ran to 9 lever arch files.
17. It then transpired that the Bundle contained errors. An entirely new Bundle was prepared just before the hearing date with 3297 pages over 9 files. In addition, as requested by the Tribunal, a Core Bundle of key documents was provided.
18. These details are included to illustrate how what appeared to be a straightforward service charge dispute over a modest amount of money

ballooned into a case that was, at least so far as the documents were concerned, complex and unwieldy. It was clear that although the proceedings involved only one residential lessee, many other lessees in Arlington House had an interest in the outcome. Thus the potential impact of the Tribunal's decision might be greater than at first appeared. At no time did either party inform the Tribunal that the two day time estimate had become unrealistic.

19. At the outset of the hearing on 13 October 2015 the Tribunal reminded the parties of the overriding objective under the Tribunal Procedure Rules 2013 and the need to deal with the case in ways which were proportionate to its importance, its complexity, and the anticipated costs and resources of the parties and of the tribunal. It then became clear that the Reply raised many new challenges to the service charges that went far beyond the many issues already raised in the Respondent's original statement of case. There was no realistic possibility of dealing with these new points in the time allocated for the hearing. Furthermore the Applicant had not responded to them, adopting the position that they should not even be considered by the Tribunal. The Respondent's position was that until the invoices were disclosed with the Applicant's statement of case, and there was an opportunity to examine them, she had not been in a position to formulate all challenges. She/her lay representatives had not appreciated that disclosure of copy invoices might have been requested at an earlier stage.
20. The Tribunal decided that it would not be fair to prevent the Respondent from pursuing the additional matters in the Reply. However the Applicant would need to be given an opportunity to respond to them. Further, if these matters were to be considered at an oral hearing, it could take several days. That would not be proportionate, especially as many of the new points had a low monetary value. The Tribunal therefore decided that these matters would be determined on the papers alone, once the Applicant had had an opportunity to respond.
21. The Applicant's response in the form of a Scott Schedule was received on 27 November 2015.
22. The Tribunal then re-convened on 7 December 2015, without the parties, to consider all the evidence and to reach a determination.

Representation and Evidence at the Hearing

23. At the hearing the Applicant was represented by Mr K Lees of counsel. He relied on the witness statement of Mr P Sulsh, from the managing agents, Trinity, and Mr Sulsh gave some supplementary oral evidence. The Respondent was represented by Mr J Moss, a fellow lessee at Arlington House, with assistance from her husband Mr S Pengelly.

The Law and Jurisdiction

24. The Tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable. It cannot adjudicate on issues regarding interest or costs (unless part of a service or administration charge).
25. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. Where a service charge is payable before the costs are incurred, no greater amount than is reasonable is payable.
26. Under section 20C of the Act a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a Tribunal 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.
27. Section 47 of the Landlord and Tenant Act 1987 requires that any written demand given to a tenant of a dwelling contains the name and address of the landlord, and if that address is not within England and Wales, provides an address within England and Wales where notices may be served. If a service charge demand does not contain this information the sum demanded "shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant".
28. Under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 an application may be made to a tribunal for a determination whether an administration charge is payable. If the amount of the charge is not specified in the lease, it is payable only to the extent that it is reasonable.

The Charges in Dispute

29. Where issues are transferred to the tribunal from the court, the tribunal's powers are limited to (a) the issues that fall within its statutory jurisdiction (as set out above) and (b) the issues before the court.
30. The court proceedings were issued in late 2014. The Amended Particulars of Claim filed in the county court sought to recover:

	£
For Service Charge year 2009:	569.85
For service charge year 2010:	211.28
For service charge year 2011:	556.48
For service charge year 2012:	610.28
	635.85
For service charge year 2013:	655.77
	655.77
For service charge year 2014:	643.98
	643.98
Administration charges 2014:	150.00
	<u>561.00</u>
	5894.24

The Administration Charges

31. The Applicant accepted in its statement of case that it could not substantiate the charge of £150.00 and that this was withdrawn. It is therefore not payable.
32. It transpired that the second sum claimed of £561.00 for legal costs had never been demanded as an administration charge. It represents a claim for contractual costs in connection with the county court proceedings and is for the court, not the Tribunal, to consider in light of the recent decision of the Upper Tribunal in *Barrett v Robinson* [2014] UKUT 0322 (LC).

The Service Charges

33. The Respondent raised several points of principle which potentially impacted on liability to pay all the service charges.

Was Section 47 complied with?

34. The Respondent alleged that until August 2015, when fresh demands were issued for the service charges naming either Metropolitan or Deritend (as appropriate) as landlord, none of the demands received for the service charges had complied with section 47. A demand dated 12 September 2013 was relied on, requiring an on account payment in the sum of £655.77. This named the landlord as "Freshwater". However Freshwater has never been the Respondent's landlord. The Respondent said she was not told that Deritend rather than Metropolitan was her landlord until April 2015.
35. The Applicant's case was that paper copies of demands were not retained and its computer system did not enable the Applicant to ascertain who the demands would have named as landlord when they were originally issued (due to an automatic updating function). It was not admitted that any demands, beyond the one produced by the

Respondent, had failed to name the correct landlord. The Respondent would have known who the landlord was in any event, as an earlier demand in evidence dated 16 September 2011 identified the correct landlord. Furthermore the service charge accounts for 2011 and 2012 dated 31 March 2014 named the correct landlord, and the 12 September 2013 demand had been re-issued on 12 August 2015 naming the correct landlord and requiring payment by 12 September 2015. The Applicant relied on the recent Upper Tribunal decision in *Tedla v Cameret Court* [2015] UKUT 221 (LC) which held that if a demand does not comply with section 47, it is not necessary for the defective demand to be re-issued; all that is needed is a notice providing the required information.

