

12674



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

**Case Reference** : LON/OOAD/LSC/2017/0330

**Property** : Flats 18 and 26 Jutland House and Flat 42 Moyle House, Little Brights Road, Belvedere, Kent DA17

**Applicant** : Miss M Visy, Flats 18 and 26 Jutland House  
Mr D Debnath, Flat 42 Moyle House

**Representative** : Miss Visy on her own behalf and on behalf of Mr Debnath

**Respondent Ltd** : 1. Belvedere Park Management Company  
2. Adriatic Land 4 (GR1) Ltd

**Representative** : Mr Paul Letman of Counsel instructed by Miss J Canham of Wilson Solicitors together with Mr Nigel Wilson, Director of Pinnacle Place (Managing Agent) and Mr Alasdair Wardrop, Director of Arthur J Gallagher Insurance Brokers

**Type of Application** : Application under section 20C and 27A of the Landlord and Tenant Act 1985

**Tribunal Members** : Tribunal Judge Dutton  
Mr T W Sennett MA FCIEH

**Date and venue of Hearing** : 10 Alfred Place, London WC1E 7LR on 29th January 2018

**Date of Decision** : 28th March 2018

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**DECISION**

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## DECISION

1. **The Tribunal makes the determination set out under the various headings in this decision.**
2. **The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.**

### THE APPLICATION

1. The application seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (the Act) as the amount of service charge is payable by the Applicant in respect of the service charge year 2015/16, based on actual charges, and the years 2016/17 and 2017/18, based on budgeted figures.
2. The relevant legal provisions are set out in the appendix to this decision.

### HEARING

3. The Applicant appeared in person representing both herself and Mr Debnath. The latter appeared to have paid no real part in these proceedings there being no witness statement from him nor indeed any supporting documentation. The Respondents, of which there are two, were represented by Mr Paul Letman of Counsel. Belvedere Park Management Company Ltd is the company charged with carrying out the day to day management on the estate and Adriatic Land 4 (GR1) Ltd is the present freeholder.
4. Prior to the hearing we received two substantial bundles of documents which included amongst other things the application and directions, copies of leases, a Scott Schedule, statements of Miss Visy, Mr Wilson and Mr Wardrop of which there were two, estimates obtained, emails, accounts and some additional evidence. The bundles ran to over 700 pages. On the morning of the hearing we were provided with some additional papers from Miss Visy relating, it would seem, to insurance and gardening and some additional papers from the Respondents, also relating to gardening.
5. At the start of the hearing Miss Visy complained about the late delivery of papers and in addition a second witness statement from Mr Wardrop for which she said no permission has been granted. She wished us to consider whether the Respondent should be barred as a result of failing to comply with the directions and also their unreasonable behaviour in connection with the documents produced.
6. Mr Letman responded that the exhibits to Mr Wardrop's witness statement were late but that attempt had been made to serve these by emails but they had "bounced back." However, the Applicant had had since 15<sup>th</sup> January to consider the papers and that the Respondents had endeavoured to comply with the directions. The second witness statement from Mr Wardrop was very short and there was nothing in the way of witness statements from the Applicant to show the comparables.

7. We offered Miss Visy extra time to consider the papers or we could adjourn if she wished to take more time. In addition, it was put to her that her wish to introduce papers on the morning seems somewhat contrary to her application that there had not been compliance with the directions timetable. She indicated that she wished the matter to be dealt with today and did not therefore seek to pursue the question of the documents any further.

