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

**Case Reference** : CHI/23UL/LSC/2016/0091

**Property** : Flats 7, 25 and 36 Central Walk, Station Approach, Epsom, Surrey KT19 8BY

**Applicant** : (1) Chris Rankin (2) Concepcion Gell (3) May Joyce Gibson (tenants)

**Representative** : Mr WJD Barker of Bampton Management

**Respondent** : Central Walk RTM Company Ltd (RTM Company)

**Representative** : Ms K Gray of counsel instructed by TWM Solicitors LLP

**Type of Application** : Correction certificate

**Tribunal Member(s)** : Judge M.A. Loveday

**Date and venue of hearing** : -

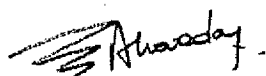
**Date of Decision** : 4 August 2017

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CORRECTION CERTIFICATE

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I hereby certify that, under rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, due to a clerical error, accidental slip or omission, corrections should be made to the Tribunal decision dated 10 July 2017 in the form of decision attached.



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**Judge MA Loveday**

4 August 2017

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**Representative** : Mr WJD Barker of Bampton Management

**Respondent** : Central Walk RTM Company Ltd (RTM Company)

**Representative** : Ms K Gray of counsel instructed by TWM Solicitors LLP

**Type of Application** : Landlord and Tenant Act 1985 s.27A (service charges)

**Tribunal Member(s)** : Judge Mark Loveday  
Mr Helen Bowers MRICS

**Date and venue of hearing** : 13 April 2017, Guildford Law Courts and reconvene on 11 May 2017

**Date of Decision** : 10 July 2017

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**DETERMINATION**

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## **Background**

1. This is an application under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") to determine liability to pay service charges under leases of three flats at 7, 25 and 36 Central Walk, Station Approach, Epsom, Surrey KT19 8BY. The Applicant lessees seek a determination in respect of the 2014/15 and 2015/16 service charge years. The Respondent is an RTM company which has had the right to manage the block since 2007. The freehold has, however, recently been transferred to Central Walk Ltd, a lessee owned management company.
2. Directions were given on 23 November 2016 and 8 February 2017 and a hearing took place on 13 April 2017. At the hearing, the Applicants were represented by Mr WJD Barker of Bamptons Management and the Respondent was represented by Ms K Gray of counsel. Due to the late hour when the hearing concluded, the Tribunal had to consider its decision on 11 May 2017. Hence the delay in providing this determination.

## **Inspection**

3. The Tribunal did not inspect the property.

## **Facts**

4. The essential facts and history are not in dispute and can be taken from the witness statements.
5. The property comprises part of a site on the southern side of Station Approach almost opposite the main railway station at Epsom. The whole site, which includes commercial premises and an NCP Car Park, is subject to a headlease. Central Walk itself is a purpose-built block of 64 flats completed in 2003. 16 of the flats are subject to a further lease granted to Thames Valley Housing Association

and these units are apparently let on shared ownership sub-leases. The remaining 48 'market' flats are let on underleases.

6. The Respondent acquired the Right to Manage in 2007. The Applicants are lessees of three of the 48 flats referred to above (namely Flats 36, 7 and 25 respectively). However, many of the disputes in this matter specifically related to the Second Applicant, Ms Gell. The Second Applicant works as a property manager and is a Director of Diamond Managing Agents Ltd ("Diamond"). By her own admission, she was one of the original moving lights behind the acquisition of the right to manage and between 2006 and 2008 she was also a Director of the Respondent. She acted as secretary of the Respondent between 2007 and 2015, and during this time Diamond was retained as managing agent. The relationship ended in 2015, when the Second Applicant was not re-appointed as secretary and Diamond's employment was terminated. Counsel for the Respondent accepted that since that time "the relationship between [the Second Applicant] and the directors of [the Respondent] was not a happy one". The present application effectively relates to service charges for the period after Diamond ceased to act. It is a regrettable feature of this matter that it is therefore effectively a dispute between one group of lessees and another group of lessees about the management of the block.
7. Following the termination of Diamond's retainer, the Respondent engaged Bartholomews as managing agents until those agents ceased acting in August 2016.
8. On 15 February 2016, a requisite majority of qualifying tenants within the block exercised the right of first refusal under Pt.1 of the Landlord and Tenant Act 1987, and nominated Central Walk Ltd as nominee purchaser. In March 2016, Central Walk Ltd and the Respondent agreed to transfer management responsibilities to the former under s.105(5) of the 2002 Act. Notwithstanding the transfer, the application was brought against the former RTM Company

- but no issue was taken by either side as to whether it was the correct party to be joined.

### **The Lease**

9. The Tribunal was provided with an unexecuted draft of a lease of Flat 7 made between Thirlstone Centros Miller Ltd and the First Applicant. Office copy entries for Flat 7 show that this lease was granted on 26 November 2003. The Tribunal was told the lease for Flat 7 was in similar form to the leases of the other two flats
  
10. The material provisions of the Lease appear in Appx.2 to this decision. However, in summary there is an obligation at clause 1.1 for the lessee to pay an interim service charge in advance on 29 September and 25 March in every year in respect of the landlord's anticipated relevant costs. There is a further obligation in para 1.2 of Sch.5 for the lessee to pay a balancing service charge (described as the "Lessee's Proportion") "within 14 days of service by the Lessor on the Lessee of a certificate" in specified form. The landlord's recoverable relevant costs are listed in Sch.7 to the lease. The Tribunal was informed that the relevant apportionments to be applied to the Sch.7 relevant costs to arrive at the service charges were respectively 1.32% for Flat 36, 1.63% for Flat 7 and 2.03% for Flat 25.

### **The service charges in dispute**

11. As explained above, the application challenged liability to pay service charges for the years ending 31 August 2015 and 31 August 2016.
  