36. Determination: It is clear that the demand dated 12 September 2013 did not comply with section 47 when it was issued. The Tribunal does not accept that this error was nullified by an earlier demand which correctly identified the landlord, or by serving service charge accounts which happened to contain within them the name (but not the address) of the landlord. Therefore the sum claimed in the 12 September 2013 demand, namely £655.77, was not payable at the time the court proceedings were issued. It only became payable on 12 September 2015 (subject to arguments on other points of challenge).
37. The Respondent was given the opportunity to produce copies of other demands that had failed to comply with section 47, but did not do so. The Tribunal cannot conclude from just one demand that any or all of the other demands were non-compliant.

Did delay in preparing accounts affect payability?

38. The Respondent argued that none of the service charge accounts had been prepared and certified “as soon as practicable” as required by the lease. In effect her argument was that this breach removed any liability to pay. Delay prevented the Respondent from checking the invoices and challenging the figures.
39. The Applicant did not dispute that there had been delays, but denied that this had any impact on payability. The words “as soon as practicable” did not make time of the essence i.e. a pre-condition to payment. There was no hardship or prejudice to the lessees as they did not have to pay any balancing charge until the accounts were prepared.
40. Determination: The words used in the lease are not apt to describe a condition precedent to payment. If delay in producing the accounts meant that the lessor could not recover any costs incurred for the lessees’ benefit, however reasonable, this would be a dramatic result and clear words would be required showing that this was what was really intended: *Warrior Quay v Joachim* [2008] EW Lands LRX/42/2006. No such intention is demonstrated by the words used in this lease. Accordingly the Respondent’s challenge on this issue does not succeed. It may be noted that in the event of delay, the lessees are at liberty to challenge on account demands in the meantime, and once

the accounts are produced they have all usual remedies. They could also elect to serve a notice making time of the essence if they so wished.

Did the omission of certain ground floor areas of Arlington House in the demise to the Applicant affect payability?

41. The Respondent originally contended that the answer to this question was Yes insofar as the second 2014 on account demand was issued by Deritend rather than Metropolitan, but after reconsideration at the hearing this point was withdrawn.

42. All sums in the service charge accounts have been rounded to the nearest pound. This decision adopts the same practice.

43. Not every point raised in the Respondent's initial statement of case was pursued. This decision covers only the points that were pursued. Where additional points raised in the Reply were *de minimis* and/or have not resulted in a reduction in the charge, this Decision deals with them summarily in the interests of proportionality.

Service Charge Year 2009

Preliminary

44. In this year the Respondent settled two on account demands. Unfortunately, the Tribunal was not told how much was paid. The sum claimed in the county court arises from a balancing charge in the sum of £569.85 demanded in November 2012 after the accounts were (belatedly) produced showing an overall service charge of **£176,097**. The Tribunal will make a determination as to the service charge for the entire year and therefore the amount of Respondent's proportion. However, whether all or part of £569.85 is payable by the Respondent will then depend on how much has she has already paid.

Wages and Expenses -£41,584

45. The Respondent's contention was that 10% of these costs should be allocated and charged to the commercial premises. However only a 5% allocation had been made, and then only in respect of some of the costs.

46. The Applicant accepted that 10% should be allocated to the commercial premises but thought this had been done.

47. Determination: An examination of the document apparently relied on by both parties (Bundle page 3025) shows that the Respondent's contention is correct. Applying a 10% deduction to all wage costs results in a figure of £39,328, a reduction of **£2256**.

48. The Tribunal considered additional points of challenge made in the Reply and the Applicant's comments thereon, but finds that the charges are otherwise reasonable and makes no further adjustment.

Office Rent and Rates - £1690

49. The Respondent challenged this figure on the ground that no supporting invoices had been produced. The Applicant relied on the accounts prepared and certified by the accountants as proving the validity of the expenditure. The Tribunal notes that this is a routine and ongoing head of expenditure. It is not suggested by the Respondent that no such costs were incurred. On balance, the Tribunal is satisfied that such costs would have been incurred and notes that the sum is similar to that charged in 2010. There is no suggestion that the sum was excessive. Accordingly it is allowed in full.

Security Guards - £28,715 (less apportionment of £1258 to 2008)

50. This figure was challenged on two grounds: (a) the invoices added up to only £22,767 and (b) 50% of the cost should be allocated to the commercial areas. Reliance was placed on the terms of the security contract which provided for 13 hour shifts from 5pm to 8am, during which time there were to be 12 external patrols and 2 internal patrols.
51. The Applicant accepted the figure of £22,767 but said that all costs were properly charged to the residential lessees as maintaining security of the whole site benefitted the residents. An internal patrol of an 18 storey building would take more time than an external patrol.
52. Determination: The Tribunal does not accept that patrols of the substantial external commercial areas including Arlington Square and the car park should be charged to the lessees, whose main interest is confined to their building and its accessways. There was no evidence as to how long each patrol took but adopting a commonsense approach having seen the property, a 50/50 apportionment of cost is determined as reasonable. It would, if anything, appear to be generous to the lessor. 50% of (£22,767 less £1258) is £10,754. This is the amount recoverable, a reduction of **£16,703**.

Cleaning Materials etc - £1017

53. The Respondent queried this figure on the basis of missing invoices, but these were later supplied by the Applicant. No adjustment is made.

Refusal removal and sacks - £146

54. The Respondent contended there were no invoices to support this expenditure. The Applicant suggested that as the figure appeared in the certified accounts, the accountants must have seen supporting invoices.

The Tribunal notes that the accounts are not audited and the certification is in limited terms; therefore the Applicant's submission is not accepted. There is no other evidence that this cost was incurred and accordingly it is disallowed, leading to a reduction of **£146**.

Checking lift following fire in motor room- £173

55. This charge was withdrawn by the Applicant, so there is a reduction of **£173**.

Professional fees - £633

56. Although initially challenged by the Respondent, the Applicant produced invoices in this sum and no adjustment is made.

Repairs and Maintenance- £21,347

(i) Window and door repairs - £5,857

57. The Respondent contended that only £571 related to the communal areas, and the rest related to individual flats. Under clause 2(9) of the lease the lessees were responsible for their own windows and window frames and these costs should not be recoverable through the service charge. In response the Applicant relied on clause 2(a)(iii)(b) which allows the cost of window repairs to be charged if the lessee has not repaired them. The Respondent then contended that this could only apply if the lessor had first required the lessee to carry out the works by serving a notice under clause 2(10) and no such notices had been given.