## **BACKGROUND**

8. The three flats which are the subject of this application, are found in a development of 402 units with some commercial units. The development had originally been built by Bellway Homes who had been the freeholder until the end of January 2016 although two directors of Bellway appeared to remain on the board of Belvedere. Miss Visy had purchased her flats in September and October of 2015 but it was not wholly clear when Mr Debnath had purchased his but presumably around the same time.
9. The basis of the application was, as put by Miss Visy, a review of the historical costs based on the evidence presented and to seek some form of cap in respect of the budgeted costs, which it was submitted were unreasonable.
10. It was not considered that any inspection of the development was necessary. The Applicant's hold under long leases of the property for a term of 125 years less three days from 4<sup>th</sup> July 2007. The leases contain requirements on the landlord to provide services and for the tenant to contribute towards those costs by way of a variable service charge. As is necessary, we will refer to the terms of the lease in this decision.
11. It is we think fair to say that Miss Visy had undertaken an almost forensic review of the accounts and had produced a Scott Schedule containing detailed matters to be reviewed. We were told that the amounts in dispute were for Flat 18 at Jutland House £890.48 with the same amount for Flat 26 and in respect of Flat 42 Moyle House £1,254.93. The total amount, therefore, that was disputed by the Applicants was £3,035.89.
12. We proceeded to deal with the matter by way of a review of the Scott Schedule but it was suggested by Miss Visy, a view accepted by all concerned, that it would be sensible to deal with the insurance first as Mr Wardrop was present and he could be released. We therefore considered that matter first.
13. The insurance was dealt with at page 143 of the Scott Schedule. The issues from the Applicant's point of view appeared to be that the lease required the property to be managed as cost effectively as possible and at a meeting, Pinnacle, the managing agents has confirmed that the insurance was for five years and would not have been reviewed were it not for the fact that the freeholder was now Adriatic. Queries had been raised by BPRAs being Belvedere Park Residents Association of which for a short period of time Miss Visy was a member. She also relied on some comparative quotes that she had obtained, which were handed to us on the morning of the hearing. She said that she had not been able to get these any earlier because of the late delivery of Mr Wardrop's second statement. She also told us that she had been a

senior auditor dealing with insurance whilst working for accountants. She referred us to an email she had received from Haus Block Management which appeared to be dated 19<sup>th</sup> May 2017 we think in response to enquiries raised about the possibility of a new managing agent taking over. The reference to insurance indicates that they had received a quote from a broker with a premium of £75,862 compared with the insurance then said to be being paid of £98,248. In addition, in the new papers, at page 465H is an email from Livingstones Group following a query of insurance which says as follows: *"Our insurers have indicated a premium of around £80,000 to £85,000 including terrorism. However, they will require a breakdown of the sums insured between each block and communal area along with at least a structural and survey report and site pictures."* In an earlier email dated 12<sup>th</sup> January, a Mr Chapman from Remus Management indicated that he thought the premium was on the high side but it would depend on the cover in the policy.

14. We were told that there was no structural survey but that there had been an insurance valuation. It was pointed out that the building was not completed until 2013. In response Mr Letman indicated that his view was that the application had been launched without any evidence and that Miss Visy had been 'fishing around' for figures and although the claim was started in August, no alternative quotes had been produced. Miss Visy responded that she had been requesting information for some time.
15. We then heard from Mr Wardrop who had provided two witness statements, the first at page 344 running to 346 and the second a short follow up at page 375. He told us that he had been providing insurance services to Adriatic through his company Arthur J Gallagher since approximately June 2013. At the time of his company taking over the insurance for Adriatic they undertook a group renewal going out to a number of companies to provide costings. He told us that they do not deal with properties of this nature on an individual basis but by way of a 'delegated scheme' but that benchmarking was undertaken to ensure that the premium was not excessive. It is we understand the case that there are 76 units in both Jutland and Moyle.
16. The witness statement is common to both parties and there is no need to go into great detail as to what was said. He told us that the property had been added to a portfolio in August of 2016 after the purchase of the estate by Adriatic. A portfolio review will take place later this year. He went into detail as to how the premium was broken down between each of the blocks and if one looked at the insurance for 2016/17 for Jutland House this was £17,552.92 which gave a unit cost of just over £230 and for Moyle House a sum slightly lower. Apparently, a review was undertaken for the purposes of insuring the estate as a stand-alone proposition. This showed differing charges from Aviva, AXA and Zurich the current providers which was slightly the higher but not to any great degree. There was, however, an increase in the sum assured in September of 2017.
17. Miss Visy asked Mr Wardrop some questions as to the period for which he had acted for Adriatic and whether or not he believed due diligence had been provided for the insurance. He confirmed that everything had been done to

comply with FCA requirements and their own internal monitoring arrangements. He thought, compared to other portfolios, that the insurance for this property was at a good rate.

