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**HM Courts
& Tribunals
Service**

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

Case No : CAM/26UB/LSC/2011/0137

Property : 43 Ottawa Court, Broxbourne, Herts EN10 6FL

Claimant : Canada Fields Management Company Ltd

Defendants : George Dearman & Helen Dearman

Inspection : 7th February 2012

Hearing : 7th February 2012

Determination : 7th February 2012

Written Decision : 31st May 2012

Tribunal : Mr S Reeder (lawyer chair)
Miss Marina Krisko BSc (Est Man) FRICS (valuer member)
Mr John Francis (lay member)

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

DECISION

DECISION

The service & administration charges

The following service and administration charges are determined by this Tribunal to be reasonable and payable :

<i>Opening balance from previous agent (20.05.09)</i>	<i>£1,006.96</i>
<i>Debt collection costs (08.09.09)</i>	<i>£143.75</i>
<i>Service charge demand (01.01.10)</i>	<i>£910</i>
<i>Debt collection costs (12.03.10)</i>	<i>£29.38</i>
<i>Debt collection costs (29.03.10)</i>	<i>£146.88</i>
<i>Professional fees (11.08.10)</i>	<i>£105.75</i>
<i>Service charge demand (01.01.11)</i>	<i>£1,184.36(estimated only)</i>
<i>Admin fee for late payment (23.03.11)</i>	<i>£30</i>
<i>Debt referral fee (08.04.11)</i>	<i>£150</i>
<i>Court fees (06.06.11)</i>	<i>£175(for the court to decide)</i>
<i>POC Fee</i>	<i>nil</i>
<i>Trace fee</i>	<i>nil</i>

The costs of the Tribunal proceedings

As this matter was a transfer at the direction of the county court this Tribunal makes no determination as to whether to make an order pursuant to section 20C of the Landlord & Tenant Act 1985

Transfer back to the County Court

On 11th October 2011 (served by the court on 18th October 2011) District Judge Silverman made an order transferring this county court claim (No. 1BE01695) to the Leasehold Valuation Tribunal for a determination in relation to the service charges and administration charges claimed. This matter is now transferred back to the Bedford County Court to enable any party to apply to the court on any relevant matter including payment of court fees, costs within the court proceedings, interest and enforcement.

REASONS

Procedural history

1. This matter was commenced by the claimant managing agent in the Bedford county court (No.1BE01695) in July 2011. In August 2011 the defendant lessees filed a defence disputing the sums claimed. On 11th October 2011 District Judge Silverman made an order transferring the claim to the Leasehold Valuation Tribunal for a determination in relation to the service charges and administration charges claimed. This transfer was received by the Tribunal on 18th October 2011. A Directions Order was made by the Tribunal on 3rd November. The Tribunal carried out a visual inspection of the external parts and grounds and internal communal parts of the block in which the premises are situated on 7th February 2012 and conducted a hearing that same day. The Tribunal completed its determinations on 7th February 2012. This decision was not written up until May 2012 due to a prolonged period of illness suffered by the Chairman who apologises to the parties for the undoubted inconvenience caused by this delay.

The relevant service & administration charges

2. The county court claim form, particulars of claim and exhibited schedule of account (including the handwritten endorsement on the copy before the Tribunal which the claimant has confirmed is the same as the copy appended to the particulars of claim before the Court) set out the service and administration charges claimed as follows–

Opening balance from previous agent (20.05.09)	£1,253.96
Debt collection costs (08.09.09)	£143.75
Service charge demand (01.01.10)	£1,022.53
Debt collection costs (12.03.10)	£29.38
Debt collection costs (29.03.10)	£146.88
Professional fees (11.08.10)	£105.75
Service charge demand (01.01.11)	£1,184.36
Admin fee for late payment (23.03.11)	£30
Debt referral fee (08.04.11)	£150
Court fees (06.06.11)	£175
POC Fee	£150
Trace fee	£28