58. Determination: Clause 2(a)(iii)(b) allows the cost of repairs to flat windows to be recovered through the service charge "if the same shall have not been properly repaired by the Lessee". Clause 2(10) is permissive and does not require the lessor first to serve a notice on the lessee. It was not unreasonable for the lessor to opt to do the work itself given that the lease specifically envisaged and provided for this. It might have been unreasonable had the flats concerned been those retained by the lessor (of which there are about 40) but there was no evidence that that was the case. Therefore the cost claimed is allowed.

(ii) Various works to communal and service area doors: £1711 and £734

59. The Respondent had found only one invoice for work that might be covered by these two charges, in the sum of £1184. There was no other evidence of what work had been done and the Respondent thought that the £734 charge might be double-charging for work already included in the £1171 charge. The Applicant pointed out that subsequent charges for work which appeared to overlap was not unusual, and did not mean that the second charge was unreasonable.

60. Determination: As there is no evidence of what work was actually done other than that covered by the £1184 invoice, this is the only sum allowed, a reduction of **£1261**.

(iii) Clearing stack pipes, waste pipes and drains - £1579

61. The Respondent contended that only £391 should be allowed as the rest related to clearing kitchen sinks and pipes in individual lessees' flats, and should be charged to those lessees.
62. The Applicant relied on clause 2(a) (iii)(a) and (c) of the lease which provides for the recovery of costs for the repair and maintenance of water pipes in the building. A blocked sink or pipe in a flat could affect the entire system if that blockage was allowed to gravitate into the communal drainage stack.
63. Determination: The only information as to the work done is that set out in summary form in the various invoices. These indicate that some work was carried out in individual flats, and other work done to the main stack which is a communal responsibility. Doing the best it can on this limited evidence, the Tribunal finds that it would be reasonable to apportion 50% of the cost to the service charge, leaving the remaining 50% as a cost that should have been charged to individual flats. There is therefore a reduction of **£790**.
64. The Respondent also argued that £35.00 of the claimed cost was undocumented in any way. The Tribunal accepts this and therefore makes a further reduction of **£17**.

(iv) Cold water treatment and sampling (Four visits)- £757

65. The Applicant argued that there was no supporting invoice and argued that the entire cost should be disallowed. The Respondent could only provide one water testing report dated 26 June 2009. Nonetheless this is evidence of work having been carried out and the fact that the service charge accounts specifically refer to four visits persuades the Tribunal to find on balance that this work was done. There is nothing to suggest the cost is unreasonable and no deduction is made.

Entry phone system - £8,278

66. In July 2008 Freshwater Property Management entered into a 3 year agreement with Stanley Security to hire and service an entry phone system for Arlington House. The copy agreement in the Bundle omitted 6 of its 8 pages, but page 1 indicates that the basic charge for the first year was £1713.75 per quarter.
67. The Respondent contended that the cost was not reasonably incurred as it was a poorly maintained system with recurring faults, although there was no specific evidence as to how well the system was operating in 2009. It was not prudent management to rent such equipment. A

local electrician could have serviced it on a call-out basis for £1000 per annum and the charge should be reduced to that amount.

68. Mr Sulsh from Trinity explained that the contract was still in effect, as it had rolled on to a further 5 year term when the original 3 years expired. It would expire in 2016 but to terminate early would incur a penalty charge which was not cost-effective. He accepted there could be a better system and was aware of operating issues more recently.
69. The Respondent also pointed out there was no invoice to support the sum claimed. The Applicant noted there was no dispute that the service had been provided and the sum claimed was very similar to that claimed in 2010 where the invoice was available.
70. Determination: There is no specific evidence of system failures. There are no comparative quotes which might show the cost was unreasonably high. This is specialised equipment hired from a reputable company, and it requires specialist maintenance. The Respondent's suggestion that a local electrician could do the work for £1000 is completely uncorroborated and is rejected. In this instance the lack of a supporting invoice is not fatal, as there is no dispute that the service was provided and no indication that the sum claimed is out of line with that charged in other years. The amount claimed is allowed in full.

Pest Control - £439

71. The Respondent contended that 50% of the cost should be charged to the commercial premises. In 2009 some shops were still open. Some shops sold food. The Applicant stated this expense was for the residents' benefit. The pump room and bin store attracted rodents. The Tribunal had seen rat traps in these areas during the inspection.
72. Determination: As there were some shops still open in 2009, it is reasonable for the charge to be apportioned on a 50/50 basis. There will therefore be a reduction of **£219** in the sum charged to the residents. It is further noted that in any event the sum charged to the service charge is less than that agreed with the contractor.

Fire Security - £306

73. The Tribunal accepts that the supporting invoices produced are for £25 less than that charged and therefore makes a reduction of **£25**.

Fire alarm pagers - £793

74. This item is disallowed because there is no evidence whatsoever of the goods having been supplied. The accountants did not carry out an audit and the mere inclusion of this item in the accounts is therefore insufficient. Thus there is a reduction of **£793**.

Engineering insurance - £4269

75. The Respondent argued that as the only invoice exhibited was for £1275 the charge should be limited to that amount. The Applicant then produced an invoice for a much larger sum which it claimed covered the cost. However this named a different Freshwater company as the insured, and although it appeared to relate to insurance of plant at various properties, there was no indication that Arlington House was included. Accordingly the charge is reduced to £1275, the annual premium shown in the only relevant invoice included by the Applicant in the bundle, a reduction of **£2994**.