### **TRIBUNAL'S REASONS AND DECISIONS RE: INSURANCE**

18. We heard all that was said by Mr Wardrop and had the opportunity of considering his witness statements. He struck us as reasonable and professional witness. The evidence on behalf of the Applicant is unconvincing. The quotations that she has obtained appear to have certain caveats which do not persuade us that they are insurance on a like for like basis. Although she complained that she had not been given the information from Mr Wardrop until his latest witness statement, she is a person who is experienced in insurance and should have known what would have been required. Accordingly, the lateness of the production of such evidence as she has produced seems to us unhelpful as she could have been dealing with this some time ago. No particular questions appeared to have been asked of the Respondent as to the terms of the insurance, the claims history etc.
19. We find that the costs are reasonable. We have no compelling evidence from the Applicants as to alternative cheaper like for like quotes. We are satisfied that proper steps were taken by the Respondents to obtain insurance as described by Mr Wardrop in his witness statement and to us at the hearing. The portfolio arrangements have obvious benefits to insurances at this level, which have been set out in a number of authorities. The actual costs for both Jutland and Moyle House, as we indicated above, show an insurance liability of not much above £200 for each flat, which on the face of it does not seem to us to be an unreasonable amount. **Accordingly, insofar as the insurance is concerned we reject the Applicant's complaints and find that the sums claimed both for the actual costs in 2015/16 and the estimated costs for the two following years based on the earlier year as they are, are reasonable.**
20. We should say at this stage as is common to all matters relating to estimated charges, if those actual costs turn out to vary greatly without explanation, then it is always open to the Applicants or indeed any other lessee, to challenge them under section 27A of the Act.
21. We now return to the Scott Schedule for the order in which matters are to be dealt with.

### **ACCOUNTANCY**

22. For the year 2015/16 was £3,840 with the budgeted figure remaining the same. It is the Applicant's contention that the accountancy fee is disputed because of delays in issuing signed audited account and in providing responses to queries. It is said that the accounts for the year 2015/16 were not received until May of 2017 and had not been signed. The residents association, of which Miss Visy was removed as a member, had apparently requested to see an engagement letter but that had not been forwarded. There was a general complaint by Miss Visy that enquiries had been made of the accountants, which have not been answered, copies of documentation have

apparently been requested, which has not been provided and that the costs themselves are too high.

23. In fact signed accounts now exist although were not within the bundle. The Respondents agreed to provide those as well as the engagement letter for 2013 without delay.
24. The only estimate that the Applicant tendered appeared to be in a letter from Remus and is referred to in pages 297 to 299. At page 299 in the email sent, it seems on 13<sup>th</sup> December 2017 in answer a query with regard to accountancy fees, the writer, who appears to be a Mark Chapman says a budget of £4,000 based on the sheer size of the site and time would be reasonable. In another email on that date he indicates that a quote of £3,600 had been obtained and also that on accountancy they would be willing to match the price being charged.

### **TRIBUNAL'S REASONS AND DECISION**

25. Evidence from the Applicant that the cost of the accountancy is excessive is not sustainable. She has produced no letters from other accountants indicating what the fees might be. This is a complicated development with a number of blocks containing over 400 flats with quite substantial service charge monies. It is unfortunate that it has taken some time for the accounts for the year 2015/16 to be produced but there is no "time of the essence" provisions within the lease. In addition also, there is no evidence that the delay in producing the accounts lays at the door of the accountants. **In our finding the accountancy fees are reasonable and are recoverable both for the actual costs in 2015/16 and the estimated costs for the following two years.**

### **CCTV**

26. The next matter we deal with is the question of CCTV. The issue here appears to be lack of consultation. The only charge is an estimated one for 2017/18 of £5,370. In the fact in the papers before us is a letter from Pinnacle on behalf of Belvedere being a CCTV survey which indicates costs in the region of just over £20,000 for the installation of such a system with a request that the residents vote for or against it. An invoice from GRE Maintenance Limited supports this figure, which is inclusive of VAT. There is a separate quote from EST Limited showing a figure of £25,674. **After considering this matter further, the Applicant confirmed that the figure was no longer in dispute and the amount was therefore accepted as properly claimed for the estimated year in question.** We were told in fact that the Respondents would be proceeding with the EST quote referred to above.