The relevant law – service charges

3. 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 –*
- (a) *.....*

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

(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 it is payable.*

The relevant law – administration charges

4. 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 inspection

5. The Tribunal made an external visual inspection of the relevant block on the Canada Estate (containing flat nos.41-56), of the internal communal parts within that block which are relevant to the defendant's ground floor flat (43), and of the immediate garden/grounds. On inspection some cigarette butts, broken glass and refuse was visually apparent immediately outside the block. The defendant reported having to regularly clear away such items themselves. The communal entrance door leads to a ground floor internal lobby housing 3 meter cupboards and a switchgear cupboard with keys held by the landlord, their contractors, and the caretaker. The defendants reported that those cupboards were insecure and open until October 2011. On inspection the meter cupboards were open and did not close properly and the other cupboards were found closed and locked. The internal lobby leads to four flats on that ground floor including the defendants' flat No. 43. Individual post boxes for each are attached to the lobby wall. The defendants reported that post is often left on the lobby floor although none was seen at the time of the inspection. A Warwick Estates notice board is attached to the lobby wall. Documents on this notice board include a weekly cleaning log provided by the contractor, Messrs Jagger Support Services which appeared to be maintained. The defendants reported that the contractor does attend regularly but does not provide a reasonable cleaning service for the internal communal parts including the windows. Such cleaning was basic but adequate at the time of inspection. The defendants drew the Tribunal's attention to an area of the internal party wall between the communal lobby and flat 43 which they state

had four holes until 2009 when they themselves repaired the same. The defendant's drew the Tribunal's attention to the internal decorations which they state have not been renewed since construction. They appeared to be adequate inspection. Externally they pointed to a down pipe which had a missing clip and to three refuse paladins which they say are rented from the local authority, whereas they state there should be four provided. Externally, the air bricks to both sides of the entrance door were taped closed for what appeared to have been some time. The defendants drew attention to what they describe as poor gardening and the loss of shrubs. However, due to the heavy snow covering at the time of inspection this could not be clearly seen. The defendants also pointed out the old furniture and tyres left in the bike shed.

The hearing

6. The claimant managing company was represented at the hearing by Eleanor Bruce of counsel with Abigail Teece and Jerry Brooke of the managing agents Messrs Warwick Estates. George Dearman and Amy Field attended on behalf of the defendants. The hearing continued until 4.45pm and the parties presented their arguments very effectively. These are summarised as part of the determinations later in this Decision.
7. In accordance with the Directions Order of 4th November 2011 the claimant provided an indexed bundle of relevant documents including a statement of case and witness statement dated 26th January 2012 from Abigail Teece of Warwick Estates. The defendants provided their own statement of case dated 21st December 2012. The Tribunal carefully considered all of the documents before it during the hearing and its deliberations.
8. The Canada Estate consists of approximately 10 acres in all with 370 units, the estate costs being charged equally to everyone. The expenses for the flats only are shared between 316 flat units in 22 blocks. Mr & Mrs Dearman acquired their leasehold interest in flat 43 in 2005. The flat is let to tenants but Mr Dearman has retained his garage on the Canada Estate and visits approximately once a month for 2-3 hours on each occasion. Warwick Estates Property Management Ltd were appointed as managing agents in May 2009, taking over from Messrs CPM. They manage all of the 370 properties on the estate (houses, maisonettes and flats). They produced a detailed drawing of the Canada Estate showing the blocks and the estate grounds. The Warwick Estates service charge budgets commenced in 2010 and are produced in the hearing bundle. They detail each service item, the total charge and the proportionate charge for the types of property.

The lease

9. The Tribunal was provided with the lease for 43 Ottawa Court, and that lease was examined during the hearing. Particular regard was had to the particulars, meaning and interpretation provisions on clauses 1-3, 1.6 (initial provisional service charge), 2.3 (management areas), 5.6 (service charge payment), 5.9.3

(costs of recovery of arrears of service charge), 7.1 (management obligations), and 5th Schedule (service charge provisions).

