



**HM Courts
& Tribunals
Service**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
EASTERN REGION
LEASEHOLD VALUATION TRIBUNAL**

Case No : CAM/00MD/LSC/2012/0092

Property : Flat 70, 242 Rutland Avenue, Slough, Berks SL1 3AL

Applicant : 242 Management Company Limited

Respondent : Mrs Humera Mohammed

Inspection : 12th October 2012

Hearing : 12th October 2012

Determination : 12th October 2012

Date of Written Decision : 31st October 2012

**Tribunal : Mr S Reeder (lawyer chair)
Mrs Sarah Redmond BSc (Econ) MRICS (valuer)
Mrs Najiba Bhatti (lay member)**

**Decision : Determination of the liability for, and
reasonableness of, service charges and
administration charges following a transfer from the
county court**

DECISION

The service & administration charges

The sum claimed in the county court is £1561.87 (comprising the service & administration charges items numbered 1-10 below) plus the court issue fee of £80.

The Tribunal determines that the service and administration charges which are reasonable and payable total £1526.87 and comprise as follows :

1. Court fee costs including reduction (25.03.10) - £85
2. Solicitor costs (28.05.10) - £102
3. Madderson solicitor's costs (02.06.10) - £nil
4. Copy lease (20.07.10) - £15
5. Service charge (01.10.10-31.03.11) - £366.56
6. Reserve fund charge (01.10.10-31.03.11) - £80.94
7. Service charge (03.04.11-30.09.11) - £366.56
8. Reserve fund charge (01.04.11-31.03.12) - £80.94
9. Service charge (01.10.11-31.03.12) - £366.56
10. Reserve fund charge (01.10.11-31.03.12) - £80.94

The respondent's liability for the issue fee of £80 for the county court claim is a matter to be determined by the County Court

The costs of these Tribunal proceedings

The Tribunal declines to make an order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding the respondent's landlord from re-charging any of the costs of these proceedings to the respondent as a service charge.

Transfer back to the County Court

On 11th July District Judge Major made an order transferring this county court claim (No. 2QT 17815) to the Leasehold Valuation Tribunal for a determination in relation to the service charges and administration charges claimed and directed that the parties to that claim are to notify the court within 7 days of any adjudication by the Tribunal. The applicant and/or respondent should provide a copy of this Decision to the county court in accordance with that direction.

REASONS

The relevant law – service charges

1. The Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine liability to pay service charges. The relevant sections are set out below (adopting the numbering of the Act).

18. Meaning of 'service charge' and 'relevant costs'

- (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, improvements¹ 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.

19. Limitation of service charges : reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –
 - (a) only to the extent that they are reasonable incurred, and
 - (b) where they are incurred on the provision 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 20C : Limitation of service charges : costs of proceedings

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made –

¹ 'Improvements' were added to the definition of 'service charge' by the Commonhold & Leasehold Reform Act 2002

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

- (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.

27A. Liability to pay service charges : jurisdiction

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which is payable.

The relevant law – administration charges

- 2. Part 1 of Schedule 11 to the Commonhold & Leasehold Reform Act 2002 sets out the Tribunal's jurisdiction to determine the Payability and reasonableness of administration charges. The relevant sections are set out below (adopting the numbering of the Act).

Section 1 - meaning of "administration charge"

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly--
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither--

- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Sections 2 & 3 - reasonableness of administration charges

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that--

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be--

- (a) the variation specified in the application, or
- (b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Section 5 - liability to pay administration charges

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
 - (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
 - (4) No application under sub-paragraph (1) 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.
 - (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination--
 - (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

The relevant law - consultation

3. Section 20 of the Landlord & Tenant Act 1985 (as amended by section 151 of the Commonhold and Leasehold Reform Act 2002) provides –

Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) or both unless the consultation requirements have been either –

- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on an appeal from) a leasehold valuation tribunal.
4. Sections 20(3)&(4) of the 1985 Act provide that this section applies where the relevant costs incurred by the works or under the agreement exceeds the appropriate amount.

5. Section 20(5) of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) provide that, in relation to a qualifying long term agreement of 12 months or more, the appropriate amount is £100 for any one service charge payer.
6. Sections 20(6)&(7) of the 1985 and the 2003 Regulations operate so that if the consultation requirements have not been complied or dispensed with the recoverable costs are limited to a maximum of £100 from each service charge payer.