### **CLEANING EQUIPMENT AND CLEANING**

27. The next matter we deal with is cleaning equipment. In this regard Miss Visy had produced an alternative quote from Maid on a Mission which was at page 437 of the bundle. This is for communal cleaning and communal window cleaning. The quotation goes into some detail and confirms that all products

and equipment will be provided by the company. The cleaning arrangements appear to be matched to those currently put forward by the Respondents and were a price of £100,200 inclusive of VAT. There is an important note which says as follows: *“The following prices have been set out in this proposal on the understanding that contract is not subject to TUPE, should this arise Maid on a Mission Limited would need to recalculate therefore this current proposal would become null and void and a new proposal would be issued once we have the correct information required.”*

28. In addition to these figures we were referred to an apparent estimate from Remus, which was within their general offer to take over the management of the block where they appear to be indicating that the entire site costs would be £46,800. Haus, in an email dated 14<sup>th</sup> August 2017, appeared to indicate a figure of some £40,000 for the cleaning of all blocks. It is not however clear what time is being spent nor the number of staff available.
29. The cleaning equipment has been separately designated and is £593.54 for the actual costs with estimates of £1,000 and £700 for 2016/17 and 2017/18 respectively. In respect of the cleaners themselves, the actual costs for 2015/16 is £62,509 with estimates costs for the following years of £87,500 and £91,400.40.
30. In support of the level of dissatisfaction, the Applicants sent copies of some Facebook entries and a suggestion that on one occasion at least, a supervisor had failed to turn up because he was apparently shopping. A timesheet has only recently been produced.
31. It appears accepted that Pinnacle employ the cleaners directly and some benchmarking costs were undertaken by the Respondents showing three cleaning operatives for seven hours per day, for a week, at £11,055, and one supervisor for the same period of £490 per week giving a sum of over £100,000 . At page 264 a quotation from Lloyds showed either a charge of £82,000 or alternatively £90,000 both subject to VAT. Miss Visy in her evidence referred some photographs that she had taken showing boxes of tape scattered around and grass uncut. These, however, were on the face of it one-offs and the other complaints made by lessees seemed to be relatively limited.
32. We were told that the residents association had asked that cleaners be visible i.e. either having uniform or name tags and that there be timesheets. Copies of some of those were included. On the question of equipment, she felt that the hiring of same would be much cheaper than purchasing. We were shown evidence of an invoice from Amtech UK dealing with the purchase of a carpet cleaner and accessories in the sum of £4,113 with an additional sum of £204.14.
33. We were told that the equipment would enable outside cleaning as well as the carpets and that it was considered a most efficient way of dealing with the matter. Apparently, the carpets are cleaned possibly quarterly but maybe more often if needed.

## TRIBUNAL'S REASONS AND DECISION

34. We have noted all that has been said and the relevant documents. The main quote to compare is that of Maids on a Mission but that fails to take into account that there is likely to be a TUPE transfer as the current cleaners are all directly employed by Pinnacle. If that were to be the case, which we believe it would be, then the quotes given by Maids on a Mission would need to be reviewed. In any event, the sums charged by the Respondents do not seem excessive compared to those quotes that we have received. The complaint as to the standard of cleaning is relatively limited. It is right to note that in connection with this claim generally, there are 402 lessees but only two, and in truth only one, have actually taken any time and made any effort to challenge any of the service charge costs. **In those circumstances, therefore, we find that there is no reason for us to disallow the actual service charge costs for both the equipment and the cleaning and as those are mirrored to a certain extent in the estimated costs for 2016/17 and 2017/18, we find those are reasonable and also payable.**

### ENGINEERING INSURANCE

35. The next matter we need to deal with is engineering insurance. However, at the hearing Miss Visy confirmed that this was not a matter that remained in dispute and **accordingly the sums claimed for both actual costs and estimated are allowed.** We should point out that on this occasion and we believe on others, the figures shown in the Scott Schedule are those put forward by Miss Visy and not necessarily the figures contained either in the actual accounts or in the estimated charges, which has not made matters easier.