The determinations

The component charges in the 'opening balance' and 'annual service charge demands'

10. The defendant statement of case dated 21st December 2011 raises a number of issues about the services provided and the reasonableness of the resulting charges which are components of the opening balance and/or of the annual service charge demands. The claimant was required to address each of these during the hearing.

Repairs & maintenance charges for 2010 and 2011

11. The defendants state that no maintenance was carried out between 2005 and late 2011. They state that the holes to the party wall between flat 43 and the communal lobby were not repaired and detracted from their attempts to sell the flat. They requested a breakdown and justification for the budgeted costs. The claimant stated that maintenance/repair costs of less than £250 are dealt with as running repairs with an appropriate known contractor instructed to deal with them, whereas maintenance/repair costs of £250 or more are dealt with by formal consultation with the resident directors of the Canada Fields Management Company and, subject to their approval, a tender procedure which results in 3 quotes from appropriate contractors. The claimant states that costs are only settled upon invoice and when Warwick Estates is satisfied that the work has been discharged to a reasonable standard. The detailed budget prepared each year by Warwick Estates breaks these charges down into their component parts clearly (general minor repairs, electrical repairs, drain repairs and cleaning, TV aerial/satellite, tree maintenance and pest control). The claimant states that one of the holes in the entrance lobby was behind the entrance door and likely caused by use of that door, whilst the others were in the lobby wall and resulted from vandalism by third parties. Abigail Teece stated that she involved the PCSO and police in an attempt to manage such vandalism and that the defendants made their own repairs to the communal lobby wall without obtaining permission from the landlord or agent. On the evidence and information before the Tribunal it determines that these repairs and maintenance charges are clearly established, are reasonable in nature and sum, and so are payable in full.

Communal cleaning for 2009, 2010 & 2011

12. The defendants argue that the costs of £33,712, £21,831 and £19,975 respectively are unreasonable as the service provided is not to a reasonable standard. They refer to failures to remove dirt 'planted' by them, failures to deal with the dirt left by a neighbouring occupier wheeling a motor bike in and out of the communal lobby daily and failure to clear up cigarette butts left outside by neighbouring occupiers and their visitors. The claimant states that the internal communal cleaning and window cleaning is carried out by Jagger

Support Services and that they were appointed by a tender process which uses a written specification and produces three quotes which are presented to the resident directors board who choose the contractor to be appointed. It is agreed that one of the resident directors lives in this block. The claimant states that this director has never had occasion to question the quality of cleaning provided. Further, the claimant states that no substantial problems have been observed during the monthly inspections or raised by other lessees. Unfortunately, when asked by the Tribunal for details or copies of the relevant contracts and job specifications the claimant was unable to produce any paperwork and was not fully aware of the details of the work to be provided. However, the Tribunal are mindful that the defendants are not resident in flat 43 and that Mr Dearman visits only infrequently to use his garage such that his observations on any day he visits may not accurately reflect the state of the communal areas on an ongoing basis. On balance, the Tribunal is satisfied that the service is reasonable for the charges levied and that those charges provide reasonable value for money. Accordingly, these charges are payable in full.

Door entry system maintenance for 2009, 2010 & 2011

13. The defendants state that these costs of £17,549, £18,977 and £17,625 respectively should be covered by guarantees and/or are no maintenance is required and/or they are not aware of any being carried out. The claimant states that the developer of the Canada Fields Estate entered into a 25 year contract with the contractor who maintains the entry systems as part of the development and that this ongoing cost should be known to anyone purchasing a lease. Mr Brooke of Warwick Estates states that this contract produces an index linked fixed fee, that the resident directors would have to elect to buy the claimant out of that contract to avoid that fee, and that they have not done so to date.
14. No evidence was presented to establish that the contract costs are unreasonably high when benchmarked against available market alternatives. The contractual situation is unfortunate but was, or would on reasonable inquiry, have been known to the defendant during their conveyance process when they acquired their leasehold interest. It is for directors of the claimant, with the advice Warwick Estates, to consider whether a contract 'buy out' will provide better value for money going forward.
15. In the circumstances the Tribunal determines that these charges are reasonable and are payable in full.

