



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

Case Reference : CHI/40UE/LSC/2015/0091

Property : 36 Castlemoat Place, Corporation Street,
Taunton, Somerset TA1 4BB

Applicant : Ms Yvonne McDermott

Representative :

Respondent : Ash Management (Taunton) Limited

Representative : Ashfords LLP

Type of Application : Liability to pay service charges

Tribunal Member : Judge Tildesley OBE

Date and Venue of Hearing : Determination on the Papers

Date of Decision : 8 July 2016

DECISION

Decisions of the Tribunal

- I. The Tribunal is not entitled to hear the application relating to the utility bills for gas and water because it has been the subject of a determination by a court (section 27A(4)(c) of the 1985 Act).
- II. The Tribunal agrees with the Respondent that the Applicant's general point about the steep increase in service charge was not a matter that can be ruled upon by the Tribunal.
- III. The Tribunal is satisfied that the audit and accountancy charge for the year ended 31 May 2015 was reasonably incurred and that the services provided were to a reasonable standard.
- IV. The Tribunal is satisfied that the charges for window cleaning for the years ended 31 May 2014 and 2015 were reasonably incurred and that the services provided were to a reasonable standard.
- V. The Tribunal finds that the charge of £35 plus VAT for carrying out a weekly test of the fire alarm was reasonable.
- VI. The Tribunal determines the costs of £10,332.50 plus VAT for the roof repairs were reasonably incurred.
- VII. The Tribunal finds the amount spent by the Respondent on solicitors' costs in pursuing the claim against the Applicant was not reasonable and disproportionate to the issues involved. The Tribunal, therefore, determines that the legal costs of £2,400 plus fixed costs of £366 had been reasonably incurred by the Respondent in pursuing its claim against the Applicant. The Tribunal, therefore reduces, the service charge for legal fees for the year ended 31 May 2015 by £2,598.60.
- VIII. The Tribunal is not in a position to make findings on the transactions recorded in the Respondent's current account which have been identified by the Applicant.
- IX. The Tribunal disallows the director's travel expenses in the sum of £378.08 in respect of the service charge for the year ended 31 May 2016.
- X. The Tribunal does not make an order under Section 20C of the Landlord and Tenant Act 1985.

The Application

1. The Applicant sought a determination under Section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether service charges were payable for the period from March 2011 to date.
2. The Applicant also sought an order for the limitation of the landlord’s costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985.
3. On 4 January 2016 the Tribunal issued directions which set out a timetable for the disposal of the matter and indicating that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the date of receipt of the directions.
4. The Respondent objected to the application being dealt with on the papers and required an oral hearing. In view of this and that the Respondent had now instructed solicitors the Tribunal issued further directions on 22 January 2016.
5. The Applicant and Respondent supplied their statements of case to each other on 10 March 2016 and 14 April 2016 respectively. The Applicant sent a reply to the Respondent’s statement of case which was received on 20 April 2016 [503-504].
6. The Tribunal ordered a case management hearing by conference call which took place on 5 May 2016. The Tribunal questioned whether an oral hearing was still appropriate in view of the evidence submitted by both parties. The Applicant indicated her consent to the matter being dealt with on the papers. The Respondent did likewise in a letter dated 12 May 2016.
7. The Tribunal based its determination on the bundle of documents prepared by the Respondents. A copy of which was sent to the Applicant. References to documents in the bundle are put in square brackets.
8. The bundle included witness statements of David Edward Masterton Burns who was one of the four directors of the Respondent [388-397] and of Christine Glover a partner of AC Mole and Sons which carried out the audit of the service charge accounts [487-489].

The Law

9. The Tribunal has power under Section 27A of the 1985 Act to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is

payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant or determined by a Court.

10. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
11. Under S.20C of the 1985 Act a tenant may apply for an order that all or any of the costs incurred in connection with the proceedings before a Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant specified in the application.
12. The relevant legal provisions are set out in the Appendix to this decision.