12. Despite the parties having prepared a substantial hearing bundle, that bundle solely concentrated on the relevant costs incurred by the landlord and little thought had been given to the precise nature of the "service charges" (as defined by LTA 1985 s.18) which were supposedly in dispute. In response to a direction from the Tribunal, the parties produced a supplemental bundle which included

the relevant Applications for Payment. The material items are as follows:

<i>Application for payment</i>	<i>Flat 7</i>	<i>Flat 25</i>	<i>Flat 36</i>	<i>Description</i>
04.11.14	£486.47	£605.85	£393.95	Interim Service Charge 1 Oct 2014 to 31 Mar 2015
18.05.15	£515.67	£642.21	£417.59	Interim Service Charge 1 Apr 2015 to 30 Sep 2015
23.09.15	£515.67	£642.21	£417.59	Interim Service Charge 1 Oct 2015 to 31 Mar 2016
10.06.16	£531.14	£661.47	£430.12	Interim Service Charge 1 Apr 2016 to 30 Sep 2016

13. It therefore became clear that:

- (a) The only demands for payment related to interim service charges - or what are described in LTA 1985 s.19(2) as service charges "payable before the relevant costs are incurred".
- (b) Those interim service charges related to three rather than two service charge years, namely 2014-15 (part), 2015-16 and 2016-17 (part).
- (c) The interim service charges were based on three annual service charge budgets prepared by the Respondent's managing agents. Copies of these budgets were included in the Supplemental Bundle, and they itemised the estimated relevant costs which the agents anticipated would be incurred in the relevant service charge years under various headings.

14. Having said that, the actual relevant costs incurred by the Respondent for two of these three service charge years was known. The bundle included service charge accounts for the years ended 31 March 2015 and 2016 prepared by accountants MJ Hosmer and both signed by the Directors of the Respondent on 15 October 2016. Those accounts set out details of the relevant costs actually

incurred by the Respondent under a number of headings. It was explained to the Tribunal that no demands for any further charges had been made under para 1.2 of Sch.5. The Respondent had instead made up the excess of actual expenditure over the interim service charges demanded by drawing on a reserve fund.

15. The Applicants' arguments are set out in their Statement of Case dated 12 January 2017 and a detailed Schedule of Disputed Service Charges attached to this Statement of Case<sup>1</sup>. Mr Barker expanded upon this in oral submissions at the hearing. The Respondent's arguments are set out in its Statement of Case dated 8 February 2017 which Ms Gray expanded upon at the hearing.

### **The Tribunal's jurisdiction**

16. Plainly, different considerations apply to a lessee's liability to pay 'interim' service charges and the lessee's liability to pay 'balancing' charges. In this case, the two are payable under differently worded provisions of the Lease. For example, para 1.1 of Sch.5 does not refer to a "certificate", whilst para 1.2 of Sch.5 does refer to a "certificate". Moreover, the statutory provisions governing such charges are different – in particular LTA 1985 s.19(1) and (2) involve differently worded tests of reasonableness which are applied to different things (in the one case "service charges", and in the other the landlord's "relevant costs").
17. It is therefore crucial to understand precisely what it was that the Tribunal was being urged to consider.
18. In his submissions, Mr Barker urged the Tribunal to deal with this as an application to determine the relevant costs incurred during the 2014/15 and 2015/16 service charge years under LTA 1985 s.19(1). The relevant costs were known, and they appeared in the

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<sup>1</sup> Derived from the Service Charge Income and Expenditure Accounts referred to above.



annual service charge accounts which had been certified by the landlord's accountant under para 2 of Sch.5 to the Lease. This alone gave the Tribunal jurisdiction. The Tribunal also must have jurisdiction to deal with a free-standing s.19(1) application, even if the landlord never made a 'balancing' charge. Otherwise, a landlord could deny lessees the important benefit of s.19(1) by simply topping up shortfalls at year end with ad hoc contributions from a reserve fund (as had happened here). Mr Barker also relied on the fact that the bulk of the evidence which had been filed related to the issue of whether the relevant costs had been reasonably incurred under LTA 1985 s.19(1) – including material relating to the standard of services under s.19(1)(b).

19. Ms Gray argued this was a 's.19(2) case', namely one which only concerned "a service charge ... payable before the relevant costs are incurred". On the facts of this case, there was as yet no "service charge payable" for either 2014/15 or 2015/16, since no balancing charge had yet been demanded at year end. A "service charge" was a term of art under LTA 1985 s.18(1) and it was different to the landlord's "relevant costs" under s.18(2). Having incurred "relevant costs", the Respondent had chosen not to levy any further "service charge" – and it had instead decided to withdraw sums from the reserve. This was entirely permissible under the terms of the Lease. The reserve was subject to a statutory trust under LTA 1987 s.49, and if the Applicants believed those sums had been improperly withdrawn, they had remedies for breach of trust. With respect, the Tribunal therefore had no jurisdiction under s.27A at all, since there was no end of year "service charge".

20. The significance of the jurisdictional argument is that Mr Barker admitted in closing that the interim service charges demanded on 4 November 2014, 18 May 2015, 23 September 2015 and 10 June 2016 and the budgets on which they were based were "reasonable" within the meaning of LTA 1985 s.19(2). In response to a question

from the Tribunal, he accepted the overall 2014/15 budget provision of £59,690 was reasonable and that the same applied to the 2015/16 budget provision. If the Tribunal was limited to consideration of the interim charges alone, the application would therefore substantially fail *ab initio*.

21. The Tribunal prefers Mr Barker's submissions, and it is prepared to deal with the actual relevant costs incurred by the Respondent in 2014/15 and 2015/16 rather than the interim charges. The application in this case (dated 21 September 2016) was ambiguous, in that it did not state clearly whether or not it was limited to the interim service charges demanded. However, the entirety of the contentions in the Statements of Case filed by the Applicants (dated 12 January 2017) and the Respondent (dated 8 February 2017) related to the relevant costs which had been incurred – rather than the interim charges which had been demanded. The parties plainly prepared their cases to deal with the arguments about the relevant costs which had been incurred – indeed it does not appear that they appreciated until shortly before the hearing that the only charges which had been demanded were interim charges. Both parties were therefore fully prepared to deal with issues under LTA 1985 s.19(1). Moreover, the Service Charge Accounts which have been produced enable the Tribunal to assess the service charge which would potentially be payable at year end, since the Tribunal has been given the apportionments for each flat. That applies whether the costs are in fact met from a reserve fund (as happened in this case) or under the provisions of para 1.2 of Sch.5 to the Lease.

22. The Tribunal does not accept the jurisdictional argument advanced by Ms Gray. Quite apart from the fact that a trust claim would be disproportionately expensive to pursue in court for such limited sums, it is wrong to suggest that s.27A does not permit a Tribunal to determine liability for relevant costs without a demand for “bal-

ancing” service charges. The argument is inconsistent with the right to apply to a Tribunal under LTA 1985 s.27A(3). This permits the Tribunal to make a “determination whether, if costs were incurred ... a service charge would be payable”. Moreover, the Tribunal is satisfied that LTA 1985 s.27A has always provided a right to apply for a determination under LTA 1985 s.19 – even where no “service charge” has been demanded. When s.27A was introduced into LTA 1985 by amendment in 2003, it coincided with the repeal of a previous (and less extensive) right to apply to the leasehold valuation tribunal under s.19(3A). The LVT had previously had a specific standalone jurisdiction to determine “whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred”, and that wide power was subsumed within the general power to determine liability to pay a service charge. In any event, no purpose would be served by refusing to determine the questions raised by the Applicants in relation to the reasonableness of the relevant costs under s.19(1), and leaving them to a future application or hearing – at no doubt considerable extra cost to all the parties. The Respondent did not suggest it was prejudiced in any way by this approach.