Accountants' fee - £7616

76. In this year, and in 2010, the accountancy fees are very much higher than those charged in subsequent years. There was a change of managing agent (Chainbow) in September 2009, and a further change to the current managing agent (Trinity) in December 2011.
77. For both 2009 and 2010 two sets of accounts were certified. For 2009 firstly on 22 March 2011 and secondly on 22 October 2012. For 2010 firstly on 26 April 2012 and secondly on 22 October 2012. The same firm of accountants dealt with both years.
78. The Respondent contends the fees are excessive and should be reduced to a figure in line with that charged in 2011 of £960. Mr Sulsh sought to explain the difference by saying that Trinity (who were responsible for the 2011 accounts) has its own in-house accounting department and so the external accountants have much less work to do.
79. The accountant's invoice for the 2009 accounts charges £3520 + VAT for the first set of accounts and £2900 + VAT for the second set. The narrative on the bill refers to receiving a draft statement of expenditure from the managing agents, verifying it with vouchers, information and explanations supplied, finalising and certifying the account. There is no explanation why the work was done twice. There is no information about the hourly rate or time spent.
80. Determination: No alternative cost quotations were supplied by the Respondent, but the Tribunal appreciates the difficulty of obtaining such where the volume of work required is unclear. In such circumstances the Tribunal is entitled to take a robust common-sense approach and do the best it can on the limited evidence available: *Gateway (Leeds) Management v Naghash* [2015] UKUT 33 (LC). The Tribunal is also entitled to rely on its general knowledge and experience. While the work involved in 2009 may have been more extensive due to the change in managing agents part-way through the year, the fact that the accountants appear to have done the whole exercise twice must be due to mistakes or errors, by them or the

managing agents, and there is no reason why the lessees should pay for these. There was no evidence before the Tribunal as to the work done by the accountants other than their fee-notes, which do not even record the amount of time spent. (A separate narrative was provided of work done for the 2008 accounts, but this does not establish what work was done for the 2009 accounts.) The Tribunal bears in mind that there are a large volume of invoices but if the managing agents had kept accurate records this should not have required much more work of the accountants; they were not doing an audit. Where managing agents keep reasonably good records it is the Tribunal's view that a competent accountant would not need to charge more than £2400 inc VAT. There is therefore a reduction of **£5216**

Management fee - £17,746

81. This comprised the fees of Highdorn for the period January-August and the fees of Chainbow from that date. The Respondent said that no invoice from Highdorn had been produced. However, it was not contended that Highdorn had not carried the service or that the fee was not in accordance with their service agreement and the Tribunal makes no deduction. Following the hearing, Highdorn's invoice was supplied by the Applicant.
82. The Respondent also argued that the Applicant should not charge a percentage fee on employment costs but the Tribunal notes that this was specifically allowed for in Chainbow's management agreement and makes no adjustment.
83. The Tribunal considered additional points of challenge made in the Reply and the Applicant's comments thereon, but finds that the charges are otherwise reasonable and makes no further adjustment.
84. There was a general challenge to the management fees for all years on the ground that the service was not of a reasonable standard. This is dealt with below at paras 158-161 below. However no deduction is made for 2009.

Summary of Deductions for 2009

- 84A. The Tribunal has decided that there should be deductions from the sum charged in the accounts of £176,097 in the total sum of £30,593 (circa 17.3%). The service charge payable for 2009 is therefore **£145,504**

Service Charge Year 2010

85. In this year the Respondent paid two on account demands. As for 2009, the Tribunal was not told how much was paid. The sum claimed in the county court arises from a balancing charge in the sum of £211.28 demanded in November 2012 after the accounts were (belatedly)

produced showing an overall service charge of **£233,221**. The Tribunal will make a determination as to the service charge for the entire year and therefore the amount of Respondent's proportion. However, whether all or part of £211.18 is payable by the Respondent will then depend on how much has she has already paid.

Wages and Expenses - £11,256

86. In 2010 the employment of three staff employed as caretakers was terminated as the new managing agents considered costs could be saved, with the work done by an outside contractor instead. Two of the staff were made redundant. The redundancy payments inclusive of national insurance and VAT amounted to £9448. The Respondent submitted that this cost should not be recoverable through the service charge. The Applicant said the costs were a "cost of employment" which is specifically referred to in the lease as a service charge item.
87. The Respondent also said that any sum allowed should be reduced by 10% to take account of the work carried out by these staff for the commercial areas (the same percentage as agreed by the Applicant for wages in 2009).
88. Determination: The redundancy payments were payable as a direct result of the employments coming to an end were so intrinsically linked to the actual employment that they must be regarded as a cost of employment recoverable through the service charge. The total wage cost of £11,256 is allowed subject to a 10% reduction of **£1125** which should not be charged to the residential lessees.

Porter settlement - £6750

89. The third staff member, the porter, did not receive a redundancy payment due to his age, but made a claim against the lessor. This was settled for £15,000, half of which was covered by the professional indemnity insurers, and half (less 10% charged to the commercial areas) to the lessees. The Respondent contended that the Applicant must have been at fault if there was a dispute resulting in a payment, and the lessees should not pay for this. The Applicant countered that it was not right to conclude that the sum of £7500 (not covered by the insurers) would not have been paid anyway.
90. Determination: Doing the best it can on the limited evidence, the Tribunal concludes that the element of the payment made by the insurers reflects the liability due to fault, and that the balance of the payment is not fault-based and would have had to be paid anyway. The sum is allowed in full.

Office Rent and Rates - £1524

91. The Respondent challenged this figure on the ground that no supporting invoices had been produced. The Applicant relied on the accounts prepared and certified by the accountants as proving the validity of the expenditure. The Tribunal notes that this is a routine and ongoing head of expenditure. It is not suggested by the Respondent that no such costs were incurred. On balance, the Tribunal is satisfied that such costs would have been incurred and notes that the sum is similar to that charged in 2009. There is no suggestion that the sum was excessive. Accordingly it is allowed in full

Supplying Carpet etc - £627

92. This charge was withdrawn by the Applicant at the hearing, leading to a reduction of **£627**.

Security Guards - £65,871

93. The arguments here were as for 2009, save that 10% had already been deducted from the gross cost as an apportionment to the commercial areas. For the same reasons as given in 2009, the Tribunal finds the apportionment should be 50/50. The charge is therefore reduced by a further 40% of gross (£73190) in the sum of **£29, 276**.