The Background

13. The property is a studio flat in a development comprising of 53 residential apartments and five commercial units located in Taunton town centre.
14. The Applicant purchased the flat as an investment property in February 2011.
15. The property is subject to a lease for a term of 125 years from 1 January 2008, and made between Ash Homes (Taunton) Limited in Administrative Receivership as Lessor, Ash Management (Taunton) Limited as the management company, and the Applicant as lessee.
16. The Applicant informed the Tribunal that Ash Management was set up in August 2009 and operated from the same address as Ash Homes. According to the Applicant, Ash Homes sold its subsidiary Ash Management to Bridge House (Taunton) in December 2013. Mr Burns and Mr Goodland were recorded as directors of Ash Management in the service charge accounts for the year ended 31 May 2014.
17. The Applicant stated that Whitton Laing of Exeter were the managing agent for the property until they were replaced by Blenheims on 1 May 2015
18. Under the lease the management company covenants with the lessor and the lessee to deal properly and conscientiously with all aspects of the management and administration of the Estate. Clause 5 to the lease defines the responsibilities of the management company.
19. Under clause 1.17 of the lease the Applicant is required to contribute 1.14 per cent of service charge expenditure that relates to the whole

building and 1.64 per cent of service charge expenditure that relates to the residential flats only.

20. Under clause 1.18 service charge expenditure is defined as all expenditure incurred by the management company in carrying out its obligations under clause 5 of the lease.

The Issues

21. The Applicant identified nine issues which she wished the Tribunal to determine.

Issue One: Utility Bills

22. The Applicant argued that she was not liable to pay the utility bills (water and gas) for the property.
23. The Respondent explained the relevant utility company invoiced it for the cost of all heating and water utilities for the residential flats within the development. The Respondent in turn billed the leaseholders for their use of water and gas which was measured by means of sub-meters for each flat.
24. The Applicant contended that she should only be responsible for payment of the utility bills when the property was not occupied. The Applicant maintained that the Respondent should invoice her sub-tenants direct because they were using the utility supplies. The Applicant also stated that the Respondent's administration of the utility supplies was chaotic with meters only being read twice a year. Finally the Applicant challenged whether the payment of the utility charges was recoverable under the lease as a service charge.
25. The Respondent's primary position was that the Tribunal had no jurisdiction to determine the issue.
26. The Respondent referred to proceedings before the County Court where judgment was entered on 12 February 2015 against the Applicant in the total sum of £4,680.31 [482]. The Respondent's claim related to the Applicant's liability to pay the sum of £2,034.95 being the amount of unpaid utility costs of the property outstanding from 16 May 2011 to 11 June 2014 [476]. The Respondent relied on clause 3.2 of the lease to establish the Applicant's liability to pay the utility bills [477].
27. The Respondent's plea of no jurisdiction was founded on section 27A(4)(c) of the 1985 Act. This provides that no application for determination of service charges may be made in respect of a matter which has been the subject of determination by a court.
28. In the alternative the Respondent argued that it would be an abuse of process if the Tribunal allowed the Applicant to raise this issue.