The inspection

7. Prior the hearing the Tribunal has inspected the external grounds to, and the internal communal parts of, the two blocks (Virginia and Maryland) which make up the relevant estate for the purposes of services and service charges. The Tribunal was accompanied by Mr Stephen Charles of Urban Managers, managing agent for the landlord, by Mr John Cregan who is a lessee director of 242 Management Company Ltd, and by Mr Mohammed on behalf of the respondent.
8. The external grounds comprise lawns to the side and rear with shrub borders. Allocated parking is clearly marked on the paved areas to the front of Virginia and side of Maryland. Boundary fencing runs around the rear. An enclosed cycle rack and a brick bin store stand in the grounds. The parties reported problems with third parties accessing those buildings and with occupiers leaving their refuse on the floor in the bin store. As a result, for the last 4-5 years, the refuse and recycling palladins have been situated outside in the communal grounds. There is a sensor activated vehicular entrance gate across the front street entrance which is not working. The parties agreed that it has not worked for approximately 4 years or more. Mr Cregan states that the repair cost is approximately £6,000 and no funds have been available to date to commission the repair. There is a water stand pipe outside of the bin store intended for use in cleaning that store but it is no longer used or usable.
9. Mrs Mohammed's flat (flat 70) is located in the block named Virginia. However, at the request of the parties the Tribunal inspected the internal communal parts of both Virginia and Maryland. Each is a 3 storey block dating from 2006 with a communal entrance door, entrance lobby and staircase to upper floors with further communal lobbies on each floor. Internal lighting is by timer switch serving three lights to each floor and all appeared in working order. The internal decorations are in good order having been renewed in June 2012 for the first time since construction. Save for one section to the ground floor rear communal lobby in Maryland the carpeting to communal areas is the original provided at construction in 2006. Whilst no longer pristine it remains serviceable and in a reasonable state of cleanliness although there appears to be some worn and potentially lifting carpet by the nosings to the stairs.

10. The Tribunal observes the external grounds and the internal communal parts to be in a reasonable state of maintenance, cleanliness and repair.

The hearing

11. The Tribunal has the benefit of an indexed bundle of documents including the lease, service charge account statements, service charge budgets and accounts, requests for payment, and previous Tribunal decision (26th January 2011) in respect of the same premises and parties. In addition the parties have provided written statements of the issues and argument pursued in response to a formal Directions Order dated 29th July 2012 and to a further directions letter dated 7th September 2012. Those documents have been considered with care by the Tribunal.
12. The applicant has been represented by Mr Stephen Charles of Urban Managers, managing agent for the landlord, and by Mr John Cregan who is a lessee director of 242 Management Company Ltd. Both have made helpful oral contributions which set out the applicant's case thoroughly but concisely. The lessee respondent Mrs Mohammed has not attended the hearing. Instead her husband, Mr Mohammed has appeared on her behalf and expressly confirmed to the Tribunal that he has the requisite authority from her to do so and to represent her interests. He has raised a number of challenges to the service & administration charges and has pursued his arguments with vigour. The Tribunal has given careful regard to the respective arguments made. The competing contentions are summarised in the determinations below.

The lease

13. The lease in the bundle is the draft lease for the flats within the two blocks at 242 Rutland Avenue. Mr Mohammed takes issue with this lease being included in the bundle but in fact raises no relevant objection. The completed lease for flat 70 is on the Tribunal office file and the Tribunal has satisfied itself that the completed lease is in identical terms to the draft in the bundle.
14. The developer lessor is Barratt Homes Limited. 242 Management Company Limited is a lessee management company formed for the purposes of managing the development since handover in 2006. Every lessee is entitled and expected to be a director of that management company so that the lessees in effect manage the 242 Rutland Avenue estate. The due proportion of estate expenses payable by the respondent as service charge is stated as 4.167% subject to variation in accordance with clause 2 of the Seventh Schedule. Clause 1 of the lease defines the buildings, the dwellings, the garden areas, the maintained property, the Sixth Schedule maintenance expenses and the lessees' due proportion of the maintenance expenses.
15. The Second Schedule defines the maintained property. The Third Schedule defines the demised premises.