Electricity - £18,441

94. The Respondent noted that £532 of this sum was attributable to late charges. The Applicant accepted these should not be charged to the lessees.
95. The Respondent also noted that the invoices provided added up to only £18,234. The Applicant was prepared to accept this figure in place of £18,441.
96. The suggestion made in the Respondent's statement of case that the commercial telecom equipment on the roof was using electricity charged to the lessees was not pursued at the hearing.
97. Determination: The charges are payable in the agreed sum of £18,234 less £532 = £17,702, an overall reduction of **£739**.

Legal costs - £1562

98. These costs were described in the accounts as "Legal Costs: Land Registry and court fees incurred in pursuing service charge arrears". The supporting documents indicated they were charges by the managing agents for "admin fees", as well as court fees paid. There was no evidence that the costs included fees paid to lawyers.

99. The Respondent submitted that these costs were not payable as a service charge under the lease.
100. The Applicant relied on clause 2(a)(x) of the lease which permits recovery of *“the cost of any other service or facility which the Lessor may in its absolute discretion provide for the comfort or convenience of occupiers of the Buildings or for their proper maintenance safety amenity and administration.”* It was said that if these costs were not recoverable, the lessor would have the power to borrow money to make up the deficit and the cost of this would be charged to the lessees under clause 2(a)(x11) which permits the recovery of interest on monies borrowed by the lessor in order to defray the cost of services.
101. Discussion and determination: The Supreme Court has recently made it clear that there is no rule of construction which requires service charge clauses to be construed restrictively: *Arnold v Britton* [2015] UKSC 36. The Tribunal must consider what a reasonable person with the relevant background knowledge would understand the term to mean, focussing on the meaning of the words in their context and in the light of the natural meaning of the clause.
102. Clause 2(a) of the lease is a detailed provision specifying the types of cost and expenditure that are recoverable from the lessee through the service charge. It has 15 sub-clauses, none of which specifically refer to the recovery of costs expended by the lessor in attempt to collect service charge arrears, save for clause 2(a)(xi) which covers *“the cost of employing managing agents for the management of the Building and the collection of rents and service charge ...”* . However it was not submitted by the Applicant that the sum of £1562 fell under this clause.
103. Clause 2(7) of the lease is a covenant by the lessee *“To pay to the Lessor all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Lessor in or in contemplation of proceedings under sections 146 and 147 of the Law of Property Act 1925”*. However, the decision in *Barrett v Robinson* [2014] UKUT 0322 (LC) makes it clear that legal costs incurred pursuing arrears will only fall under such a clause if, at the time the expenditure was incurred, the landlord already has section 146/147 proceedings in mind. In any event such a charge will be an administration charge payable by defaulting lessee, not a service charge to be borne by all lessees.
104. In *Assethold v Watts* [2014] UKUT 0537 (LC) the Upper Tribunal had to decide whether legal costs incurred in connection with a party wall dispute could be recovered as a service charge. The relevant wording in the lease was: *“all works installations acts matters and things as in the reasonable discretion of the Landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Development”*. The Deputy President found that the legal costs incurred in connection with the party wall dispute were

taken “for the proper maintenance, safety, amenity and administration of the Building” and were therefore recoverable.

105. At paragraph 58 the Deputy President stated “I accept that, as a general principle of interpretation, if contracting parties intend that a payment obligation such as a service charge should cover a particular type of expenditure they will wish to make that clear. Unclear language should therefore be read as having a narrower rather than a wider effect. Nonetheless, I do not think that principle should be pushed to the point where language which was clearly intended to encompass expenditure in a wide variety of situations which the parties have not explicitly catalogued should be so restrictively construed as to deprive it of any real effect. It seems to me to be wrong in principle to start from the proposition that, with certain types of expenditure, including the cost of legal services, unless specific words are employed no amount of general language will be sufficient to demonstrate an intention to include that expenditure within the scope of a service charge. Language may be clear, even though it is not specific”.

106. This approach is a departure from that taken in some earlier decisions where it was held that clear words were required if legal costs were to be recoverable e.g. *Sella House v Mears* (1989) 21 HLR 147 (CA). In that case legal costs incurred pursuing rent arrears were held not to be covered by a clause which permitted recovery of costs of employing “all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the building”.

107. The costs here, while described as “legal costs” in the accounts, are in fact only additional charges made by Chainbow for pursuing arrears and for court fees that were paid by Chainbow. The Tribunal concludes that such costs are clearly recoverable under clause 2(a) (xi) of the lease, without any strain on language, as they are costs of the managing agents in collecting the service charge. This is not inconsistent with any other provisions of the lease. Whether the costs are also recoverable, or whether fees paid to lawyers would be recoverable, under clause 2(a)(x) of the lease is a much more difficult issue given the new guidance in *Assethold v Watts*. However, we do not need to decide this point and decline to do so.

Professional fees - £3,760

108. This was an invoice from Chainbow for “Ad hoc LVT Services” for the month of 2010” and referred to advice given in relation to LVT proceedings . The Respondent said the only LVT proceedings had been in 2009 when an application was made by lessees for Chainbow to be appointed as manager in place of Highdorn. Prior to the hearing the Applicant had agreed to the appointment. The Respondent said that

services provided by Chainbow prior to their appointment had been provided free of charge, and should not be recovered though the service charge.

109. The Applicant submitted that clause 2(a)(x) of the lease permitted recovery.
110. Determination: There was no evidence that this charge was for work other than that carried out by Chainbow prior to their appointment, presumably assisting the lessees' application in an effort to get themselves appointed. These are costs that should be borne by Chainbow alone. They cannot be costs reasonably incurred under clause 2(a)(x) and are disallowed. There will therefore be a further reduction of **£3760**.

Professional fees - £584

111. This was the cost of an engineering survey in preparation for the switch to digital TV. The Respondent said that the lessor should have been able to negotiate a free survey, given the potential of future work to the surveying company.
112. The Applicant again relied on clause 2(a)(x) of the lease as permitting recovery.
113. Determination: There was no evidence that a free survey could have been obtained and the cost is clearly recoverable under clause 2(a)(x).