29. The Applicant pointed out that the judgment of 12 February 2015 was made in her absence. The Applicant had sought leave to appeal the judgment.
30. On 17 May 2016 HHJ Murfitt sitting at the County Court at Chelmsford refused the Applicant's request for the judgment of 12 February 2015 to be set aside [651].
31. In connection with the Applicant's permission for appeal HHJ Murfitt directed the Applicant to file and serve a transcript of the hearing and judgment on 12 February 2015 within 21 days, and upon receipt the case shall be restored before HHJ Murfitt for urgent consideration of permission to appeal on paper.
32. Although the Applicant's permission to appeal has not yet been determined, the Tribunal takes the view that it has no jurisdiction to decide the "utility bill" issue. The Tribunal considers the judgment of 12 February 2015 remains in force until overturned on appeal. In which case the Tribunal is not entitled to hear the application relating to the utility bills for gas and water because it has been the subject of a determination by a court (section 27A(4)(c) of the 1985 Act.
33. The Tribunal also has doubts about whether the Respondent's recovery of the charges for water and gas for the individual flats from the leaseholder is a service charge within the meaning of section 18 of the 1985 Act. In the Tribunal's view, the Respondent is not providing a service when it collects the charges from individual leaseholders. Instead the Respondent is simply enforcing its rights under clause 3.2 of the lease.
34. In such circumstances the Tribunal would have no jurisdiction under section 27A of the 1985 Act to determine the Applicant's liability to pay the charges for water and gas. In order for the Tribunal to have jurisdiction, the Tribunal must be satisfied that the purported charges are authorised by contract (the lease) and that they meet the definition of service charge in section 18 of the 1985 Act.
35. The Court is the correct forum for determining disputes over contractual liabilities which do not involve service charges.
36. The Tribunal's doubt about whether the charges for water and gas constitute a service charge is another reason for the Tribunal to decline jurisdiction in this matter in favour of the Court.

Issue Two: Steep Rise in Service Charge

37. The Applicant requested an explanation for the increase in service charge from £24.51 per calendar month in 2011 to £42.61 per month from July 2014.

38. The Applicant said the service charges for the property were one of the most costly in the West Country and disproportionately high when compared with the level and scope of services offered to leaseholders.
39. The Respondent's position was that the Applicant had not particularised the charges she was challenging despite the Tribunal directing her to set out in a schedule the item and amount in dispute for each service charge year under dispute and the reasons why.
40. The Applicant in her schedule [209] had simply said "increase in service charge 2014": "insufficient explanation of increase and economies". The order requested by the Applicant in her statement was that "*it would be helpful if Ash Management would produce clear and transparent guidance*" [268].
41. Mr Burns explained that the rise in service charge for the year ending 31 May 2015 as compared with the previous year was due to an increase of £35,000 in general repairs and maintenance. The main areas of additional expenditure were the costs associated with the replacement of the water pumps and with the investigation of water leaks [390-391].
42. Mr Burns stated that some of the increase was funded by a drawdown on the sinking fund (£9,300) and an extra service charge of £15,000 which was discussed at the leaseholders' meeting on 19 December 2014 [409].
43. The Tribunal agrees with the Respondent that the Applicant's general point about the steep increase in service charge was not a matter that can be ruled upon by the Tribunal.

Issue Three: Auditing and Accountancy Costs

44. The Applicant challenged the sum of £4,968 for audit and accountancy costs for the year ended 31 May 2015. The Applicant pointed out that this was a large increase upon the costs of £1,940 recorded in the previous year accounts.
45. Ms Glover of AC Mole & Sons in her witness statement explained that the figures recorded in the two sets of accounts for the fees for auditing the accounts and providing monthly payroll services were distorted by the use of accruals.
46. Ms Glover stated that her firm's fees exclusive of VAT for the two years in question were £3,290 and £3,200 [488]. The VAT inclusive fees were £3,948 and £3,840 respectively. This compared with the fee of £3,100 plus VAT (£3,720) charged by the previous auditor, Albert Goodman LLP for the year ended 31 May 2013.
47. According to Ms Glover, the fees charged for 2014 and 2015 did not represent the actual costs of the services provided by her firm. Ms Glover supplied a breakdown of the costs for the respective years.