16. Part A of the Sixth Schedule sets out the building expenses and estate charges which include grounds maintenance (paras 1, 2 & 4), maintaining services including communal electrics (para 3), retained common parts maintenance (para 10), cleaning and managing bin stores rubbish receptacles and cycle stores (paras 5 & 6), cleaning of retained common parts & windows (paras 11 & 12), maintaining door entry systems (para 13), and block insurance (para 8). Part B of that Schedule sets out the relevant costs arising which include paying persons in connection with the upkeep of the maintained property (para 2), paying all outgoings on the maintained property (para 3), costs and expenses incurred in managing and administering the maintained property (para 7), costs and expenses of collection of the rents due and enforcement of the lease covenants (para 7.1), costs and expenses of the preparation of service charge accounts (para 7.4), costs and expenses of the appointment of a managing agent or consultant (para 7.5), costs and expenses of auditing the service charge accounts (para 9), costs and expenses of providing any service or facility which in the opinion of the management company it is reasonable to provides (para 11), such sum as is necessary to contribute toward a reserve fund for items of future expenditure (para 12), any further costs and expenses incurred by the management company relating to the maintenance and the proper and convenient management and running of the development (para 14).
17. The Seventh Schedule defines the lessee's due proportion of the Sixth Schedule costs (para 1) and provides for recalculation of the percentage on an equitable basis (para 2), accountant certification binding on the parties to the lease (para 3), annual maintenance expense accounts so soon as practicable after 30th September (para 6), and payment on account of half of the lessee's proportion on each of 1st October and 1st April with a balancing payment/credit within 21 days of service of the account of maintenance expenses (para 7).
18. By the Eighth Schedule the lessee covenants to pay the lessee's proportion in the manner and at the times prescribed by the lease (para 2), to pay interest on service charge arrears (para 3).
19. The Tenth Schedule sets out the covenants on behalf of 242 Management Company Ltd which include to carry out the Sixth Schedule obligations (para 1), to use all reasonable endeavours to recover the lessee contribution to the Sixth Schedule costs (para 2), to hold a reserve fund on trust for the lessees (para 3), and to employ a reputable and suitably qualified managing agent variable by the membership of the Management Company. (para 8).

The determinations

20. The Tribunal obtained a copy of the county court claim form and satisfied itself that the sum claimed in the county court is £1561.87 comprising

service & administration charges totalling £1561.87, together with the court issue fee of £80

21. The applicant's written statement at pages 37-41 of the bundle helpfully sets out the individual component service & administration charges which make up the claim sum of £1561.87 and was therefore used by all as a 'core document' for the purposes of the hearing.

Court fee costs including reduction (25.03.10)

22. The sum claimed is £85. Mr Charles states that this sum is the court issue fee in relation to the previous county court claim for unpaid service charges against the respondent which was subsequently transferred to the Tribunal on 23rd June 2010 and determined on 26th January 2011 and was recharged as a service charge by the previous managing agent Messrs MCS as can be seen on the statement of account at page 34 of the bundle. That statement shows a court fee of £150 dated 25th March 2010 and a reduction (due to the claim proceeding as a CPR Part 8 claim) of £65 dated 28th May 2010 producing a balance due of £85.
23. Mr Mohammed accepts that this is what the sum relates to but argues that this self same sum is one of the administration charges which were disallowed by the previous Tribunal in January 2011 and relies upon paragraph 46 of that decision (pages 43-55 of the bundle) which does disallow two administration charges. The Tribunal has considered that Decision. The Summary of Decision on the first page together with paragraphs 1, 19 and 46 of the Reasons clearly identify the administration charges under consideration on that occasion as being two debt recovery charges of £193.88 each. It is therefore clear that the present administration charge was not before the Tribunal on that occasion and so it could not and did not disallow it. It is also clear from the final paragraph of the Decision dated 26th January 2011 that the Tribunal on that occasion expressly declined to make an order pursuant to section 20C of the Landlord & Tenant Act 1985 and stated in terms that "accordingly the applicant is entitled to include the costs of these proceedings within the appropriate service charge year". Neither party suggests to this Tribunal that the county court subsequently made any order precluding the applicant from seeking to recharge the costs referable to the county court claim as a service and/or administration charge.
24. Mr Mohammed also argues that it should be disallowed as it is a charge raised by Messrs MCS and there is something impermissible or improper about the relationship between, or involvement from time to time of, five corporate entities which are referred to in the various documentation relating to the management of 242 Rutland Avenue since 2006. Mr Charles and Mr Cregan explained the role of each. Portfolio GR Ltd hold the freehold interest which was transferred to them by the developer Barratt Homes Ltd once the development was completed. Stamrac Properties are the company nominated by the freeholder to receive the ground rents due under the leases. Management Company Services Ltd