Repairs and Maintenance - £5750

114. An item challenged under this head was £748 for cleaning waste stacks. The Respondent's position was as for 2009 (see paras 61- 64 above). For the same reasons as previously stated, only 50% of the charge is upheld, so there is a reduction of **£374**.
115. The Respondent also disputed a charge for "Cold water treatment and sampling (Two visits)- £387" on the basis that there was no supporting invoice and argued that the entire cost should be disallowed. This sum is approximately one half of that charged in 2009 for the same type of work over four visits. It therefore appears that there was a programme in place of regular testing, and this together with the fact that the accounts themselves specifically refer to two visits persuades the Tribunal that this work was done. There is nothing to suggest the cost is unreasonable and no deduction is made.

Entry phone system - £8881

116. The Respondent's challenge was on the same basis as 2009 (see paras 66-70 above) save that in this year the supporting invoice was produced. It is not upheld for the same reasons.

Pest control - £448

117. The Respondent again contended that 50% of the cost should be charged to the commercial premises. However there was no evidence that any of the commercial units were still operating in 2010. Accordingly the full charge is upheld.

Fire alarm sprinkler system - £793

118. This sum was challenged on the basis of no supporting evidence but the Applicant then provided a nominal transaction ledger listing with the same figure noted. The full sum is allowed.

Fire alarm service - £699

119. This sum was challenged on the basis of no supporting evidence but the Applicant then shown provided a nominal transaction ledger listing with the same figure noted. The full sum is allowed.

Bank charges - £121

120. This sum was challenged on the basis of no supporting evidence but the Applicant then shown provided a nominal transaction ledger listing with the same figure noted. The full sum is allowed.

Accountants' fee - £9144

121. This fee was claimed by the Respondent to be unreasonably high, even higher than that charged for 2009. As in 2009, two sets of accounts were certified for this year but the accountants' invoice, unlike that for 2009, does not mention this. The charge breaks down to £7,620 + VAT, but there is no indication of the hourly rate or the time spent.
122. Determination: The comments made by the Tribunal in respect of 2009 (see paras 76-80 above) apply equally to this year but with greater force given that the fee is almost 20% higher and no explanation for the increase has been provided. Unlike in 2009, there was no change of managing agent during the year. Accordingly the Tribunal again allows a fee of £2400 inc VAT, a reduction of **£6744**.

Management fee inc. disbursements - £24186

123. The managing agents for the entirety of 2010 were Chainbow Ltd. The Tribunal was shown management agreement entered into between

Chainbow and Metropolitan dated 28 August 2009 provided for an annual fee of £20,000 + VAT¹ subject to “RPI or CPI upward review on each anniversary”.

124. The Respondent submitted that the fee for 2010 should have been £23,500 (£20,000 + 17.5% VAT) and disputed the excess of £686. The Applicant countered this by attributing the excess to the annual increase effective September 2010 together with miscellaneous recoverable disbursements.
125. Having perused the exhibited invoices for Chainbow's monthly fees it appears to the Tribunal that fees were never charged precisely in accordance with the written agreement. The basic monthly charge during the first 12 months was £2250 + VAT. From September 2010 to August 2011 it rose to £2362.50 + VAT. From September 2011 it was £2460.83 + VAT. These increases may have been in line with inflation but the starting monthly figure of £2250 does not match the fee noted in the written agreement between Chainbow and Metropolitan. However there is no evidence that the monthly fees were queried at any time by Metropolitan, and the only reasonable inference is that the level of fees was agreed. It is unclear whether any charges were or should have been apportioned to Arlington Square. Moreover there are many additional invoices for various extra charges. Neither of the parties attempted to provide a breakdown of the charges and it is not for the Tribunal to attempt a forensic investigation.
126. Taking a broad view, and doing the best it can on the evidence, it appears the sum charged to the service charge account in 2010 is less than that actually invoiced by Chainbow to Metropolitan in respect of Arlington House. The Respondent did not identify any particular aspect of the charge which she thought was unreasonably high. Even using the fee stated in the written agreement, and allowing for the annual increase in September 2010 and some modest disbursements, it would not be unreasonable. Accordingly no deduction is made on this basis.
127. The Tribunal considered additional specific points of challenge made in the Reply and the Applicant's comments thereon, but was not persuaded that any adjustment was required.
128. However, there was also a general challenge to the management fees in all years on the ground that the service was not of a reasonable standard. This is dealt with below at paras 158-161 below. Having determined that the management fee for 2010 should be reduced by 10% a reduction of **£2419** is made.

¹ In 2009 the rate of VAT was 15%, increasing to 17.5 % on 1 January 2010 and then to 20% on 4 January 2011

128A. The Tribunal has decided that there should be deductions from the sum charged in the accounts of £233,221 in the total sum of £45,064 (circa 19.3%). The service charge payable for 2010 is therefore **£188,157**.

Service Charge Year 2011

129. In this year the Respondent paid the first on account demand in an unknown amount but not the second on account demand for £556.48 which is the sum claimed in the county court. There is no balancing charge in this year as the actual service charge noted in the accounts is less than the total demanded on account. The accounts were certified on 31 March 2014 showing an overall service charge of **£147,355**. The Tribunal will make a determination as to the service charge for the entire year and therefore the amount of Respondent's proportion. Whether all or part of the £556.48 is payable by the Respondent will depend on how much she has already paid on account.

Cleaning - £16,717

130. The work previously carried by caretaker/porter employees was carried out in 2011 by a contractor. The amount charged to the residential service charge was 90% of the total, the balance of 10% being apportioned to the commercial areas. The Respondent said that 13% should be apportioned rather than 10% because the staff spent disproportionate time on the approximately 40 flats owned by Metropolitan which are not demised on long leases. However as there was no material evidence to support this assertion, no reduction is made.

Electricity - £25,155

131. The Respondent challenged the electricity charges which had risen again by more than £7000 over the previous year's figure. The parties agreed that the main reason was a significant increase in the unit charge. The Applicant was not able to provide an explanation for the increased cost, save that it was thought that one sub-meter was being charged on estimates rather than actual consumption. There was no evidence that the meters were feeding the commercial telecom equipment on the roof. There was no dispute that the figure charged in the accounts was supported by numerous copy invoices, although it was not possible to be certain that all invoices related to consumption during 2010 and not any earlier period.