48. The breakdown of costs for the year ended 31 May 2014 was £3,290 for 46 hours which were spent on Preparation and Audit of Service Charge Accounts, Preparation of Statutory Accounts, Meeting with Director to discuss and finalise Accounts, Correspondence, and Processing Payroll [490].
49. In contrast the breakdown for the year ended 31 May 2015 was £5,629 for 98 hours. The principal reasons for the increased hours in 2015 were the change in managing agent, and the provision of information in connection with disputes [490].
50. Ms Glover stated that the figure of £1,940 in the 2014 accounts included her firm's accrual for 2014 which at that stage had been estimated at £1,500, and the balance of the previous auditor's fees of £440.
51. Ms Glover said the figure of £4,968 in the 2015 accounts included her firm's actual fee note for 2014 of £3,948 less opening accrual of £1,500 which equalled £2,448 plus an accrual of £2,520 for 2015.
52. The Tribunal accepts Ms Glover's evidence which was not challenged by the Applicant who had a right of reply to the Respondent's case. The Tribunal finds there was no substantial increase in the actual fee for audit and accountancy services in 2015 from the previous year. The fee charged in 2015 was in line with the fee charged by the former auditor Albert Goodman LLP for the year ended 31 May 2013. The Applicant produced no alternative quotations for the audit and accountancy services provided by AC Mole and Sons.
53. The Tribunal is satisfied that the audit and accountancy charge for the year ended 31 May 2015 was reasonably incurred and that the services provided were to a reasonable standard.

Issue Four: Window Cleaning Bills

54. The Applicant wished to establish that all window cleaning charges payable through the service charge for 2014 and 2015 were purely for residential units.
55. The charges for window cleaning were £3,310 and £2,350 for the years ended 31 May 2014 and 31 May 2015 respectively.
56. Mr Burns explained that the windows were cleaned at two monthly cycles at £470 per cycle. The reason for the disparity between the two years was that the charge for 2014 included the invoices for seven cycles, whereas the charge for 2015 incorporated the invoices for five cycles. Mr Burns attached five invoices from O'Keefes Cleaning Services [462-466] to substantiate the charges.

57. Mr Burns produced the Service Charge Certificate for the years in question which showed the apportionment of the charges for window cleaning for the residential and commercial units. In 2014 the breakdown was £2,371.28 (residential) and £938.72 (commercial) [452]. In 2015 the breakdown was £1,683.54 (residential) and £666.46 (commercial) [458].
58. Mr Burns explained that the window cleaning charges were allocated to the expenditure for the whole building which produced an apportionment of 71.64:28.36 between residential and commercial.
59. Mr Burns stated the Respondent's managing agents had asked the window cleaning contractor to separate out the costs associated with the residential flats from those incurred on the commercial units. The contractor considered that the residential units should in future be charged £2,040 whilst the charge for the commercial units should be £780 which constituted 27.66 per cent of the total charges for window cleaning.
60. Mr Burns pointed out that the Respondent had secured lower charges for window cleaning than originally anticipated when the development was first occupied. At the time the expected costs for window cleaning were £4,500. Mr Burns said that the lower costs had been achieved by using suppliers who were not VAT registered, and by keeping the charges under review. Mr Burns expected the window cleaning costs for the whole building in the coming financial year to be in the region of £3,000.
61. The Tribunal is satisfied with Mr Burns' explanation of the window cleaning costs. The Applicant has adduced no evidence to challenge the reasonableness of the charge. The Tribunal considers that Mr Burns has answered the Applicant's query regarding the apportionment of the costs between the residential and commercial units.
62. The Tribunal is satisfied that the charges for window cleaning for the years ended 31 May 2014 and 2015 were reasonably incurred and that the services provided were to a reasonable standard.

Issue Five: Alarm Testing

63. The Applicant believed that the Respondent had been paying an electrician £35 plus Vat per week since 25 June 2012 to carry out a fire alarm test.
64. The Applicant exhibited a letter from a Jeremy Acreman to Whitton Lang, the previous managing agents, dated 25 June 2012 [273] which set out his charges for a weekly inspection of the fire alarm and for a six monthly inspection of the system. The six monthly inspection included the operation of manual call points, smoke devices, auxiliary outputs with 50 per cent of the system tested every six months. The charge for the six monthly inspection was £175.