### **Matters conceded**

23. The Applicants’ Statement of Case included two schedules setting out a number of items of relevant cost to which they objected. The schedules were apparently derived from documents which emerged during an inspection of the service charge accounts under LTA 1985 s.22. Regrettably, the underlying documents were not (in the main) produced to the tribunal, and it was not always easy to reconcile them the various heads of expenditure shown in the service charge income and expenditure accounts. However, the two schedules largely form the basis of the arguments before the Tribunal.

24. At the outset of the hearing, the parties were able to confirm that a certain number of the items which appeared in the two schedules were no longer in dispute.

25. The Applicants accepted a number of items of cost in the schedules were recoverable under the Lease and reasonably incurred. These were:

- £21.00 for keys on 31 May 2015
- £835.00 for the lift contract in 2014/15
- £255.11 for car parks

26. On the Respondent's side, it was accepted the Applicants were not liable to contribute to certain relevant costs:

- Company secretarial fees. The Applicants objected to fees of £300 (on 31 March 2015) and £600 (31 March 2016). These figures appeared in the service charge income and expenditure accounts for 2014/15 and 2015/16. The Respondent accepted these costs were not recoverable under the terms of the Lease.
- Central locksmith. The Applicants objected to a charge of £235.20 for a "central locksmith" (23 September 2014). The Respondent's Statement of Case accepted these costs related solely to the Housing Association flats and that they had been wrongly posted to Flats 1-48. However, it is not entirely clear whether these have been included in any of the line items in the service charge income and expenditure accounts for 2014/15 and 2015/16.
- Directors liability insurance 2014/15 £79.31

27. Seven items of cost remained to be determined by the Tribunal.

### **Issue 1: Room hire and stamps**

28. The Applicants referred to two relatively modest items of relevant cost in their Schedule of Disputed Service Charges. The first was

£129, which they described as a cost incurred in relation to a “Room hired for purchase of freehold”, and the second was £10 which they described as “inv for stamps for freehold purchase”. Mr Barker referred to Sch.8 to the Respondent’s Statement of Case which stated that the members of the Respondent had received a Notice of Intention under s.5 of the Landlord and Tenant Act 1987, and that it called a meeting of residents to discuss the notice. The Respondent went on to say that the two items related to the calling of this meeting. However, the Applicants accepted they were unable to show where these two items of cost appeared in the service charge income and expenditure accounts for 2014/15 and 2015/16. But if they did, the costs did not fall within any of the heads of Maintenance Expense listed in Sch.7 and to the Lease. In any event, these relevant costs did not appear in the 2014/15 and 2015/16 service charge budgets and it was not therefore reasonable to incur the cost of room hire and stamps.

29. The Respondent did not produce any invoices for these two items and was unable to confirm for certain that they were included in the service charge income and expenditure accounts for 2014/15 and 2015/16. Insofar as they were included, the Respondent argued these relevant costs were recoverable since they fell within the ‘sweeping-up’ clause at para 16 of Sch.7 to the Lease. The costs were also reasonably incurred, since it was perfectly proper for the RTM company to consult with the lessees before reaching an informed decision about a response to the s.5 notice.

30. The Tribunal bears in mind these are relatively modest sums of money and that it is therefore proportionate to give fairly brief reasons for reaching its decision. It finds as a fact that the costs were incurred for the purposes set out in the Respondent’s Statement of Case. It is further satisfied that costs incurred in considering a response to a landlord’s notice under LTA 1987 s.5 would be “incurred ... in and about the ... proper and convenient management

and running of the building” and would therefore fall within para 16 of Sch.7 to the Lease. The incurring of such costs would also be reasonable, in that it was a proportionate response to the s.5 notice and plainly an RTM company would require guidance from the lessees about the proper response to such a notice. Indeed, it might well be open to criticism if it did not consult with the lessees over such matters. The Tribunal therefore rejects the Applicants’ argument that part of the 2014/15 and 2015/16 service charges should be disallowed on this basis.

### **Issue 2: Bonus Payment to Ms Silva Simmonds**

31. This can be dealt with fairly briefly. On 14 November 2015, the Respondent paid a bonus of £500 to Ms Silva Simmonds. At the time Ms Simmonds had been employed as a cleaner since 2008, and had latterly been increasing her role as an on-site manager (see below).
32. The Applicants objected to this cost on two main grounds. First, it was said the standard of services provided was not reasonable, an argument dealt with below. Secondly, it is said the cost was not recoverable under the terms of the Lease.
33. As far as the Lease is concerned, the Respondent relied on para 3 of Pt.II of Sch.7. The landlord’s relevant costs may include “fees charges expenses salaries wages and commissions paid to any ... contractor or employee porters caretakers cleaners and window cleaners ...”. Mr Barker did not accept that the provision was wide enough to cover the bonus paid to Ms Silva.
34. The Tribunal considers para 3 is apt to include a bonus payment made to a contractor or cleaner. The bonus in this case was paid in respect of Ms Silva’s employment and related to her duties as a “contractor ... employee ... [or] cleaner”. It is as much part of her salary or wages as her agreed basic rate of pay. The list of payments in para 3 is in any event a wide one, encompassing “fees

charges expenses". There is no reason why a discretionary bonus payment does not fit within such a list of costs.

### **Issue 3: Managing agents' fees**

35. The Applicants challenge the costs of managing the property in both service charge years.
  
36. The basic facts in relation to this issue are not in dispute. As explained above, Bartholomews were retained as managing agents for the premises from August 2014 until they resigned as agents on 8 August 2016. The management services they provided are set out in a letter from the agents dated 22 November 2016. For the period 1 August 2014 to 17 May 2016, Bartholomews provided a full range of management services, which included service charge collection, management of maintenance contracts, supervision of minor works etc. Their fees were £8,960 + VAT (£10,752) for the first year to 31 July 2015, and a fee of £9,184 + VAT (£11,020.80) for the second year to 31 July 2016. However, the management agreement was renegotiated with effect from 18 May 2016, when the range of services provided by the agents was reduced. The change involved the agents ceasing to be responsible for minor repairs, maintenance contracts, inspecting the common parts and preparing specifications for works. Bartholomews agreed a reduced fee of £5,000 + VAT (£6,000) for those services between 18 May 2016 and 8 August 2016. The Respondent also retained Ms Silva Simmonds on a part time basis to provide certain services in the building, details of which are set out below. In essence, the Applicants' argument is that the services and fees paid to Bartholomews after October 2015 duplicated the services and sums paid to Ms Simmonds and that an element of the relevant costs of management was not therefore reasonably incurred under s.19(1).
  