132. Determination: While it may be suspected that the then managing agents Chainbow did not take steps to obtain a reasonably competitive electricity tariff when a fixed tariff period expired, there is no actual evidence of this and no comparative quotes for electricity prices in 2011 were provided. The only quotes produced were for costs in 2015, and are in the range of £18300, - £19500, which are in line with the 2015 budget figure for common parts electricity. On the evidence the

Tribunal cannot be satisfied on a balance of probabilities that the charges are unreasonable and no deduction is made.

Fire Safety - £4154

133. The Respondent contended that these works had not been carried out to a reasonable standard and made general allegations of various problems. Mr Sulsh said that not all "fault" displays were in fact faults but he accepted further work was carried out in 2012. The Respondent also argued that time spent on fire alarm testing was excessive. However, without any reliable evidence that work was unnecessary or not carried out to a reasonable standard no deduction is made.

Entry phone System - £11,684

134. The Respondent's challenge was as for earlier years, with the added objection that this year's cost was more than £3000 higher than 2010. In response Mr Sulsh said there had been additional call-outs and during the year due to vandalism, the cost of which was not covered by the standard service fee. There was no evidence to contradict what Mr Sulsh said and accordingly the Tribunal makes no deduction.

Security Guards - £16,082

135. There was no evidence that any of these costs had been charged to the commercial areas. For the same reasons as given for previous years, the charge should be apportioned 50/50 and it is therefore reduced by **£8041**.

Repairs - £2,455

136. The Respondent argued that the invoices supplied did not add up to as much as the sum claimed, but the Applicant then produced ledgers showing how the sum was made up. No deduction is made.

Buildings Insurance - £23,490

137. The Respondent queried why this sum was higher than that stated in the 2011 budget of £21,024 which was presumably based on a quote. Mr Sulsh said the difference was due to taking out additional insurance for that part of the car park used by the residents. This explanation is accepted by the Tribunal and no deduction is made.

Admin Fee - £201 & Misc. - £409

138. There was no cogent evidence as to the expenditure represented by these invoices and they are both disallowed, a reduction of **£610**.

Management fees - £31753

139. The Respondent submitted that this increased fee was not justified. The budget sum was only £25,620. The Applicant noted that the fees were increased each September and the invoices showed an increase in the monthly fee from £2835 to £2977 inc. VAT.
140. Determination: Although the level of fees charged exceeded that set out in the 2009 written agreement, the Tribunal has already noted that this agreement was never adhered to. The only reasonable inference is that a higher level of fee was agreed, as all the monthly invoices are consistent with this. The amount charged in 2011 is consistent with the monthly invoices. Ignoring any criticisms as to the standard of service, there was no submission at the level of fee was per se unreasonable. The charge is therefore allowed.
141. The general challenge to the management fees for all years on the ground that the service was not of a reasonable standard is dealt with at paras 158-161 below. Having determined that the management fee for 2011 should be reduced by 10% a reduction of **£3175** is made.
- 141A. The Tribunal has decided that there should be deductions from the sum charged in the accounts of £147,355 in the total sum of £11,826 (circa 8%). The service charge payable for 2011 is therefore **£135,529**.

Service charge year 2012

142. In this year the Respondent paid neither of the on account demands of £610.28 and 635.85 (total £1246.13) the sums claimed in the county court. The accounts were certified on 31 March 2014 showing an overall service charge of **£174,686**. The Tribunal will make a determination as to the service charge for the entire year and the amount due from the Respondent. The current managing agents, Trinity, took over management just before the start of the year.

Cleaning - £36,623

143. The Respondent contended that there should be a reduction of 20% as the invoices produced only added up to £26038. The Applicant noted that only 9 of the 12 monthly invoices had been produced but there was no suggestion that the cleaning had not been done in the other months so the lack of invoices should not be fatal. The invoices produced were for a standard sum of £2893 per month. In the absence of any evidence that work was not done the Tribunal allows 12 x £2893 = £34716, a reduction of **£1907**.

Electricity - £35,120

144. In this year the electricity costs rose again with a higher unit charge. The Respondent made the same points as for 2011, and noted that in 2013 the charge was much reduced. Mr Sulsh said that Trinity has a Utilities Department which goes to providers to get the best rates. A computer record was produced which was said to show that another provider had been approached for a quote in 2012 but it had been decided not to change provider. The figure in the service charge accounts was said to include a sum of about £10,000 carried over from the previous year. Actual usage had not changed much. Mr Sulsh said that a credit had been applied in respect of the meter charged on estimated readings and that had helped to reduce the cost in subsequent years.
145. The number of copy electricity invoices included in the Bundle was immense and did not permit of detailed analysis. For all the reasons given for 2010, no deduction is made.

General Repairs - £4631

146. The Applicant accepted that **£1383** should be deducted as it related to Arlington Square. The Respondent raised queries on various invoices on grounds dealt with elsewhere in this decision which were responded to in Mr Sulsh's written evidence, and there was nothing sufficiently concrete to persuade the Tribunal that there should be any further deduction.

Lift maintenance - £20,215

147. The Respondent made the general point that lift repair costs were very high but did not challenge the reasonableness of any particular invoice, and the Applicant explained why the 1960s lifts were being kept in commission rather than replaced at this time. No deduction is made.

Fire safety - £4887

148. it is noted from the nominal ledger that the correct amount charged should be £4867, a reduction of **£20**. Otherwise, the Respondent's argument was the same as for 2011. No further reduction is made for the reasons given for 2011.

TV Satellite maintenance - £5845

149. This was the cost of a new satellite system. The Respondent suggested that Metropolitan had promised to install this free of charge to the lessees. There was no cogent evidence of this and, as Mr Lees argued, no evidence of any consideration or estoppel that would make such a promise binding in any event. The full charge is recoverable.