Gardening & grounds maintenance for 2009, 2010 & 2011

16. The defendants state that these costs of £30,381, £33,809 and £28,600 respectively are unreasonable as the service provided is not to a reasonable standard. They describe the grounds as "meticulous" in 2005 and that they have deteriorate to a poor state since then. The claimant states that the gardening and is carried out by Jagger Support Services, who also carry out internal communal, and that they were appointed by a tender process which uses a written specification and produces three quotes which are presented to the

resident directors board who choose which contractor to appoint. Unfortunately, when asked by the Tribunal for details or copies of contracts and job specifications the claimant was unable to produce any of the relevant paperwork and was not fully aware of the details of the work specified to be provided. The claimant states that the quality of service provided is checked on the monthly inspections and had not given rise to any substantial number of complaints from other lessees. During the inspection the Tribunal took the opportunity to view the gardens/grounds which were observed to be in a reasonable state of maintenance and management so far as could be seen under the snowfall. On balance the Tribunal determines that the quality of the service is reasonable for the charges made, and those charges are payable in full.

Carpet replacement in 2010

17. The defendants question why the 2010 account shows a payment of £26,500 to Aruba Carpets as the carpets in the communal areas of their block have not been replaced. This objection is erroneous. The claimant states that this sum was not for carpet replacement but a one-off payment from the reserve fund for carpet cleaning in the communal areas across the Canada Estate. This is a permissible use of that fund. An estate-wide programme for a fixed cost might reasonably be expected to provide economies of scale and so value for money. No challenge is made to the actual sum involved. In the circumstances the Tribunal determines that this sum is reasonable.

Redecoration in 2010

18. The defendants question why the 2010 account shows a charge of £17,96.13 for redecoration when none have taken place in their block. The claimant states that in fact this sum was paid out of the reserve fund for redecoration to the communal areas in Nos 1-12, and 15-30 Vancouver Road which badly required redecoration. This is a permissible use of that fund. It is noted that the claimant states that a caretaker has been appointed for the estate who deals with small running redecoration needs, and is programmed to undertake a rolling redecoration of all of the internal communal areas across the estate. It is accepted that, by the time of the Tribunal's inspection the internal communal parts to the defendant's block had benefited from redecoration. Visual inspection confirmed it is now found in a reasonable state. In the circumstances the Tribunal determines that this charge is reasonable.

Refuse paladin costs for 2009 & 2010

19. This relates to charges of £1714 in 2009 and £1175 in 2010. The defendants state that these paladins were paid for some time ago and so no rental should be payable, and that the refuse collection service by the council should be covered by residents' council tax payments. This objection is erroneous. The claimant confirms that the paladins were purchased outright and that no charge is payable to the local authority for refuse collection, and states that these charges actually relate to a monthly large item collection across the estate. These are larger items disposed of by residents and often left in the bin stores and/or communal grounds. The Tribunal recalls seeing just such an item, a bed, during

the inspection. This is a reasonable and indeed sensible estate management task which is permissible under the lease. No challenge is brought to the actual sums involved. They appear unremarkable given the size and nature of the estate. In the circumstances the Tribunal determines that these charges are reasonable, and are payable in full.