65. The Applicant considered the weekly charge of £35 plus Vat excessive. The Applicant asserted that it was unnecessary to employ a qualified electrician to carry out such a test which involved simply pressing a button. The Applicant maintained that the task could be carried out by the handyman on site or another tenant.
66. Mr Burns said that the previous managing agent had initiated a weekly routine in relation to fire alarm testing in order to comply with best practice under The Regulatory Reform (Fire Safety) Order 2005.
67. Mr Burns pointed out that the current managing agent had initiated a new fire risk assessment to be carried out at the building and that he would ensure the implementation of the assessment's recommendations. Mr Burns, however, was of the view that whatever the outcome of the assessment the weekly fire alarm testing by a qualified electrician should continue.
68. The Respondent in its statement of case said that the building comprised 53 residential units and five commercial units. According to the Respondent, the presence of commercial units introduced additional fire risk factors which would not be present in a residential only block.
69. The Respondent argued the Applicant had not challenged the Respondent's legal obligations relating to fire safety. Also the Applicant had not questioned the frequency of the testing, and had not adduced evidence of the charge she considered reasonable for performing the weekly inspection. According to the Respondent, the Applicant's challenge was restricted to the identity and qualifications of the person carrying out the task. The Respondent considered the Applicant's suggestion that the testing of the fire alarm could be entrusted to a handyman or a resident tenant untenable.
70. The Tribunal observes that the Applicant did not dispute the necessity for weekly testing of the fire alarm system. The Tribunal considers the testing should be carried out by a competent person. The Tribunal is satisfied on the evidence that the Respondent's decision to engage a qualified electrician as the competent person was a reasonable one in all the circumstances. The Respondent, however, should not be fixed on the choice of a qualified electrician if the outcome of the current fire risk assessment suggests otherwise. The Applicant adduced no evidence to suggest that a charge of £35 plus VAT was excessive for such a task performed by a competent person. In those circumstances the Tribunal finds that the charge of £35 plus VAT for carrying out a weekly test of the fire alarm was reasonable.

Issue Six: Repairs to the Roof

71. The Applicant questioned the £10,000 which had been allocated to the roof project in the 2016 budget estimate. The Applicant was of the view that the works to the roof were rectifying inherent defects in its construction. The Applicant suggested that the costs of these works should either be paid for by the original builders (Gadds Properties) or covered by the NHBC agreement. The Applicant believed that NHBC had refused to meet the costs because the Respondent had failed to report the defects in timely manner. In those circumstances the Applicant maintained that she should not pay increased service charges because of the Respondent's inefficiency.
72. Mr Burns supplied six invoices to a total value of £10,332.50 in connection with the works done to the roof which were completed in July 2015 [467-472]. The £10,332.50 costs were apportioned £9,050 to the roofing contractor, and £1,282.50 to the surveyor. The Tribunal understands that further works are necessary to the parapets to stop further damage to the property by water ingress.
73. Mr Burns stated that NHBC had provided verbal confirmation to a fellow director that the claim under NHBC would be upheld in relation to the leaking parapets and that NHBC would cover some of the Respondent's costs in investigating the leaks that were occurring.
74. The Respondent's position was that it had taken steps to address the problems with the roof. Further the Respondent would continue with its efforts to recover as much expenditure as it could from NHBC for which due credit would be given to the leaseholders. The Respondent, however, was entitled to recover the costs of the works through the service charge unless and until any recovery was made from NHBC.
75. The Respondent and Mr Burns did not deal directly with the Applicant's contention that the Respondent had failed to notify NHBC in a timely manner. Ms Robinson of the managing agent advised leaseholders that she had spoken with Stephen Whiteley (claim investigator of NHBC) who said there was no evidence of notification of the water ingress problems through the parapet walls within the liability period ending in 2012 [240].
76. The Tribunal takes the view that the "NHBC issue" is not a matter that falls within its purview. The Tribunal does not have sufficient information to decide whether the Respondent had been negligent in not pursuing a timely claim with NHBC. In any event it is the Court not the Tribunal which determines such issues.
77. The Tribunal is concerned with the reasonableness of the Respondent's decision to repair the roof and whether the costs of those works fell within the range of reasonable prices for the same works.