('MCS') were the first managing agents who were appointed by Barratt Homes in 2006 and continued to act as agents until in or around December 2010. Property Debt Collection Ltd managed service charge arrears for MCS during their tenure. Property Debt Collection Legal Services dealt with litigation and enforcement relating to service charge debts for MCS. Urban Owners are Mr Charles' employers and were appointed as managing agent in place of MCS in December 2010. On the information before it the Tribunal do not find any improper relationship or impermissible acts which would cause it to disallow this or any other service or administration charge which is relevant to this application.

25. The Tribunal finds that the sum of £85 recharged to the lessee is in respect of the court issue fee in relation to the previous county court claim for unpaid service charges and falls within the scope of the Sixth Schedule expenses and charges under the lease. It further finds that it is an administration charge as defined by paragraph 1(c) of Schedule 11 to the Commonhold & Leasehold Reform Act 2002. It further finds that the documentation before it is sufficient to satisfy it that the sum is accurate, was properly demanded and included in service charge accounts and that the legal and procedural requirements were adequately complied with. The only basis for challenge raised by the respondent in her two written statements is that this fee was disallowed previously. The only bases for challenge pursued at the hearing by Mr Mohammed are as outlined above. The Directions Order dated 29th July 2012 did not require the applicant to produce copy documents generated at each stage by the budget, accounting and payment demand process.

Solicitor costs (28.05.10)

26. The sum claimed is £102. Mr Charles states that this sum is the solicitor's fee in relation to issuing the previous county court claim for unpaid service charges against the respondent which was subsequently transferred to the Tribunal on 23rd June 2010 and determined on 26th January 2011 and was recharged as a service charge by the previous managing agent Messrs MCS as can be seen on the statement of account at page 34 of the bundle. Again, the nature and quantum of the charge is unremarkable and is amply supported by the known litigation history and the available documentation.
27. Mr Mohammed pursues the same bases of challenge as for the 'court fee (25.03.10)' item.
28. The Tribunal determines that this administration charge is payable and is due in the sum claimed : £102. In reaching this determination the Tribunal's reasoning is the same as is already set out in relation the 'court fee (25.03.10)' item.

Madderson solicitor's costs (02.06.10)

29. The sum claimed is £35. On the information before the Tribunal it is not readily apparent why MCS Ltd, who appear to have already engaged the assistance of PDC Legal Services, would have engaged this firm of solicitors to carry out work on or before 2nd June 2010, nor what this cost relates to, nor whether it is a reasonable sum. Mr Charles very fairly confirmed that his best efforts have not been able to obtain documentary or other assistance from the files inherited from MCS Ltd or from MCS Ltd itself as to what this charge relates to or why it was incurred. Mr Cregan could add nothing on these points.
30. In her written statement the respondent challenges this charge on the basis that it is not clear what it refers to and may in fact be "the claimant's pocket money". In his oral arguments during the hearing Mr Mohammed concentrated more on the same bases of challenge as for the 'court fee (25.03.10)' item.
31. In the circumstances there is insufficient evidence and information before the Tribunal to satisfy it that this is a reasonable administration charge which was reasonably incurred in the circumstances prevailing in June 2010. Accordingly, the Tribunal determines that this charge is not payable by the respondent.

Copy lease (20.07.10)

32. The sum claimed is £15. This charge too was incurred during the period when MCS were managing agent and it appears on the statement of service charge account (page 34 of the bundle). Mr Charles states his belief that it relates to obtaining a copy lease for the respondent's flat as a component part of establishing liability for the unpaid service charges in the 2010 county court proceedings which gave rise to the January 2011 determination by a previous LV Tribunal. The chronology of those proceedings which is apparent from the documents before the Tribunal supports this analysis.
33. The respondent's written arguments take issue with this charge on the basis that "[it is] a fraudulent demand as the claimant don't have any clue of compliance with CPR 167.3 which is really a shame". Before the Tribunal Mr Mohammed has not developed this argument to the point of clarity but states that this charge should have been made within the 2010 county court proceedings and determined by the Tribunal which considered those proceedings on transfer in January 2011.
34. If this is a reference to CPR 167.3 three issues arise. Firstly this Tribunal is not governed by the Civil Procedure Rules as is made clear by CPR 2.1. Secondly, there is no CPR 167.3. Thirdly, if the respondent's argument is intended to be reference to CPR 16.7 (which provides that a claimant who does not file a reply to a defence shall not be taken to admit the matters raised in the defence, and a claimant who files a reply to a defence; but fails to deal with a matter raised in the defence, shall be taken to require that matter to be proved) then, even if the provision applied to proceedings