Insurance costs for 2009, 2010 & 2011

20. The defendants question what these charges of £30,374, £28,713 and £30,000 respectively relate to as the insurance certificate provided to them states a premium of £13,544. The claimant states that the insurance is a freeholder obligation under the lease and that it elects to break the estate into four discrete areas, being the Vancouver Road, Yuko Road, Winnipeg Road and Ottawa Road blocks. Each of those areas produces its own insurance certificate. The certificate referred to by the defendant is for the Ottawa Road blocks only. In order to ensure value for money Warwick Estates now obtains open market quotations for Canada Fields Management Company and the freeholder accepts whichever quotation and provider is proposed to them provided the cover provided is adequate. The total charge equates to a little over £200 per unit which appears to be reasonable to the Tribunal. In the circumstances the Tribunal is satisfied that these sums are reasonable and determines that they are payable in full.

Management & caretaker fees in 2009, 2010 & 2011

21. The defendants state that the management charges of £59,481, £52,711, £47,220 and the caretaking fee of £30,000 are unreasonable. They dispute that the managing agent carries out a site visit each month and comes on site to deal with any issues which arise as Warwick Estates contend. They argue that both the claimant and the managing agents have not adequately responded to their complaints about the holes in the communal lobby wall and the state of the internal common parts. They report some 50 complaints to Messrs CPM whilst agents and subsequently several telephone calls to Warwick Estates with those calls relating mostly to the holes in the lobby wall. They state that the redecoration of the internal common parts was not carried out until Summer 2011 despite earlier complaints. They argue that, as this was carried out by the caretaker it is unreasonable to charge £6,000 for redecoration in addition to the £30,000 charge for the caretaker himself. The claimants fairly accepted during the hearing that the service provided by Messrs CPM was lacking on occasion hence the appointment of Warwick Estates. This does appear to accord with evidence and information before the Tribunal. The claimant argues that the response to complaints since the appointment of Warwick Estates has been adequate and, whilst they acknowledge that the defendants made one telephone complaint about the lack of maintenance in October/November 2011, they state that the management response has been reasonable. On balance, the Tribunal agrees with the claimant on this.
22. The claimant states that the £30,000 p/a caretaker costs relate to the employment of a caretaker solely for the Canada Estate by the contractor Jagger Support Services, and state that this arrangement was favoured by the

resident directors of the Canada Fields Management Company as they did not wish to incur the employer obligations of directly employing a caretaker. They argue that this delivers value for money and is a reasonable management decision. The Tribunal accepts this.

23. The claimant states that the separate redecoration charge of £6,000 is for the materials to be used by the caretaker when undertaking the three year rolling programme of redecoration to the internal communal parts across the whole of the Canada Estate as noted elsewhere in this Decision.
24. In the circumstances the Tribunal determines that these charges are reasonable and are payable in full.

Deferred payment charges

25. The defendants maintain that there is no liability under the lease for such charges and they are not recoverable. The claimant states that they were levied by Messrs CPN at £29.50 p/a during their appointment for the lessees who wished to settle their service charge liability by monthly instalment payments, but that the lessees have been permitted to pay by monthly instalments without such a charge being levied since Warwick Estate took over management in May 2009. Clause 8.2.2 of the lease requires the defendants to pay the annual estimated service charge on 1st January of each year. Clause 8.3 provides for the subsequent service on the defendants of the certificated account of actual costs and requires that any balance due, or credit to be applied to future service charge liability, to be settled within 21 days. Clause 8.4 imposes liability for interest on late payments of service charges and provides that the joint intention under the lease is that all costs expenses and liabilities shall be subject to reimbursement recoupment or indemnity by the defendants. For the period when Messrs CPN managed the service charge provisions they permitted monthly payments without charging running interest for the resulting deferral periods and only charged interest from the point at which such deferred payments remained unpaid. This provided a more beneficial position for the defendant than is envisaged by the single annual payment on 1st January which could be required under the lease. The Tribunal has carefully considered the service and administration charge provisions in the lease and the lease as a whole and determines that this charge was within the scope of charges envisaged by the lease, and that the sum arrived at was reasonable.