78. On the evidence the Tribunal is satisfied that the Respondent had to carry out repairs to the roof to prevent further damage to the property by water ingress. The Tribunal also finds there was no evidence to suggest that the costs incurred by the Respondent in effecting those repairs went beyond the realm of reasonableness. Thus the Tribunal determines the costs of £10,332.50 plus VAT for the roof repairs were reasonably incurred.

Issue 7: Solicitor's Bills

79. The Applicant was concerned with the Respondent's readiness to engage solicitors for tasks which could easily be carried out on an administrative basis or settled by straightforward communication.

80. The Applicant referred to the costs incurred by the Respondent in pursuing its claim against her through the County Court for unpaid utility charges. The Applicant said that Mr Burns had amassed a solicitor's bill of £4,998.60 for a debt of £500, which in her view was disproportionate particularly as it was for a small claim. The Applicant pointed out that Mr Burns represented the Respondent at the hearing, and that the legal costs of almost £5,000 was for preparation of the claim.

81. Mr Burns produced the schedule of legal costs for the County Court proceedings in the sum of £4,998.60 [483-486]. The schedule showed the Respondent had been represented by a solicitor at an hourly rate of £145 and a trainee solicitor with an hourly rate of £125. Their respective charges were £3,465.50 and £700 plus VAT of £833.10.

82. The Judgment of the County Court dated 12 February 2015 required the Applicant to pay the Respondent £2,400 in legal costs and £366 in fixed costs in respect of the Respondent's claim for unpaid utility bills. The Applicant was ordered to pay the costs because the Judge found that she had acted unreasonably by not attending the hearing of a claim that she disputed pursuant to CPR 27.14 (2)(g).

83. Mr Burns said the Judgment left a balance of £2,598.60 still owing to the Respondent's solicitors.

84. The Respondent stated that it was entitled to recover its legal expenses through the service charge under clause 5.11 of the lease, which provides that

"All other expenses (if any) reasonably incurred by the management company in and about the maintenance and proper and convenient management and running of the estate including in particular but without prejudice to the generality of the foregoing any legal or other costs bona fide justifiably incurred by the management company for the benefit of the lessees of the properties generally and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease of any

part of the estate (1) or any claim by or against any lessee or tenant thereof (2), or by any third party against the management company as owner lessee or occupier of any part of the estate (3)".¹

85. The Respondent said that it had incurred no legal expenditure against the service charge account in the year ended 31 May 2014.
86. The Respondent recorded legal expenses of £4,292 in the year ended 31 May 2015. This was made up of a gross figure of £7,257 for costs incurred in that period against which the County Court judgment balance of £2,965 was set off².
87. The gross amount of £7,257 included the £4,998.60 incurred in the County Court proceedings against the Applicant. The remainder had been spent on legal matters unconnected with the Applicant involving two other leaseholders.
88. The Respondent argued that it was entitled to engage solicitors to sue the Applicant for her breach of the lease. According to Mr Burns, the implications of the case were far reaching if the Applicant was successful with her defence that she was not liable to pay the charges for water and gas which would have had the potential to bankrupt the Respondent.
89. The Tribunal finds the Respondent has the authority under the lease to recover through the service charge legal costs incurred in taking proceedings against a leaseholder. Clause 1.18 defines service expenditure as meaning all expenditure properly incurred by the management company in carrying out its obligations as set out in clause 5 in the lease. Clause 5(11) includes legal costs incurred by the management company in any claim against a lessee.
90. The issue for the Tribunal is whether the quantum of the legal costs (£4,998.60) incurred by the Respondent in preparing its case against the Applicant in the County court was reasonable.
91. The Tribunal finds the legal issues involved in the claim were straightforward and did not involve complex legal questions. The amount involved was modest. The claim had been allocated to the small claims track. The costs related solely to the preparation of the case. The Judge had ordered unreasonable costs of £2,400 towards the Respondent's legal expenses plus fixed costs of £366 against the Applicant.
92. The Tribunal finds the amount spent by the Respondent on solicitors' costs in pursuing the claim against the Applicant was not reasonable and disproportionate to the issues involved. The Tribunal considers the

¹ The Tribunal has inserted the numbers to indicate the various elements for which legal charges can be recovered through the service charge.