before this Tribunal the applicant's statements of case adequately set out the issues of liability and reasonableness in relation this charge.

35. The Tribunal finds that the sum of £15 recharged to the lessee is in respect of the standard Land Registry electronic fee to obtain a copy of the respondent's lease and that it is a reasonable step to take in the process of progressing the previous county court claim for unpaid service charges. Given the Tribunal's decision in January 2011 there is nothing to prevent the applicant from seeking to recharge this cost as an administration charge in the current county court proceedings. It falls within the scope of the Sixth Schedule expenses and charges under the lease. It is an administration charge as defined by paragraph 1(c) of Schedule 11 to the Commonhold & Leasehold Reform Act 2002. The documentation before the Tribunal is sufficient to satisfy it that the sum is accurate, was properly demanded and included in service charge accounts and that the legal and procedural requirements were adequately complied with.

Service charge (01.10.10-31.03.11)

36. The sum claimed is £366.56 and Mr Charles states that this is the half yearly service charge on account. He states that the annual budget for 1st October 2010 to 31st March 2011 (page 56 of the bundle) is the first budget which Urban Owners prepared after taking over as managing agent from MCS Ltd. He states that Urban Owners took the figures for each service charge item from the last completed accounts, amended some to better reflect the likely and/or advisable expenditure, and presented the same to the directors of the 242 Management Company Ltd for their consideration. Both he and Mr Cregan confirm that the final budget is then confirmed by the directors of 242. The budget for the accounting year 1st October 2010 to 30th September 2011 (page 56 of the bundle) is the result of that process. This is apportioned across the 24 flats in the two blocks and then divided to be demanded as two half-yearly sums in accordance with the leases. Examples of such demands accompanied by the prescribed summary of the tenants' rights and obligations are provided to us in the bundle (pages 65-66). The final service charge accounts for that accounting year are also provided in the bundle (pages 57-63).
37. The respondent's written statements and Mr Mohammed's oral arguments appear to challenge the service charge demands on the basis that the managing agent's fees should be restricted to the statutory prescribed sum as there has been a failure to comply with the statutory consultation requirements imposed by section 20 of the Landlord & Tenant Act 1985, and that the other service charge items are unreasonable. Despite the requirements of paragraph 2 of the Directions Order made by the President on 29th July 2012 the respondent has neither stated exactly why those other service charge items are challenged nor stated what she considers to be a reasonable charge. As a result the Tribunal has endeavoured to deal with each component service charge which makes up this half yearly demand as follows.

General repairs & maintenance

38. In relation to general repairs and maintenance Mr Charles states that when Urban Owners were appointed as managing agents in December 2010 there was no provision or plan for repairs and maintenance and a balance of only 26p in the service charge account. He states that a proposed budget was prepared and that repairs and redecorations of the internal communal parts. It is common ground that internal redecorations were carried out in June 2012. On the evidence and information before the Tribunal the sum demanded for this service charge item is payable and reasonable.