The service & administration charges claimed in the county court proceedings

26. Having determined the issues raised by the defendant in their defence in the county court and statement of case to the Tribunal dated 21st December 2011 (and so determined the component charges of the opening balance and/or of the annual service charge demands) the Tribunal proceeds to determine the service and administration costs claimed in the county court proceedings as particularised in the schedule of account exhibited to the county court claim form and particulars of claim (page 4 of the Tribunal bundle).

The opening balance from the previous agent

27. The statement of account exhibited to the particulars of claim lists this item as “Opening balance from previous agent (20.05.09) £1,253.96”. This sum comprises the charges on the CPM statements of account in the bundle. The total sum claimed is arithmetically correct. The Tribunal finds that the component charges identified are payable and reasonable for the reasons set out elsewhere in this Decision, save for the management charge which is itself a component of the five service charge advance items on those statements of account. On the evidence and information before the Tribunal it takes the view that the management charge levied by Messrs CPM is unreasonably high for the service they delivered which can fairly be described as falling below a reasonable standard in its responses to the defendants questions about the charges being made, whereas Warwick Estates have certainly provided a reasonable service overall. In the circumstances the Tribunal determines that a reasonable management charge for the service delivered by Messrs CPM is £80 per unit for each of the 316 shared entrance properties, totalling £25,280 p/a. It follows that the management charge is reduced by £17 for 2005, £68 for 2006, £68 for 2007, £68 for 2008 and £29 for 2009. The total reduction of £247 leaves the sum of £1,006.96 payable for the “Opening balance from previous agent (20.05.09).

Debt collection costs

28. The debt collection costs (08.09.09) claimed are £143.75. Such costs are clearly payable pursuant to clause 5.9.3 of the lease. The defendants accept they were refusing to pay. They state this was because of the landlord’s failure to repair the holes in the ground floor internal lobby wall, and they way in which it dealt with the flooding in to flat No.43. As a starting point the lease does not permit non-payment in the event of such disputes, however the Tribunal acknowledges that properly reasoned delay in payment may be reasonable where disputes are substantive and are directly relevant to the service charges being demanded. This is not such a situation. The holes in the entrance lobby were behind the entrance door and likely caused by use of that door, and further along the wall and caused by vandalism by third parties. Abigail Teece involved the PCSO and police in an attempt to manage such vandalism which was sensible management response. The issue of repairs was a decision for the resident directors and they did not prioritise it before the defendant made their own repairs. Whilst unfortunate for the defendants this was within the permissible scope of the directors’ decision-making as they represent the interests of the lessees as a whole. The flood in to flat 43 emanated from flat 47 which held on a long lease from the claimant. There is no evidence before the Tribunal to establish that the flooding and so the required remedial works were the responsibility of the claimant, or that costs of remedial works should be met by the landlord’s insurance. The sum is unremarkable for debt collection procedures. It follows that the Tribunal determines that the debt collection costs of £143.75 are payable and reasonable.

2010 Service charge demand

29. The component charges within this service charge demand are payable and reasonable for the reasons set out earlier in this Decision. However, the claimed 'service charge demand (01.01.10)' of £1,022.53 is actually based on the 2010 estimated account (page 94 of the bundle), whereas the actual 2010 service charge costs are approximately 11% below that budget (page 102 of the bundle). The Tribunal therefore discounts the estimated sum of £1,022.53 by 11% and determines that the sum of £910 is payable.

Debt collection costs

30. For the reasons set out elsewhere in this Decision under the heading 'debt collection costs' the Tribunal determines that the items 'Debt collection costs (12.03.10) £29.38' and 'Debt collection costs (29.03.10) £146.88' are payable and reasonable.

Professional fees

31. The 'professional fees (11.08.10) £105.75' are actual costs incurred in instructing Messrs EJ Winter & Sons solicitors to pursue the defendants for unpaid service charges due at that time. For the reasons set out under 'debt collection costs' elsewhere in the Decision this sum is payable and reasonable in the circumstances.