37. Ms Simmonds and others gave evidence about this issue, and it is therefore necessary to consider that evidence and reach some findings of fact.

38. Ms Silva Simmonds relied on a witness statement dated 6 March 2017 which she elaborated upon at the hearing. She was first employed by the Second Applicant and Diamond in about 2008 to carry out cleaning at the property in place of a previous firm of cleaning contractors. There was no written contract but she had invoiced Diamond on a monthly basis for cleaning. Ms Silva relied on a letter dated 9 December 2016 which set out the services she had provided over the years. From 2008 to January 2009, her role was restricted to general cleaning of the common parts at a rate of £3,600pa. From January 2009, her hours increased to 8 hours/week and Ms Simmonds was asked by the Second Applicant to provide administrative assistance to Diamond. The extra duties included assisting with residents on-site, liaising with the Council, lift maintenance, etc. From October 2010, the hours increased to 12 hours/week, so Ms Simmonds could be on-site every weekday. By July 2012, Ms Simmonds was working 15 hours/week and receiving £13,938 per annum. She attended the premises every day (including Bank Holidays) and helped the managing agent in addition to providing caretaking and cleaning services. Between August 2014 and October 2015, when Bartholomews were first employed, Ms Simmonds became more involved with day to day management. She provided a link between the managing agents and the lessees on management issues (apart from the service charges and accounts) as well as cleaning. In April 2015, the Directors asked Ms Simmonds if she would devote additional hours to management and she agreed - provided a cleaning contractor was employed to do that work. In October 2015, Ms Simmonds was therefore released from cleaning duties, and took over much of the administrative management at the same rate of pay. Ms Simmonds set out a detailed list of services she provided since October 2015, which included communication with the Directors, Bartholomews, leaseholders and residents, contractor management, insurance claims, liaising with the Council, police and the landlord's agents



and providing a range of additional services. In her evidence at the hearing, Ms Simmonds confirmed she had worked at the premises every weekday morning since July 2012 from 9am-12noon (including holidays). It had been the Second Applicant who first asked her to carry out more non-cleaning duties because the Second Applicant had been “engaged with other projects”. Ms Simmonds had therefore become the “eyes and ears” of the managing agents on site. In cross-examination, it was put to Ms Simmonds that Bartholomews had not provided management services. Ms Simmonds stated that what would happen was that Bartholomews would employ contractors, but that when the contractors turned up, someone needed to show them where to go, to deal with the key systems. Ms Simmonds could not comment on Bartholomews’s fees, but she denied there was any duplication. She did not believe there was any duplication, since “we were doing different things”.

39. Mr Ian McGowan is a Director of the Respondent. He largely confirmed the evidence of Ms Simmonds in a statement dated 6 March 2017. In addition, he gave the background to events in 2015. The Respondent asked Bartholomews whether it could change its role so as to concentrate on financial management – and indeed they provided a revised draft management plan along these lines. They then suggested allocating a suitably qualified surveyor to manage Central Walk, but the potential cost of £30,000-£40,000 far exceeded what seemed reasonable. As a result, the Directors re-opened discussions with Ms Simmonds about her carrying out “full on-site management”. She started in this enhanced role in October 2015, and the Directors negotiated a reduction in Bartholomews’s duties over the ensuing months – culminating in the revised contract which took effect in May 2016. Mr McGowan accepted there had been a delay, but this was because the period coincided with the acquisition of the freehold by Central Walk Ltd. He considered that although the revised arrangements were not put in place until May 2016, the adjustments were “reflected in the

respective fees charged by [Bartholomews and Ms Simmonds] for the provision of their services.” In his evidence at the hearing, Mr McGowan confirmed that by June 2015 the Directors were not happy with Bartholomews's actions, which was why they decided to employ the agents only to do the management accounting. They still had until July 2016 to run under the old contract and Ms Simmonds was effectively working alongside Bartholomews throughout the period. In cross-examination, Mr McGowan accepted that during the relevant period Bartholomews was acting “like a post-box”. But he denied duplication. He considered the charges made by Bartholomews were “too high”, but the Directors had “jumped” on this and so the overcharging was “not much”. When pressed about the period between October 2015 and May 2016, Mr McGowan described it as a “handover period”. When asked why the Respondent continued to pay the full fees of the agents after October 2015, McGowan answered that “we just did”.

40. In her submissions, Ms Gray submitted that the dual roles of Ms Simmonds first arose under the management of the Second Applicant and Diamond. The evidence was that the change in Ms Simmonds's role occurred “slowly, slowly and on a gradual basis”. In any event, the relevant period for any duplication was a short period from October 2015 to May 2016. During that time, both sets of costs were reasonably incurred:

- (a) There was no evidence of any deterioration of services.
- (b) There was no suggestion the relevant cost of employing both was not recoverable under the Lease.
- (c) Both Bartholomews and Ms Simmonds together provided services to a certain expected level for a combined fee. Mr McGowan's evidence was that Bartholomews would have charged £30,000-£40,000 for providing on-site supervision. The overall cost of employing both was not therefore excessive.

(d) Both Ms Simmonds and Mr McGowan considered there had been no duplication.

(e) Mr McGowan explained that during this time, the Respondent was extricating itself from the management contract. This was necessarily a process of negotiation and it required time.

41. Having heard the evidence, the Tribunal finds that during the period between October 2015 and May 2016, there was some duplication between the services for which the Respondent paid Bartholomews and Ms Simmonds. This is apparent in particular from a comparison between (a) the extensive list of services set out in Ms Simmonds's letter of 9 December 2016 and (b) Bartholomews's agreement dated 22 November 2016 which includes similarly extensive list of services for the one year agreement 1 August 2015 – 31 July 2016. Both included extensive "on site" management responsibilities such as viewing the common parts to check the condition of the property and consultation with the client and lessees on a day to day basis etc. It is further supported by the change in the list of responsibilities which took place in May 2016 which is shown in the agreement dated 22 November 2016. That agreement shows that a reduction in the agents' fees took place in May 2016 from £9,184 (plus VAT) to £5,000 (plus VAT) to reflect the reduction in management responsibilities which had already taken place the previous May.