² The Applicant paid £1,715.75 of the judgment debt leaving a balance of £2964.56 [590].

amount of costs ordered by the County Court acts provides a benchmark for assessing the reasonableness of the costs incurred.

93. The Tribunal, therefore, determines that the legal costs of £2,400 plus fixed costs of £366 had been reasonably incurred by the Respondent in pursuing its claim against the Applicant. The Tribunal, therefore reduces, the service charge for legal fees for the year ended 31 May 2015 by £2,598.60. If the Applicant pays the £2,766 as ordered by the Court, that amount should be credited to the service charge account.

Issue Eight: Unexplained Transactions on the Respondent's Current Account

94. The Applicant requested explanations from the Respondent for various transactions on the Respondent's current account during the period April 2014 to November 2015. The Applicant pointed out that this period corresponded with the steep rise in service charges.
95. The highlighted transactions included payments to and from Bridge House and Whitton and Laing, payments to Ashfords solicitors, to an insurance broker and to a Janet Gompertz, and for PAYE.
96. The Respondent declined to answer the queries raised by the Applicant. The Respondent took the view that the Applicant had failed to identify the items of service charge expenditure which she contended were unreasonable. According to the Respondent, it was not obliged to account generally to the Applicant on its business activities or operations.
97. Mr Burns similarly declined to deal with this issue in his witness statement. Mr Burns said that the transactions shown on the Respondent's business account were not strictly relevant to the Applicant's challenge to the service charge accounts.
98. The Tribunal observes the unhelpful responses of Mr Burns' and the Respondent to Issue Eight were in sharp contrast to their constructive responses to the previous seven issues raised by the Applicant. The Tribunal considered whether to direct the Respondent to provide answers to the questions posed by the Applicant but decided it was disproportionate to the issues in dispute, and would unnecessarily elongate the proceedings.
99. The Tribunal decides that the Applicant has not demonstrated the relationship of the highlighted transactions with the service charges under dispute. The Tribunal is not in a position to make findings on the transactions recorded in the Respondent's current account which have been identified by the Applicant.

Issue Nine: Directors' Expenses

100. The Applicant was concerned that she had not been provided with an itemised breakdown of expenses claimed by the Respondent's directions against the service charge.
101. The Applicant stated that some of the highlighted transactions referred to under Issue Eight were in the name of an individual director.
102. The Applicant challenged an expense claim submitted by Mr Burns which was dated 10 June 2015 for travel expenses of £378.08 in connection with return journeys from Strasbourg to London and from Apsley to London. The Applicant was taken aback that Mr Burns should think it acceptable that he was entitled to recover such expenses from the leaseholders. The Applicant also considered that even if the journeys were justified the amount claimed was excessive. The Applicant carried out a simple internet search which revealed that flights with Easy Jet to Strasbourg could be obtained for £50 one way.
103. The Respondent and Mr Burns declined to answer the Applicant's concerns about director's expenses on the ground that they were not listed in her schedule and not relevant to the dispute on service charges.
104. The Tribunal is not impressed with the responses of the Respondent and Mr Burns. The Tribunal notes that director's expenses formed part of service charge expenditure.
105. Blenheims, the current managing agent, in a written answer to questions raised in advance of the Owner's Meeting on 30 November 2015 said:

"The directors may submit claims relating to their expenses in carrying out work on behalf of the Company and receipt for these costs are provided prior to payment being made. These costs form part of the service charge expenses and we would not expect them to be itemised" [236].
106. ~~Blenheims at the owners meeting said that the expenditure item "Management Charges" in the service charge account for the year ended 31 May 2015 related to Director's remuneration. According to Blenheims, this would not be applicable going forward [238]. There was a separate expenditure head for "Managing Agent's Fees".~~
107. The Tribunal notes the expenditure recorded under "Management Charges" was £1,894 and £3,335 for years ended 2014 and 2015 respectively.
108. There was no expenditure head of "Management Charges" in the 2012 and 2013 Accounts