### ESTATE MANAGER

36. After the luncheon adjournment we moved on to the question of the estate manager for which an actual charge of £50,972 is made in 2015/16 reducing to £30,000 as an estimated charge in 2016/17 because we believe the VAT was not claimed and rising again in the following year to £41,149.50.
37. Miss Visy challenged the cost although accepting that she considered an estate manager was necessary. She was, however, concerned there may be a duplication of his tasks and that of the caretaker although we had been told earlier that the caretaker does undertake some cleaning duties. The job description of the estate manager was set out at page 301 of the bundle and we were told that he is on site 2½ days of the week, although there is an office that he uses and is contactable each day if necessary. There had apparently been a change in manager, although it is not clear when.
38. Breakdown of the estate manager's costs for the actual fees were as follows: £30,504.23 for his costs, £13,351.61 for the technical team and VAT of £7,116.87. In 2017/18, the figure reduced, the estate manager being paid £26,150 he being a new appointee.



39. The comparable quotes provided by Miss Visy were to be found at page 383 where a suggested allowance of £45,000 is included for somebody who deals with supervising and an estate management role. This would include all staff costs. At page 414 under the suggested figures by Haus, they suggest that a “village manager” was not necessary and that they would deal with the management at a fee of £96,240 without the use of a separate estate manager. This contrasted with the then Pinnacle management fee of £88,596. The final “quote” was from PMB, which was not really a like for like but indicated that the management fees would be £215 plus VAT for each unit with an out of hours service adding a further £27 plus VAT per unit.

### **TRIBUNAL REASONS AND DECISION**

40. Miss Visy appeared to accept that an estate manager was necessary but thought that this may be joined with the caretaker role. We do not accept that is the case. Having seen the job description of the estate manager and considering the caretaker role, the two would not be compatible. The salary from the actual costs in 2015/16 of £30,504.23 included all employment costs, such as national insurance and pension contributions. This has reduced slightly in the subsequent estimated years.
41. It seems to us that a development of over 400 units would require an onsite manager for at least part of the time and someone who is contactable on other occasions when not on site. The alternative quotes put forward are not on a like for like basis and have been tied in with estimates given by Remus, Haus and PMB seeking in effect to take over the total management. We are somewhat sceptical, therefore, that these figures are ones that we can rely on. **The actual costs do not seem excessive and in those circumstances, we find that the costs for the year 2015/16 as charged are reasonable as are the estimated charges for the following two years.**
42. **On the Scott schedule there were headings under Fall and Arrest Systems and Fire Safety Systems which were not pursued by Miss Visy at the hearing and we therefore find that those costs are reasonable.**

### GARDENING

43. The next matter that was in dispute was the gardener’s costs. Miss Visy said that she was unsure about the charging rates, the purchasing of equipment and storage. Over the year, she said that she was satisfied with the level of gardening but she thought it could be undertaken for less hours. In an email from Priya Rawal of Pinnacle dated 2<sup>nd</sup> June 2017, Miss Visy was told that the gardening team were employed directly by Pinnacle and are paid on average £11 per hour. However, the email concluded that the overall costs for gardening equating on a unit basis was around £30. This was somewhat inconsistent with an earlier email in November 2016 when there is reference to “a” gardener although that does refer to this being ‘expanded’.