42. Although Ms Simmonds and Mr McGowan were honest and truthful witnesses, the Tribunal rejects their contention that there was no duplication. In this case, the relevant question under LTA 1985 s.19(1) is whether the costs of providing services were unreasonable because the costs are duplicated – not so much whether the services provided were duplicated. Although the Tribunal accepts that between October 2015 and May 2016 there was no duplication in the services provided (because Bartholomews does not appear

to have provided any management services 'on site') we find there was a duplication in cost. The Respondent incurred costs paying both Bartholomews and Ms Simmonds to provide the same services.

43. The Tribunal does not consider it is relevant to LTA 1985 s.19(1)(a) that the management services overall were provided to a reasonable standard and/or that the relevant costs were recoverable under the Lease. The standard of services is a separate consideration under LTA 1985 s.19(1)(b) and contractual recoverability is a separate consideration under LTA 1985 s.27A. Neither affects the question whether a cost is unreasonably incurred because it has been incurred twice. Similarly, it is not relevant that services could have been delivered in a different way at a higher overall cost. That does not meet any criticism that costs which were in fact incurred may have been unreasonable.

44. The Tribunal accepts the Applicants' general submission that duplicated expenditure would be unreasonably incurred within the meaning of LTA 1985 s.19(1)(a). The Tribunal rejects the contention that it was legitimate in this case to incur both sets of costs for a full eight month 'handing over' period while negotiations took place with Bartholomews. The various explanations given by the Respondent for this lengthy 'handing over' were not satisfactory. By their own evidence, the Directors were unhappy with the performance of the managing agents in 2015, but they still agreed a new one year contract which included the agent continuing to provide 'on site' services. More significantly, the Tribunal does not accept it was reasonable to incur the additional cost of Ms Simmonds before the Respondent negotiated a corresponding reduction in the fees payable to the agents for the same services. No proper explanation was given for the delay of several months in re-negotiating the agency agreement. The re-negotiation was not complicated, and ought not to have been affected by the freehold

claim. Mr McGowan's answer to the question about why the Respondent continued to pay the agents during this eight month period was a poor one: "we just did". The Tribunal considers the Respondent did not act reasonably in dealing with the overpayments – it was not pro-active and took too long to re-negotiate the contract with Bartholomews. In short, the duplicated payments were not "reasonably incurred"

45. The period of duplication was not entirely clear and (as explained below) Mr Barker only relied on duplication of management services for six months. Although the Tribunal rejects the general point made about a lengthy handover period, it accepts it might have been reasonable to incur double management costs for a short period of time after Ms Simmonds's role changed in October 2015. On this basis, it follows Mr Barker's assessment of duplication for a six month period to May 2016.
46. The Tribunal therefore concludes that for a period of six months, the relevant cost of management services was not reasonably incurred. Mr Barker assessed the effect of the duplication by taking the monthly charges of Ms Simmonds and Bartholomews in 2015/16 (£2,093.33), which resulted in management charges incurred of £12,559.98 over the six month period of claim. He then assessed the duplication by comparing these to the monthly charges for management in the previous service charge year (£791) which resulted in charges of £4,746 over the six month period. The difference of £7,813.98 (£12,559.98 less £4,746) represented the overpaid charges over the relevant period.
47. The Tribunal considers that Mr Barker's approach overstates the duplication of charges. A comparison between (a) the list of services provided by Bartholomews in 2015/16 in the letter of 22 November 2016 and (b) the services provided by Ms Simmonds listed in her letter 9 December 2016, suggests that the overlap is not as

significant as Mr Barker suggests. Doing its best, the Tribunal finds that the overlap represents 10% of the combined management charges for the six month period. Although the contracted figures do not necessarily represent the actual relevant costs which appear in the 2015/16 service charge accounts, it would be a time consuming and costly exercise to assess exactly what 10% of those costs would be. The Tribunal adopts a figure of 10% of the contractually agreed (a) annual management fees of £9,367 for Bartholomews (£9,184 + VAT) and (b) annual cost of £13,938 for Ms Simmonds. It considers this fairly represents the duplicated sums in the relevant costs of managing the premises. The duplicated costs were therefore at an annual rate of £2,330.56, or £1,165.28 over the relevant 6 month period.

48. On this basis, the Tribunal finds that £1,165.28 of relevant costs for management services were not reasonably incurred in the 2015/16 service charge year.

#### **Issue 4: Office construction costs and broadband**

49. The Applicants objected to the cost of constructing an office on the communal landing of the building in the sum of £2,553.85 and the cost of £445.07 for providing a broadband connection to the office connecting the office. They argued at the hearing that these were included in the 2015/16 service charge income and expenditure account where there was a line item of £4,326.42 for "internal repairs". The items had not been budgeted for, and the costs were not recoverable under Sch.7 to the Lease.

50. The Respondent's Statement of Case stated it had reviewed the lack of on-site meeting and storage facilities in June 2015. It had decided to cordon off an unused lobby area to provide somewhere (i) for residents to meet Ms Simmonds or Bartholomews and (ii) to keep management information, parking and gate fobs, keys, plans of the building (iii) for an email/printing facility and (iv) as an emergency parcel collection/storage facility. It had cost £1,500 to

provide a door, shelving, a work surface, filing cabinets and chairs. The provision was discussed at an AGM and approved. The Respondent contended this cost fell within paras 9 and 16 of Sch.7 to the Lease and that it was reasonably incurred.

51. There is no clear evidence to support the figures of £2,553.85 and £1,500 referred to by the parties and no receipts or invoices were produced for the work. Neither appears in the service charge income and expenditure account although the Broadband connection cost of £445.07 appears as a line item in the 2015/16 accounts.
52. In any event, the Tribunal considers the cost of providing the office and broadband connection are both recoverable under the Lease and reasonably incurred. The Applicants did not suggest the Respondent provided the office for purposes other than those suggested by the RTM Company. The Tribunal considers these purposes, namely as space for the lessees to meet management and as storage for management records and the like clearly involved “generally managing and administering the Building” and/or “running and management of the Building”: see para 9 of Pt.II to Sch.7 to the Lease. There is nothing in the wording of para 9 which limits the recoverable expenditure to revenue costs or which prohibits the recovery of expenditure on capital items. Similarly, the office costs were “incurred by the Lessor in and about the maintenance and the proper and convenient management and running of the Building” under para 16 of Pt.II to Sch.7. Moreover, since the office facilitated management, the cost was “reasonably incurred” for the purposes of LTA 1985 s.19. There was no suggestion that the relatively minor cost of providing the office was excessive (whichever figure one adopts) and the Tribunal considers that a cost of £2,553.83 to provide a permanent on-site office for administering the Building is also reasonable in amount.