2011 Service charge demand

32. The 'service charge demand (01.01.11) £1,184.36' is based on the estimated account for that account. Whilst the component charges within that service charge demand are payable and the sums claimed appear reasonable for the reasons set out earlier in this Decision the Tribunal cannot determine whether the actual costs are reasonable as the finalised actual figures are not before it and it is determining those costs claimed in the county court proceedings which were issued part way through the account year on 7th July 2011. This will need to be revisited by the parties and, if needs be, the Court following receipt of this Decision.

Late payment fee

33. The item 'admin fee for late payment (23.03.11) £30' is payable pursuant to clause 5.9.3 of the lease and is reasonable given the reasons for delaying payments which are considered elsewhere in this Decision.

Debt referral fee

34. The 'debt referral fee (08.04.11) £150' is an actual fixed fee paid to the debt collection company (Property Debt Collection Ltd) instructed to pursue the defendant's unpaid service charges by telephone calls and letters as appropriate. It is payable pursuant to clause 5.9.3 of the lease and is reasonable

given the defendants' reasons for delaying payments which are considered elsewhere in this Decision.

Court fees

35. The item 'court fees (06.06.11) £175' is said to relate to the issue of the claim in the county court on 7th July 2011. In fact the claim form pleads a court fee of £120 and solicitors costs of £80. As this claim has been transferred to the Tribunal for determination of service and administration charges the issue of county court costs including the issue fee remains a matter for the county court.

POC fee

36. The handwritten endorsement which appears to read "POC Fee £150" actually reads "PDC Fee" as confirmed by Abigail Teece in her witness statement. She confirms this is a further charge made by Property Debt Collection Ltd and states that "there is more than one PDC fee charged as each service year is referred to the debt collection agency if payment is not made in accordance with the lease". The claim issued in the court on 7th July 2011 relies upon the statement of account dated 6th June 2011 which already includes the debt referral fee dated 8th April 2011. There is no apparent basis for the inclusion of an additional debt collection or PDC fee following the preparation of the statement of account on 6th June 2011. There is insufficient evidence before the Tribunal to satisfy it that this administration charge is payable and reasonable. Accordingly, the Tribunal determines on the evidence and information before it that this charge is not payable.

Trace fee

37. The handwritten endorsement which reads "Trace fee £28" is said in Abigail Teece's witness statement to refer to "the administrative work under taken in order to obtain.....copies of the [defendants] lease, leasehold title and a copy of the freehold title". During her oral evidence to the Tribunal it was said to refer to tracing the defendants' home address. Ms. Bruce argued that this latter task was required to confirm the correct address for the county court proceedings. It is therefore unclear what the fee is actually for. If it does relate to the obtaining of the freehold and leasehold documents the copies of those same documents will or should be held by the claimant and/or its managing agent and the Tribunal is not satisfied that it is reasonable to charge a fee to simply access the same. If in fact it relates to confirming the defendants' address for service the Tribunal acknowledges the force in Mr Dearman's argument that, given the service in him of applications for payment, accounts and other 'official charge documentation' and to the fact that they gave rise to correspondence between the parties his address was well known to the claimant. Accordingly, the Tribunal determines that this 'Trace fee' of £28 is not reasonable and not payable.

The costs of the Tribunal proceedings

38. As this matter was a transfer at the direction of the county court there is no application fee due but a hearing fee of £150 has been paid by the claimant. Further, the claimant has incurred representation costs before the Tribunal. As this matter comes before the Tribunal as a transfer from the county court these costs fall to be considered by that court when considering the issue of the costs incurred in the county court proceedings and that court has jurisdiction pursuant to section 20C of the Landlord & Tenant Act 1985 to make an order precluding the claimant from re-charging the costs referable to this Tribunal as a service charge if it considers it just and equitable to do so. Accordingly, this Tribunal does not exercise its own jurisdiction to make such an order.

Stephen Reeder
Lawyer Chair

31st May 2012

Caution

The Tribunal inspected the building and the gardens/grounds 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.