44. We were told that there are two gardeners who work 15 hours per week. This was challenged by Miss Visy on the basis of an email that she sent to Mr Chapman, which appeared to indicate a quote of £15,600 for the estate with two men for six hours at £25 per hour. It is not wholly clear how this figure emanated but yet again it forms part of correspondence seeking to change the management of the whole estate. The other estimate given by Miss Visy to us was by Gardening Bexleyheath which indicated an hourly rate of £55 for the first hour and £42 for the second presumably in teams of two but also providing tools and equipment and some disposal costs. On 29<sup>th</sup> November 2017, however, there appears to be an email from Gardening Bexleyheath saying that they needed more information to send an accurate quote. Any further quote was not drawn to our attention.
45. For the Respondents, on the morning we were provided with a draft landscape maintenance contract from Greenmantle which showed costs of £64,653 for the work undertaken including sundry materials although no allowance for planting.
46. On the Scott Schedule we had two headings, one Gardeners and one Grounds Maintenance which it seems to us should be bundled together. The actual costs for 2015/16 were therefore around £22,500 with estimated costs for the following year of just around £20,000 and £25,000 or thereabouts for 2017/18. This did include we were told the purchase of a ride-on mower with storage unit and tools. Questioned whether the ride-on mower could be used elsewhere, we were told that it could not as this was the only estate that would require same. Although there may be some reasonable argument that there could be a reduction in the time spent during the winter months, no real evidential documentation was produced to us to challenge the costs.

### **TRIBUNAL REASONS AND DECISION**

47. We have considered the various alternative “quotes” and also reviewed the Greenmantle contract. Whilst this is perhaps a premium service, it does show the extent of work that is required to manage what is a substantial site. The purchase of a ride-on mower seems reasonable given the amount of grass that appears to be in need cutting and we were told, and it was not challenged, that it is only this site which is administered by the Respondents which would make use of this type of equipment. We were also told that the residents association had not apparently sought to reduce the hours spent by the gardeners. Apparently there is a team of ten employed by Pinnacle who rotate giving 30 hours per week. It should also be noted that for 2017/18 there is a VAT element included.
48. **Taking the matter in the round, it seems to us that no evidence has been adduced to us that shows that the costs are unreasonable. There is no real complaint made about the standard of the service and in those circumstances, we therefore find that the actual costs for 2015/16 are payable and the estimated costs are reasonable.**

'OTHERS'

49. The next heading is somewhat euphemistically referred to as Other Costs which in the main appears to be the costs associated with a website. We were shown a tax invoice from Dwellant, the website provider, for the period 1<sup>st</sup> April 2017 - 31<sup>st</sup> March 2018 in the sum of £4,341.60 including VAT. The alternatives appear to indicate that PBM Limited could offer a property manager out of hours service at £27 per hour plus VAT per unit which included sending email, text and updating matters. This equated to a figure of just around £13,000. In addition, a quote from Blockman for a lessee log in arrangement was £295 per month for the number of units with a one-off licence fee of £2,500. The annual cost was £4,248 including VAT. This being the evidence given by the Applicant to show comparable quotes it seems to us that it merely supports the figure that it currently being charged.
50. We do note that in another email from PBM (Premier Block Management) they appear to be indicating that the portal could be included within their fee structure but they are of course the company that was making the extra charge of £27 per unit but the comment made were somewhat loose and unclear and certainly did not in our view form any alternative quotation.

#### **TRIBUNAL REASONS AND DECISION**

51. **We have considered the documentation and it was confirmed by Miss Visy that under the hearing Other Costs it was only the web charge that she sought to challenge. The evidence that she adduced seemed to us to indicate that the costs being claimed by the Respondents were reasonable. There is no suggestion that the service was in any way defective. In those circumstances we find that the costs are reasonable and payable for all three years.**

#### **LIFTS**

52. We then move on to the question of lifts. The costs in respect of this are £1,220.91 for 2015/16 and estimated costs of £5,000 for the next year. The complaint in the Scott Schedule was that the property was not being managed as effectively as possible and the prices currently charged could, she thought, be halved. We were told that there were some ten lifts on the estate, that the lower costs for 2015/16 were because the lifts were still covered by warranty and that the later years an allowance of £4,000 is made in case of repairs. The current contractors, we were told, are reliable. The alternative quote from Haus appeared to indicate that they considered there was only one lift in Hackney House whereas there were two and that they would charge £1,800 to maintain this lift. That seemed to be in line with the charge for the block which was £3,500 but for two lifts.