53. The Tribunal therefore finds that the Applicants are liable to pay a contribution to the relevant costs of providing the on-site office - wherever those costs might appear in the service charge income and expenditure accounts.

#### **Issue 5: Accountants' fees**

54. The schedule to the Applicants' Statement of Case stated that they objected to a fee of £1,500 charged by DNA accountants on 5 October 2015 for preparing the 2014/15 service charge accounts. They further objected to a charge of £1,125 for preparing the 2015/16 accounts. It should be said that the latter figure of £1,125 appears to be an error, since the service charge income and expenditure account suggests the Respondent incurred accountancy fees of £1,500 in each year. But in each case the allegation was that the accounts produced by DNA were "not produced according to the lease".

55. The Respondent's Statement of Case attempted to meet this fairly broad brush allegation by arguing that the accounts did in fact comply with the Lease. In particular, the Respondent anticipated a suggestion (not in fact made in the Applicants' Statement of Case) that the accounts failed to meet requirements in the Lease for an audit and annual certification. In essence, what was said was that initially DNA produced unaudited accounts for 2014/15 and 2015/15, but that the accounts were audited following advice from the Respondent's solicitors. The Respondent further arranged for certificates to be produced by the auditors, but the certificates had been suspended pending the outcome of this application. The point was further developed by Ms Gray at the hearing, when she explained that once the Tribunal determined the recoverable relevant costs for each year, the auditors would be asked to provide a certificate with these correct figures.

56. In fact, Mr Barker's submissions at the hearing were rather different. He simply argued that the accountant's fees were "not part of



the service charge because they don't fall within the maintenance expenses in Sch.7" to the Lease. In closing, Ms Gray argued that the Applicants had not set out any pleaded case about how the accounts were said not to comply with the terms of the Lease. The objection appeared to be that the accounts had not been audited. But the £1,500 related only to the service charge accounts required by the Lease – and the Respondent had not sought to include fees paid for the preparation of statutory company accounts to the service charges.

57. The Tribunal reminds itself that the issue is whether a contribution towards the relevant costs of £1,500pa for "accountancy fees" in each year is payable and Ms Gray is correct to say that the Applicants have not set out their grounds of objection with any clarity. In any event, the Tribunal finds the fees of DNA are plainly recoverable under the Lease – whether they acted as accountants or auditors. Para 3 of Pt.II to Sch.7 of the Lease expressly permits the "fees charges expenses salaries wages and commissions paid to any auditor accountant ...". Moreover, para 2 of Sch.5 to the Lease requires an annual account to be prepared and audited by an independent auditor. As to whether the fees were reasonably incurred and the accountants' services were of a reasonable standard under LTA 1985 s.19(1), there is simply no evidence that the costs of £1,500 failed either test. No evidence was produced to suggest this level of accountancy fee was excessive for preparing service charge accounts for premises which included some 64 flats. Moreover, even if there was any failure to produce annual certificates or an audit statement as required by the Lease, that does not mean the services provided by DNA were not of a reasonable standard. The accounts were a substantial amount of work for a fairly modest fee of under £20 per flat (excl.VAT).

#### **Issue 6: Standard of cleaning**

58. The service charge income and expenditure accounts suggest relevant costs of £14,238.20 were incurred for "common parts clean-

ing” in 2014/15 and costs of £14,153.50 were incurred for “common parts cleaning” in 2015/16.

59. The Applicants argued that the cleaning services were not of a reasonable standard under LTA 1985 s.19(1)(b). The Applicants’ Statement of Case specifically referred to cleaning during the period from 1 August 2014 to 31 October 2015. As explained above, the person who undertook cleaning of the common parts during that time was Ms Simmonds.

60. The Second and Third Applicants gave evidence about the standard of cleaning.

61. The Second Applicant’s statement dated 8 March 2017 did not deal directly with cleaning. However, in her oral evidence, she stated that under Diamond’s management, the common parts of the private flats were cleaned for 3 hrs a day, whilst the Housing Association areas were cleaned once a week. The bin areas, floors and the lifts were cleaned every day. The cleaners also used to clean the glass in the doors, clean any marks to the doors and replace light-bulbs. The two entrances should be cleaned every day. However, after Bartholomews took over, they did not clean every day, hoovering was not done, bins were not cleaned etc. She was so concerned she began taking notes and pictures. The Second Applicant referred to the photographs, which were attached to the Applicants’ Statement of Case at Sch.3. They variously showed staining to the metal threshold to a lift, some litter in a hallway, dirt or dust to the skirting board on the stairs, a full cigarette bin on the outside of the building, dirt to exterior paintwork under a porch, stained treads to stairs, a stained carpet, scuffs to a fire door, some domestic waste left on a landing and uneven tiles to an exterior path or patio with weeds. In cross-examination, the Second Applicant agreed she did not live in the building and she did not use the stairs or visit every day. She tended to walk through the ground floor areas and car park as a short cut on the way to the station.

She also agreed that Ms Simmonds had been the only cleaner since the time that Diamond managed the property and worked the same hours until 2016. However, under Diamond, the Second Applicant had supervised the cleaning every day. The difference was there was no supervision by Bartholomews. The Second Applicant was asked questions about the photographs, most of which included date stamps 24 May-31 June 2015. She accepted that about half the photographs related to the Housing Association parts (with brown carpets) and that many of the rest showed the same pieces of litter and stains etc. The Second Applicant accepted that something may have gone wrong with the dates on the photos, since they showed some litter which hardly moved at all over a one month period. It was also put to the Second Applicant that she had prepared the photographs for the purposes of an AGM after she had been removed as manager for the premises. But she denied she was motivated by any animosity towards Ms Simmonds after losing the management contract.