109. The Tribunal notes that clause 5.10 of lease only permits the management company to charge a reasonable management fee if no managing agents are employed.
110. The Tribunal is satisfied that the Respondent and Mr Burns had no valid excuse for not responding to the Applicant's concern regarding directors' expenses. Their approach to Issues Eight and Nine was inconsistent with the one taken to the earlier issues in which they willingly supplied the evidence to substantiate their points of view.
111. The Tribunal finds the Respondent put forward no justification for treating the travel expenses of £378.08 as legitimate service charge expenditure. The Tribunal, therefore, disallows travel expenses in the sum of £378.08 in respect of the service charge for the year ended 31 May 2016.
112. The Tribunal makes no other ruling on directors' expenses and remuneration. The Tribunal, however, suggests the Respondent may wish to give consideration to whether the lease authorises their recovery through the service charge.

Application under S20C of the 1985 Act

113. In the application form the Applicant applied for an order under Section 20C of the 1985 Act.
114. Section 20C is concerned with whether the Respondent is entitled to recover its costs in connection with the Tribunal proceedings through the service charge. If the Respondent is so entitled, the sum claimed for costs is subject to any challenge under section 19 of the 1985 Act on the grounds of reasonableness.
115. The Tribunal is satisfied that clause 5(11) of the lease gives authority to the Respondent for recovering the costs incurred in connection with the Tribunal proceedings.
116. The criterion for deciding whether an order under section 20C should be made is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all the parties as well as the outcome of the proceedings. Under Section 20C the Tribunal is given a power to deprive a landlord of a property right. If the landlord has abused its rights or used them oppressively section 20C is a salutary power, which may be used with justice and equity.
117. The Applicant came to the Tribunal with unrealistic expectations of what it could do to resolve her dispute with the Respondent. The Applicant had three questions for the Tribunal³, only one of which (the service charge question) fell within the jurisdiction of the Tribunal.

³ Does the Respondent have any contractual right to control utilities?
Are the increased service charges reasonable? Was I mis-sold this flat?

118. The Tribunal's approach in respect of service charge disputes is to examine the individual expenditure heads that make up the service charge for the particular period. The Tribunal is reliant on the parties for the facts when determining the reasonableness of a particular charge. In this respect the Applicant's approach was on the whole too general. Her assertion that service charges had increased substantially was not sufficient in itself to justify a finding of unreasonableness. This is why the Applicant was largely unsuccessful with her application.
 119. The Tribunal considers the Applicant conducted the proceedings in a straightforward and common-sense manner which was in tune with the less formal nature of the Tribunal. As far as the Tribunal is concerned the Applicant complied with directions. The Applicant also agreed to a hearing on the papers.
 120. The Respondent likewise co-operated with the Tribunal. The Respondent applied for extensions of time when it could not meet the initial directions due to Mr Burns being on holiday. The Respondent supplied an indexed and well presented bundle of documents. The Respondent originally requested an oral hearing but realised after the telephone conference on 5 May 2016 that the application was suitable to be dealt with on the papers.
 121. The Respondent responded constructively to the Applicant's case except the last two issues. The Respondent at times gave the impression of putting the Applicant to proof which was not necessary having regard to the nature of the dispute. The Respondent, however, did not abuse its authority under the lease and at no times acted oppressively in the conduct of its case.
 122. Having regard to the facts that the Applicant was largely unsuccessful with her Application, and that the Respondent did not act oppressively the Tribunal declines to make an order under section 20C of the 1985 Act.
 123. Despite no section 20C order being made, the Applicant or any leaseholder is entitled to challenge the amount of the legal costs recovered through the service charge on the grounds of reasonableness, which would require a new application under section 27A of the 1985 Act.
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RIGHTS OF APPEAL

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

Section 19

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

Section 27A

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

- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

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

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