#### **TRIBUNAL REASONS AND DECISION**

53. As with so many of these issues, there is just not the evidence that would enable us to find that the costs being claimed by the Respondents are unreasonable. The document at page 414 misunderstands the number of lifts particularly in Hackney House and if they are going to charge £1,800 to maintain one lift a charge of £3,500 for two does not seem unreasonable. The

lifts were still under contract but for the years 2016/17 onwards they are not and it seems to us wholly reasonable for the Respondents to estimate a figure of £5,000 in case maintenance works are required. We understand that the maintenance is to remain with the existing contractor who installed the lift. **The fees, therefore, are reasonable and payable for all years in dispute.**

#### **GENERAL MAINTENANCE**

54. We then turn to general maintenance where there is a challenge as to the estimated charges of £6,000 and £7,000. The figure of £430 shown as the actual cost seems to us to be incorrect but it is not challenged. The actuals are we believe £841.82. There is apparently no transaction list which was provided either to the Applicant or the residents association. They, however, have not challenged the budgeted figures. It is unclear on what basis the Applicant challenges the estimated costs. We were told that the estimated figure is an amalgamation of estate costs, car parking costs and block costs. Apparently, reconciliation of expenditure for 2016/17 shows that some of these items have not been incurred and that there will be a reduction in the actual costs. These estate costs we were told showed that the total liability of Miss Visy was only around £20.

#### **TRIBUNAL REASONS AND DECISION**

55. **The actual charges are no longer in dispute.** The estimated costs are just that. It may well be, as appears to be the case for 2016/17, that the costs actually incurred are going to be less than the estimated ones. It could be argued that for 2017/18 the total cost of £7,000 is on the highish side but when the actual costs come to be considered, these will be resolved. We were told that the figure of £6,000 and £7,000 was for estate expenses and Miss Visy's liability, therefore, is really quite small. **We find, therefore, that the estimated costs are reasonable.**

#### **MANAGEMENT FEES**

56. We turn then to the question of management fees which is the last item of expenditure that Miss Visy pursued. She told us that it was important to highlight why she was unhappy with the management fees. These were because of the following reasons: (a) she was not involved in the management, (b) the delay in the responses, (c) certain items were challenged, for example the provision of a fob was not dealt with in a timely manner and was too expensive and (d) she described the management as despotic, being undemocratic. She told us she felt that if she was upheld it may encourage others to complain. She had not, when she purchased, been given the option to join the management company and was not aware of the possibility of so doing until quite recently when she joined at the beginning of January 2018. Further, she told us that she knew nothing of the residents association until April or May of last year and was concerned that only one person, a resident, together with the directors of Bellway and others seemed to be dealing with the matter. She considered that the management fees recorded on the Scott

Schedule at £11,552 for Jutland House only, were unreasonable and should be halved. The estimated charges are just under £50,000 for the two years.

57. We were told that the current management fee is around £220 including VAT per unit. This contrasts with BPM's proposed fee for 76 units of £239 and the Haus figures which we have referred to previously. The Scott Schedule goes into great details concerning difficulty in accessing the complaint procedure, the provision of fobs and the cost of same, the lack of involvement in the management process and the other issues that were raised.
58. In response, Mr Letman confirmed that it was open to a resident to become a member of the company but that the development had only been completed fairly recently and the lessees did not wish to become involved until that development had been concluded. This was in July of 2017 when people were invited to become members.
59. We were referred to various pages in the papers before us showing correspondence between Miss Visy and the managing agents attempting to deal with the issues. It was suggested by Mr Letman that Miss Visy's behaviour had been unreasonable. More questions resulted in answers, which resulted in more questions. Challenges had been made to matters that were not supported by evidence. It was the Respondents view that more than sufficient evidence had been supplied to the Applicant and we were reminded that Miss Visy was to all intents and purposes on her own, notwithstanding that she had notified the residents association she was going to make the application and apparently had circulated a flyer.