62. The Third Applicant relied on a statement dated 8 March 2017 and gave evidence at the hearing. She referred to a letter dated 28 September 2016 she had written to Bartholomews complaining that “the cleaning has deteriorated”, and that she had raised it at an AGM. She never knew who turned up to do the cleaning. She was in her fourth floor flat every day, and could say the walls, carpets and lifts were dirty, windows smeared etc. In cross-examination, it was put to the Third Applicant that although Ms Simmonds had been cleaning since 2008, the only written complaint produced was at the very end of her tenure as a cleaner, just before she handed over the cleaning to others. Ms Gibson stated that she was not the only person to complain about the cleaning. It was also put to her that Thames Valley Housing had stated in a letter dated 7 March 2017 that they had always found Central Walk to be maintained to a good standard. The Third Applicant said the Housing

Association properties were a different block to hers. Finally, she agreed that the complaints about cleaning were “very minor”.

63. Ms Simmonds gave evidence about cleaning and was cross-examined. Suffice it to say that “nothing changed” with the cleaning when Bartholomews took over. She had continued to work the same number of hours in the cleaning until she handed over to the contractors in October 2015. Ms Simmonds stated that she arrived at about 9.00am and did a quick inspection to see what was needed. She hardly ever saw the Second Applicant although she did see the Third Applicant quite frequently. Ms Simmonds did not think the photos presented a fair picture of how she left the block each day. She would plainly have removed any large items of litter with a dustbin and brush. Ms Simmonds accepted the photos showed some dirt, especially to the lift threshold. But she could not force people to clean their shoes. She did not clean the walls and floors every day, although she had a rota. Ms Simmonds stated she cleaned the skirting boards once a week. As to complaints, she said she had never received any. In cross-examination. Ms Simmonds said she spent about 25% of her time on the Housing Association parts.

64. The Tribunal is faced with the not unfamiliar task of assessing whether cleaning of common parts is of a reasonable standard some years after the event. The Tribunal gives weight to the oral evidence of all the witnesses, but ultimately, a choice has to be made between them.

65. In reaching its decision, the Tribunal considers there are three pieces of evidence which support the Respondent and the evidence of Ms Simmonds. First, where services are not of reasonable standard over a prolonged period of time, one would expect to see complaints from residents and others about this. However, only one (fairly muted) letter of complaint was produced by the Applicants – and that letter was written after Ms Simmonds had been

cleaning the property for a number of years. Secondly, no challenge was made to the evidence by Ms Simmonds about the number of hours she worked on cleaning throughout the relevant period. The Second Applicant met this by suggesting that the fault lay with the new Managing Agents, who failed to supervise properly. But this was not a sophisticated service which required much supervision, it was simply cleaning of common parts. It is inherently improbable that the standard of cleaning by the same person who had been cleaning the premises for the same number of hours every week for several years would have sharply deteriorated over a short period – unless there was some other explanation. Thirdly, there are the photographs. The concessions by the Second Applicant that there was an error with the date stamp lessens the weight one can attach to these photographs, since they may well have been taken over a number of hours (as opposed to weeks). Moreover, it is conceded that about half relate to a separate block which was cleaned with much less frequency. However, the photographs show a very limited number of deficiencies, most of which are repeated several times. The photographs, which necessarily select the worst allegations made by the Applicants, do not suggest a low standard of cleaning. It is not perfect standard of cleaning, but perfection is not the statutory test in LTA 1985 s.19(1)(b).

66. Although the Second Applicant's oral evidence was supported by the Third Applicant, ultimately the Tribunal prefers Ms Simmonds evidence to that of the Applicants. The cleaning services were of a reasonable standard during the material time.

#### **Issue 7: Bulk waste**

67. These are very minor items of relevant cost, relating to £30 and £35 incurred on 30 October 2014 and 28 February 2015 for "removal bulk waste". It was not entirely clear where these relevant costs appeared in the 2014/15 service charge income and expenditure account.

68. Mr Barker argued in his opening submissions that the charges were for contractors to remove bulky waste items and that they ought to have been included in the cleaning charges made by Ms Simmonds. In its Statement of Case, the Respondent said they were “heavy cleaning/maintenance” which Ms Simmonds could not undertake personally.

69. In view of the small sums involved, the Tribunal needs only to deal with these two small items briefly. It finds it was reasonable for the Respondent to incur additional costs for removing bulky waste. A cleaner’s standard charges can only be expected to include the disposal of routine litter and dust etc. In the Tribunal’s experience it is common for local authorities and waste contractors to charge additional fees for removal of bulky items. These charges are recoverable under the Lease at para 3 of Pt.II of Sch.7. One-off occasional charges of £30 and £35 do not seem excessive for contractors to remove bulky items. The charges were recoverable under the lease and reasonably incurred under LTA 1985 s.19(1), and the Applicants are therefore liable to contribute to these costs.

### **Section 20c**

70. The Applicants have applied for an order under LTA 1985 s.20C that all or part of the Respondent’s costs before the Tribunal will not be added to the service charges.

71. Mr Barker argued that the Applicants had succeeded on at least part of their arguments – at the very least by way of concessions made. Moreover, part of the difficulty was caused by the Respondent’s failure to operate the service charge machinery provided for by the Lease. There was still no certification of costs as required by paras 1.2 and 2 of Sch.5 to the Lease. The Respondent had also frustrated legitimate requests for access to documentation. It should also borne in mind that the Respondent no longer managed the building, and could not therefore claim service charges itself.

72. Ms Gray resisted the s.20C application. It was the Applicants who brought the claim and the Respondent had little choice but to meet the application. It had also acted responsibly in the conduct of the claim.

73. The Tribunal takes into account that the Applicants have to a limited extent succeeded in this case. It does not criticise the Respondent's conduct of the application, but there is some force in the point that matters have been complicated by the Respondent's failure to provide certification in accordance with paras 1.2 and 2 of Sch.5 to the Lease. Waiting for the outcome of the Tribunal is not a good explanation for not operating the service charge machinery provided for in the Lease. The Tribunal considers it is just and equitable in all the circumstances to make an order for 50% costs under LTA 1985 s.20C. Half of the costs of and occasioned by the Respondent in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicants.

### **Conclusions**

74. The Tribunal determines that the Applicants are liable to pay service charges in relation to the following relevant costs:

- £21 for keys on 31 May 2015
- £835 for the lift contract in 2014/15
- £255 for car parks
- £129 for a "Room hired for purchase of freehold" and the £10 as "inv for stamps for freehold purchase" (29 September 2014)
- £500 for a bonus paid to Silva Simmonds (14 November 2015)
- £2,553.85 for constructing an office on the communal landing of the building and £445.07 in 2015/16

- £1,500 charged by DNA accountants on 5 October 2015 in 2014/15 and 2015/16
- £14,238.20 for “common parts cleaning” in 2014/15 and £14,153.50 in 2015/16
- £30 and £35 for “removal bulk waste” in 2014/15

75. The Tribunal determines that the Applicants are not liable to pay service charges in relation to the following relevant costs:

- £300 for company secretarial fees (on 31 March 2015) and £600 (31 March 2016)
- £235.20 for a “central locksmith” (23 September 2014)
- £79.31 for Directors liability insurance in 2014/15
- £1,165.28 for management services in 2015/16

76. Under LTA 1985 s.20C, half of the costs of and occasioned by the Respondent in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicants.