Pump maintenance - £2568

150. This sum was the cost of a maintenance contract for the two water pumps and tanks. One pump was not working and the Respondent said it had not been working for a long time, so incurring fees for its maintenance was unreasonable. Mr Sulsh said he thought the pump had stopped working only in 2013 but in any event there had always been one pump working and supplying water to the residents. The managing agents were presently considering whether to refurbish or replace the other pump.
151. As there was no evidence that the cost was unreasonable, even for one pump, the Respondent's challenge is rejected.

Boiler - £386

152. The Applicant accepted that there is no boiler at Arlington House and as there is no proper explanation for this charge the sum of **£386** is disallowed.

Entry phone system - £8916

153. The Respondent's challenge was as in earlier years and is rejected for the same reasons.

Building Insurance - £22,145

154. The Respondent queried the charge as the supporting invoice showed a premium of £21,154. Mr Sulsh said that an extra £54 had been paid for lift insurance and that Trinity apportioned premiums, paid mid-year, between service charge years. This explanation is accepted and no reduction is made.

Management fees - £26,904

155. The Respondent initially challenged this figure on the ground that there were no supporting invoices. These were then supplied by the Applicant. By 2012 Chainbow had been replaced by Trinity.
156. The general challenge to the management fees for all years on the ground that the service was not of a reasonable standard is dealt with at paras 158 – 161 below. Having determined that the management fee for 2012 should be reduced by 10% a reduction of **£2690** is made.

Health & Safety - £3174

157. The Respondent initially challenged this figure on the ground that there were no supporting invoices. These were then supplied by the Applicant.

- 157A. The Tribunal has decided that there should be deductions from the sum charged in the accounts of £174,686 in the total sum of £6386 (circa 3.6%). The service charge payable for 2012 is therefore **£168300**.

General challenge to management fees

158. The Respondent made a challenge to management fees in all years on the basis that the service had not been carried out to a reasonable standard. In particular, criticism was made of the very late production of service charge accounts, failure to deal with rising electricity costs until 2013, and the pump contract. General criticism was made that certain repairs/maintenance items had not been attended to.
159. The Respondent's case was that the service had been reasonable. A "fault log" maintained by Trinity since it took over the management showed that fault reports were logged and dealt with.
160. The Tribunal notes there were three different managing agents during the periods in dispute. Highdorn were replaced by Chainbow, chosen by the lessees, in September 2009, and in December 2011 Trinity took over. The Tribunal's impression of Mr Sulsh of Trinity was that he is competent and working to reduce costs.
161. Determination: While there is no evidence that Chainbow did anything to try to reduce the sharply rising electricity costs, there is equally no evidence that the costs could reasonably have been reduced. There is no cogent evidence that the managing agents failed to deal with other matters. However there is no doubt that there has been excessive delay in producing the service charge accounts for 2009 and 2010 (October 2012) and 2011 and 2012 (March 2014). These accounts should reasonably have been prepared during the 12 months following the year end and to the extent that did not happen, there was a deficiency in the service during those years. The lessees are entitled to expect a reasonably prompt service and should not have to wait for more than two years to find out what the service charge is and whether they have to find further monies to fund any deficit. The Tribunal therefore makes a reduction of 10% to the management fees for years 2010 – 2012. Whether there should be a similar reduction for 2013 (in respect of late production of the 2012 accounts) is not for us to decide now as we are only dealing with budget figures for that year.

Service charge year 2013

162. In this year the Respondent paid neither of the on account demands of £655.77 each, the sums claimed in the county court. No accounts for 2013 have yet been prepared. Accordingly, the reasonableness and payability of the sums demanded on account depends only on whether they represent a reasonable estimate based on a reasonable budget of

the year's anticipated expenditure. Thus, although each side had prepared very lengthy submissions based on a review of invoices for actual expenditure during the year (these, unlike the accounts, being available) the Tribunal took the view that they did not need to be considered. The Respondent will have a further opportunity to challenge actual expenditure once the accounts are available and the actual service charge is ascertained.

163. The budget for 2013 is £179,751. The Respondent queried the budget sums for lift maintenance of £20,000, electricity of £28,000 and Entry phone system of £8400.
164. The Respondent pointed out that the two lifts dated from the 1960s. The old machinery was difficult to maintain and required specialist contractors. The budget sum was similar to actual expenditure in 2012. Replacement would cost £250,000. With maintenance, the lifts were working well given their age. As to electricity, this was a lower figure than expenditure in 2012. Mr Sulsh had switched to a different supplier and the budget was based on the previous year's consumption but using the new unit price. The challenge on the Entry phone costs had been dealt with previously. The current contract expired in 2016.
165. Determination: There is nothing in the budget which appears unreasonable and the sums demanded from the Respondent totalling £1311.40 are payable. It is noted that this figure is less than 0.76% of the total budget figure, so if anything it is an under-estimate.

Service charge year 2014

166. In this year the Respondent paid neither of the on account demands of £643.98 each, the sums claimed in the county court. No accounts for 2014 have yet been prepared. Accordingly, the reasonableness and payability of the sums demanded on account depends only on whether they represent a reasonable estimate based on a reasonable budget of the year's anticipated expenditure.
167. The budget for 2014 is £169,468 a reduction of about 6% on the previous year. The Respondent made the same comments as for 2013. In 2014 the electricity budget figure was reduced to £27,500 but the Entry phone budget figure increased to £10,500. The Respondent said the latter increase was due to actual expenditure in 2013 exceeding the budget figure.
168. Once again, the Tribunal finds that the budget sum is reasonable and that the total demanded from the Respondent of £1287.96 (exactly 0.76% of the budget) is payable.

Section 20C

169. As indicated at the end of the oral hearing, the Tribunal invites written submissions on whether a section 20C Order should be made. These should be received by the Tribunal no later than 28 days from the date of this decision. The Respondent is asked to confirm on whose behalf the application is made. Time in relation to any request for permission to appeal will not start to run until the Tribunal's decision on section 20C is sent out.
170. Once the matter is finally concluded it will be referred back to the county court.

Dated: 15 December 2015

Judge E Morrison (Chairman)

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.