### **TRIBUNAL REASONS AND DECISION**

60. We fear that Miss Visy seeks a counsel of perfection. The complaints that she has put down on the Scott Schedule under the Management Fee are in some cases pretty minor. The problems with regard to the keys and fob replacement whilst perhaps being somewhat inconvenient, show evidence of her unwillingness to give time and to deal with matters on what might consider to be a reasonable basis. Her suggestion that the actual costs of the fobs is too high of course makes no allowance for the fact that it is Pinnacle that needs to organise the replacement fobs even though it may be cheaper to get some online. However, we are not satisfied that those were on a like for like basis. In any event, this is really minutia. We remind ourselves that no other residents have complained about the management. The actual management costs it seems to us are reasonable. The actual charges for 2015/16 were £11,552 for Jutland House which gives an annual cost for each lessee of £152. This is not excessive. None of the evidence adduced suggests to us that the management fees are too expensive nor is there any real evidence to show that the management of this estate has been carried out in a sub-standard way. **In those circumstances, therefore, we reject Miss Visy's arguments that the actual and estimated charges are unreasonable and find that the management fees as claimed are payable.**
61. The Scott Schedule indicated some external reports and cold water system charges. Given the lateness of the day and the possibility of an adjournment

to another date, Miss Visy did not proceed with those matters. **It should also be noted that during the course of the hearing there was no specific challenge to the communal window cleaning that fell to an extent within the cleaning costs nor graffiti and carpets which is perhaps a good thing as the sums involved really were quite small.**

62. We should also record that Mr Wilson spoke to his witness statement. He told us that he did not recall dealing with any formal complaints in respect of the property since 2012 and whilst he was sure there may have been some informal complaints, none had given rise to the level of issues raised by the Applicant in this matter. We noted all of Mr Wilson's statement and he was not asked any substantial questions by the Applicant.
63. Miss Visy sought an order under section 20C of the Act and also sought refund of her fees as she had indicated she tried to resolve matters and had obtained quotes to the best of her ability. She thought also that the Respondents had been unreasonable in their adherence to the directions.
64. In response to the section 20C application, Mr Letman referred us to his skeleton argument. He submitted that the Respondents had not been repressive in their actions and that the lease made clear provision for the recovery of costs. It was his view that the Applicant had acted unreasonably and referred us to the various items of correspondence, which he said showed such unreasonable actions. The comparative quotes he said were not helpful and were broadly supportive of the Respondent's costs. There had been no realistic alternative quotes for the insurance. The application had been launched in August 2017, being a lone application with the support of only one other. There was, however, he submitted nothing from the second Applicant in support of the case. There had been a lack of compromise. The application should not have been brought although no claim was made under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. That being the case, it would be inappropriate in any event for there to be an order under section 20C.
65. Miss Visy says her witness statement covered the position and it was her view that the Respondents had behaved unreasonably and could have provided documentation earlier to enable her to for example, have dealt with the insurance.
66. Insofar as the section 20C is concerned, as will be seen from above, we have found nothing to support Miss Visy's complaints. We do not propose to complete the Scott Schedule as it seems to us unnecessary as we have made individual findings on the various matters that were put before us for dispute. We do believe that Miss Visy has undertaken a somewhat forensic accounting exercise and has been unnecessarily pedantic on a number of items. Furthermore, where alternative quotes might have assisted us, those have in truth not been provided. She has relied on emails from other managing agents seeking to acquire the right to manage the development, which in our view would not necessarily provide suitable alternative costings. The challenge to the insurance was unhelpful. As somebody who is experienced in the insurance world she must have known what information was required but

could produce no evidence to show that she had written to the Respondents specifically requiring certain items of information to be provided. Instead she had waited until Mr Wardrop produced his statement in the middle of January to then try to get alternative quotes none of which we found provided any assistance to us. We make no order under s20C of the Act.

67. For those reasons, therefore, we do not propose to make a refund of the fees that she has paid to the Tribunal for the application or for the hearing. We are aware that Miss Visy is now a member of the management company. If we may we suggest that her clear accounting abilities should be put to good use for the residents, although not in an unreasonable way, and she will then have the involvement in the management that she appears to wish.

*Andrew Dutton*

Judge:

\_\_\_\_\_  
A A Dutton

Date: 28th March 2018

### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985**

##### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

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

### **Section 19**

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

### **Section 27A**

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



- (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.