Cleaning & refuse

39. In relation to cleaning and refuse it is not apparent from the respondent's statements whether and why she challenges these charges. Mr Mohammed confirms they are challenged and says the sums are unreasonable for the service provided and do not deliver value for money and that the applicant failed to carry out a consultation pursuant to section 20 of the Landlord & Tenant Act 1985. Again, the respondent provides no information as to what she would say is a reasonable charge would be and why. Mr Cregan carries out the cleaning to Maryland and lives in that block as an owner occupier lessee. Joanne Donnelly carries out the cleaning to Virginia and live in that block as an owner occupier lessee. Both are directors of the 242 Management Company Ltd. Their appointment is reviewed within each year. As this is not an open market appointment the Tribunal reminds the directors of 242 Management and Urban Owners as managing agent of the importance of testing the market periodically to ensure value for money is being achieved. They are not engaged on a contract of 12 months or more duration. They are each paid a fixed amount which was calculated by taking the 2009/10 sum charged by MCS for cleaning and refuse net of VAT. For that they clean the internal common parts of the respective blocks for approximately one hour once each week. In addition, as they are resident, they deal with any cleaning and/or refuse issues which they note or which are brought to their attention by other occupiers at the time they occur. There is no additional charge for this. There is an additional element to this item in the service charge account which is any disbursement for contractors and/or the local authority to remove any large refuse items left in the communal parts by occupiers. Mr Charles' professional opinion is that this is a reasonable fee for the service provided otherwise he would propose a different service provider. The Tribunal takes the view that the lessees are receiving good value for money and a good on site responsive service through this arrangement. In relation to the consultation requirements imposed by section 20 of the 1985 Act the Tribunal finds that this not a qualifying long term agreement of 12 months or more. The Tribunal determines amount charged is reasonable and payable.

Door entry system & security

40. Mr Mohammed challenges the charge in respect of 'door entry system and security' on the basis that it should be restricted to the previous accounting year's actual expenditure figure and that it should be subject to a formal consultation under section 20 of the 1985 Act. Mr Charles states that this charge was estimated by Urban Owners based on the previous MCS accounting provision and on the likelihood that, four years on from handover, some maintenance and repair issues would begin to occur. The Tribunal takes the view that this is a permissible and indeed sensible approach. In relation to the consultation requirements imposed by section 20 of the 1985 Act the Tribunal finds that these are not qualifying works and do not result in a contribution from any lessee which exceeds the prescribed amount. The Tribunal determines that the amount charged is reasonable and payable.

General grounds maintenance

41. General grounds maintenance is carried out by Mr Cregan and his brother for an annual fixed cost which is pegged at the annual fixed cost levied in 2010 being the last year that MCS Ltd were managing agents. Their appointment is reviewed within each year. They maintain the lawns, shrub borders, grounds and pathways. To do so they visit twice each month and in addition deal promptly with any ad hoc requirements as and when they occur. Again, this is a particular benefit of having Mr Cregan resident on the estate. This too appears to be reflected in the quality of service provided. On inspection the grounds were well kept and the state and shaping of the border shrubs suggest that a consistently good quality of service is achieved. Mr Charles' professional opinion is that this is a reasonable fee for the service provided otherwise he would propose a different service provider. The Tribunal takes the view that the lessees are receiving good value for money and a good on site responsive service through this arrangement. As this is not an open market appointment the Tribunal reminds the directors of 242 Management and Urban Owners as managing agent of the importance of testing the market periodically to ensure value for money is being achieved.

42. Mr Mohammed argues that this is another example of the directors of 242 improperly profiting from the service charge arrangements, and says that this and all other services should be subject to a formal section 20 consultation and tendering exercise. Rather unhelpfully, he states that a reasonable charge for grounds maintenance is zero.

43. The Tribunal takes the view that the lessees are receiving good value for money and a good on site responsive service through this arrangement. In relation to the consultation requirements imposed by section 20 of the 1985 Act the Tribunal finds that this not a qualifying long term agreement of 12 months or more. The Tribunal determines that the amount charged is reasonable and payable.

Electricity

44. Mr Charles' explains that the budgeted item for external and internal communal/retained parts electricity was based on the previous MCS budgeted item and that this is reasonably close to the actual costs based on the metered billing as recorded in the year end account. The figures are unremarkable given the communal lighting and entry system etc observed during the inspection. Mr Mohammed argues that a lower cost could be achieved by obtaining a fixed term and cost contract with suppliers such as British Gas. He provides no evidence or information in relation to the same. He provides no reasoned alternative and lower cost as being the reasonable cost. It is within the proper scope of the lease covenants and proper management of a small estate of this type to simply pay and recharge the metered electricity costs levied by the existing supplier. There is nothing before the Tribunal to suggest that the resulting cost is unreasonable. The Tribunal determines that the amount charged is reasonable and payable.

Other utilities

45. The 'other utilities' item relates to the water supply to the stand pipe located outside of the bin store, and is actual water usage charged by the supplier when the stand pipe was in use. This stand pipe is no longer used or usable and so the item is no longer to be included in budgets and accounts. The Tribunal does not therefore consider it further.