77. As explained above, the Respondent has not as yet provided any certificates or demands for payment under para 1.2 of Sch.5 to the Lease for either the 2014/15 or the 2015/16 service charge years. If and when the Respondent does so, the service charges payable by the Applicants will be limited by the determinations set out above.

Judge Mark Loveday  
10 July 2017



## **Appeals**

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

## Appendix 1: LEGISLATION REFERRED TO IN DECISION

### LANDLORD AND TENANT ACT 1985

#### **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[, 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.

...

#### **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 reasonably 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.

#### **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 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 a leasehold valuation tribunal;

(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;

(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.

**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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

## **Appendix 2: MATERIAL LEASE TERMS**

### **“THE FIFTH SCHEDULE The Lessee’s Proportion of Maintenance Expenses**

1. *The Lessee shall pay to the Lessor the Lessee’s Proportion in a manner following that is to say:-*
  - 1.1. *In advance of the 29 say of September and the 25 day of March in every year throughout the said term one half of the Lessee’s Proportion of the amount estimated by the Lessor or its managing agents as the Maintenance Expenses for the year in question the first payment to be apportioned (if necessary) from the date hereof*
  - 1.2. *Within 14 days next following after the service by the Lessor on the Lessee of a certificate in accordance with Clause 2 of this Schedule for the period in question the Lessee shall pay to the Lessor the amount by which the monies received by the Lessor from the Lessee pursuant to paragraph 1.1 fall short of the Lessee’s Proportion payable to the Lessor pursuant to the certificate prepared in accordance with Clause 2 for the said period and any overpayment by the Lessee shall be credited against future payments due from the Lessee to the Lessor under this Schedule.*
2. *An account of the Maintenance Expenses (distinguishing between actual expenditure and a reserve for future expenditure) for the period ending on the Thirty First day of August Two Thousand and Three and for each subsequent year ending on the Thirty first day of August during the said term shall be prepared by the Lessor and audited by an independent accountant as soon as is practicable and the Lessor shall serve a cope of such account and of the accountant’s certificate on the Lessee”*

### **“THE SEVENTH SCHEDULE Part II The Maintenance Expenses**

1. *All sums spent in and incidental to the observance and performance by or on behalf of the Lessor of the covenants contained in Part I of the Sixth Schedule which are relevant or attributable thereto*
2. *Insuring any risks for which the Lessor may be liable as an employer of persons working or engaged in a business son the Building or as the owner of the Building or any part thereof in such amount as the Lessor shall think fit*
3. *Provision and paying for the employment of such persons as may be necessary in connection with the upkeep and management of the Building and performance of the covenants on the part of the Lessor in this Lease including fees charged expenses salaries wages and commissions paid to any auditor accountant surveyor valuer architect solicitor managing agent or other agent contractor or employee porters caretakers cleaners and window cleaners building managers*
4. *The provision supply and replacement of any necessary uniforms protective clothing tools appliances plant equipment and materials as the Lessor may in its absolute discretion deem desirable or necessary*

5. *Paying all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) assessed charged or imposed on or payable in respect of the Building or any part thereof except insofar as the same are the responsibility of the Lessee or the individual lessee or owner of any of the Properties*
6. *Paying any Value Added Tax chargeable in respect of any of the matters referred to in Part I and Part II of this Schedule*
7. *Abating any nuisance and executing such works as may be necessary for complying with any notice served by a local authority in connection with the Development of any part thereof insofar as the same is not the liability of or attributable to the Lessee or any individual lessee of any of the Properties*
8. *Preparing and supplying to the Lessee and any lessee of any of the Properties copies of any Estate Regulations*
9. *Generally managing and administering the Building and protecting the amenities of the Building and for that purpose is necessary employing a firm of managing agents or consultants or similar on the payment of all costs and expenses reasonable incurred by the Lessor:-*
  - a. *in the running and management of the Building and in the collection of the reserved rents and in the enforcement of the covenants and conditions and regulations contained in the leases of the Flats and any Estate Regulations*
  - b. *in making such applications and representations and taking such action as the Lessor shall reasonably think necessary in respect of any notice or order or proposal for a notice or other served under any statute order regulation or byelaw on the lessee or any underlessee of the Flats or on the Lessor in respect of the Development of any part thereof*
  - c. *in the preparation and audit of the service charge accounts*
10. *Enforcing or attempting to enforce the observance of the covenants on the part of the lessee or owner of any of the Properties*
11. *Employing a qualified accountant for the purposes of auditing the accounts in respect of the Maintenance Expenses and certifying the total amount thereof for the period to which the account relates*
12. *Complying with the requirements and directions of any competent authority and with the provisions of all statutes and all regulations order and byelaws made thereunder relating to the Building insofar as such compliance is not the responsibility of the lessee of any of the Flats*
13. *Providing (including the cost of purchasing renting or leases) inspecting maintaining repairing reinstating renewing and operating any plant machinery equipment and providing any other service or facility which in the opinion of the Lessor it is reasonable to provide*
14. *Purring aside such sum as shall reasonably be considered necessary by the Lessor (whose decision shall be final as to questions of fact) to provide a reserve fund or funds for items of future expenditure to be or expected to be incurred at any time in connection with the Building*
15. *Operating maintaining and (if necessary) renewing the lighting apparatus from time to time of the Building and providing such additional lighting apparatus as the Lessor may think fit*
16. *All other expenses (if any) incurred by the Lessor in and about the maintenance and proper an convenient management and running of the Building including in particular but without prejudice to the generality of the forego-*

*ing any interest paid on any money borrowed by the Lessor to defray any costs expenses or liabilities incurred by it and specified in this Schedule all Bank charged properly incurred any costs imposed on the Lessor in accordance with Clause 4 of the Fifth Schedule any legal or other costs bona fide incurred by the Lessor and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease of any part of the Development or any claim by or against any lessee or tenant thereof or by any third party against the Lessor as owner lessee or occupier of any part of the Development”*