Company secretarial costs

46. Company secretarial services are provided by Urban Owners. The budgeted cost is £215 and the actual year end charge £164 comprising a base fee of £100 + VAT for carrying out the company secretarial role and work, and an additional fee of £15 for filing the annual return with the remainder being disbursements paid out as part of the company secretarial service. Mr Mohammed argues that this should be subsumed as part of the general management agent fee. The Tribunal takes the view that transparency of charging by individually identifying different services undertaken by the same provider is good practice providing that the overall costs incurred are reasonable. There is nothing before the Tribunal to suggest that the resulting cost is unreasonable. The Tribunal determines that the amount charged is reasonable and payable.

Accountancy

47. Accountancy services are provided by Messrs Winter & Co. Mr Charles explains that this is a suitable qualified and experienced chartered accountancy practice which provides the accountancy service for approximately 90% of Urban Owners' clients. He states that this arrangement offers their clients economies of scale and a competitive fee. The budget estimate of £530 was based on the budget cost during the last year of MCS management. The actual cost of £278 illustrates the competitive cost achieved for 242 Management by Urban Owners since

they took over as managing agent. There is nothing before the Tribunal to suggest that the resulting cost is unreasonable. The Tribunal determines that the amount charged is reasonable and payable.

Insurance

48. In the event Mr Mohammed takes no issue relating to insurance.

Legal & other professional services

49. Mr Mohammed takes issue with the item 'legal & other professional fees' by stating that he has no idea what they relate to and that no charge should be made under this head. This issue was not referred to in either the county court proceedings or the written statements filed by the respondent in these Tribunal proceedings. Given that situation it is no surprise that the Directions Order dated 29th July 2011 did not require the applicants to produce any documentary or other evidence relating to the item. Mr Charles and Mr Gregan point out that they did not know that it was an item in issue and therefore they have not brought to the hearing any background evidence, information or documents relating to it. They are unable to assist us on it.

50. The Tribunal must therefore consider whether it can reach a just and proper determination on the evidence and information it does have. The Tribunal notes that the item is included both in the budget account and in the year end account of actual costs incurred prepared by Messrs Winter & Co, chartered accountants, and signed off by them with the formal statement "we have reviewed the annexed summary of relevant costs and the supporting accounts, receipts and other documents produced to us by the managing agents.....in our opinion the summary of relevant costs is a fair summary.....and sufficiently supported by accounts, receipts and other documents which have been produced to us". Having regard to these factors the Tribunal is satisfied that this item is an actual relevant cost which is reasonable and is payable by the respondent.

Management fees

51. This item relates to the fees of Urban Owners who were appointed as managing agent in place of MCS Ltd in December 2010. Mr Charles states that they charge an overall fee comprising a fixed fee of £85 (+VAT) per unit for estates of this size (24 dwellings) for a basic management service plus an hourly rate of £75-80 p/h for additional tasks not already covered by that service. He further states that the 242 Rutland Avenue budgeted fees factor in 8 hours of such time for this accounting year as they were taking over the management of the scheme where there was no accrued reserves or programmed plan for works as the blocks approached 5 years since construction completion. Both Mr Charles and Mr Gregan state that the Urban Owners appointment since the end of 2010 has been year to year and subject to termination within any such year dependent upon their performance. In the event the 242 Management Company Ltd have

continued to engage them as they have found the service delivered to be good for the fee paid.

52. The respondent's written statements and Mr Mohammed's oral arguments in reality raise two issues relating to the management charge : that the fee is not reasonable for the service provided, and that the sum recoverable by the respondent is restricted to the appropriate amount as the appointment of Urban Owners as managing agent is a qualifying long term agreement and the statutory consultation requirements were not complied with.
53. In relation to the consultation requirements imposed by section 20 of the 1985 Act the Tribunal finds that this not a qualifying long term agreement of 12 months or more. In relation to the actual management fee due and included as a service charge there is no reasoned objection and the Tribunal applies its own expert experience of such charges for management of this type of an estate of this type. The charge is entirely unremarkable. Accordingly, the Tribunal determines that the amount charged is reasonable and payable.

Reserve fund charge (01.10.10-31.03.11)

54. All present accepted that the lease provides for such a fund and permits a call for that fund. Mr Charles states that Urban Owners took the view that the estate was by now reaching 4-5 years from construction completion and occupation, that the NHBC cover was to cease within 4 years, and that it was advisable to build up a reserve fund for likely works by annual instalments rather than a later single substantial demand for funds within the accounting year when such works became urgent needed. Mr Charles said the sum of £80.94 was arrived at on that basis.
55. Mr Mohammed argues that it was unreasonable to make any service charge demands to build up such a reserve fund in 2010-11 and that no such demand could possibly be reasonable until after the NHBC guarantee expired.
56. The Tribunal is of the view that the charges are reasonable and payable. On an estate of this size and nature comprising two blocks of this construction type and quality there is a reasonable probability that 4-5 years from completion renewal works will begin to accrue which need to be planned for. An annual estimated provision called by two half yearly sums on £80.94 per lessee is a perfectly proper way establishing a reserve fund in such circumstances.
57. Mr Mohammed raises the additional issue that the reserve fund for 242 Rutland Avenue should be held in an individual ring fenced account. Mr Charles explains that the reserve funds for its clients are held in one generic bank account but are separately accounted for as individual reserve funds held on trust for the individual lessee groups which have paid into them. The Tribunal takes the view that, having regard to the legal

requirements, professional guidance and good practice in the residential property management industry this is perfectly permissible.

Service charge (03.04.11-30.09.11)

58. This half yearly charge of £366.56 is reasonable and payable. The Tribunal repeats the reasoning given for the previous half yearly service charge demand.

Reserve fund charge (01.04.11-31.03.12)

59. This annual charge of £80.94 is reasonable and payable. The Tribunal repeats the reasoning given for the previous annual reserve fund charge.

Service charge (01.10.11-31.03.12)

60. This half yearly charge of £366.56 is reasonable and payable. The Tribunal repeats the reasoning given for the previous half yearly service charge demand. The Tribunal notes that by this time Urban Owners were completing their first full year as agents and that the budgeted sums were reasonably proximate to actual expenditure.

Reserve fund charge (01.10.11-31.03.12)

61. This annual charge of £80.94 is reasonable and payable. The Tribunal repeats the reasoning given for the previous annual reserve fund charge.

The costs of the Tribunal proceedings

62. Paragraph 10 of the Directions Order dated 29th July 2012 directed that any party who seeks an order pursuant to section 20C of the 1985 Act must notify the Tribunal and the parties in writing at least 10 days before the Tribunal makes its decision. The respondent did not notify any such application but Mr Mohammed has pursued such an application at the hearing and the Tribunal heard oral argument so as to ensure that all had an effective opportunity to be heard on the issue. In deciding whether to grant an order pursuant to section 20C of the 1985 Act the Tribunal is mindful that it has an absolute discretion regarding costs, that the LVT is intended to provide an accessible, low cost vehicle for the proportionate resolution of service charge disputes such as this, and that its decision should be just and equitable in all of the circumstances of this dispute.

63. The respondent's written statements accuse the applicant of attempting to "defraud" her and of "abusing as well as naming and shaming the legal system". They make a number of references to "fraudulent demands". At the hearing Mr Mohammed has maintained that the applicant is making "illegitimate claims". The approach he has taken and language he has chosen during the hearing suggest that he may in fact be the author of the written statements submitted on behalf of his wife, the respondent lessee.

64. In the event the Tribunal has only disallowed one administration fee, and only then on the basis that there is insufficient evidence and information before it satisfy it that this is a reasonable charge which was reasonably incurred in the circumstances prevailing in June 2010 (see paragraphs 29-31 above). Each and every one of the other service and administration charges which are components of the total sum claimed in the county court proceedings have been determined by this Tribunal to be reasonable and payable.

65. In the circumstances the Tribunal declines to make an order pursuant to section 20C of the Landlord & Tenant Act 1985 precluding the respondent's landlord from re-charging any of the costs of these proceedings to the respondent as a service charge. For the record the applicant has paid an issue fee of £20 and a hearing fee of £150 as disbursements and so part of their costs of the proceedings before the Tribunal.

Stephen Reeder
Lawyer Chair

31st October 2012

Caution

The Tribunal inspected the communal parts of the buildings and the gardens/grounds referred to solely for the purpose of reaching this Decision. The inspection was not a structural survey. All comments about the condition of the building or gardens/grounds are based on observations made on inspection for the sole purpose of reaching this Decision. All such comments must not be relied upon as a professional opinion of the structural or other condition of the same.