9526.

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BN/LSC/2013/0003**
Property	:	**Old Sedgwick 706, Royal Mills, 2 Cotton Street, Manchester M4 5BW**
Applicant	:	**Mr M Taylor**
Representative	:	**Mrs M Halliwell**
Respondents	:	**RM Sedgwick Residential Limited (1) Royal Mills Management Limited (2)**
Representative	:	**Mr A Berry, Solicitor**
Type of Application	:	**Landlord and Tenant Act 1985 – s27A Landlord and Tenant Act 1985 – s20C**
Tribunal Members	:	**Judge J Holbrook Mr D Pritchard FRICS Mr L Bottomley M.I.Fire.E., JP**
Date and venue of Hearing	:	**18 September 2013 5 New York Street, Manchester**
Date of Decision	:	**26 November 2013**

DECISION

DECISION

A. Mr Taylor is liable to pay a Building Service Charge ("BSC") to the First Respondent. He is also liable to pay an Estate Service Charge ("ESC") to the Second Respondent. The amounts payable in respect of the service charge years which commenced on 1 January and ended on 31 December in 2010, 2011 and 2012 are as follows:

	BSC	ESC
2010	**£2,715.63**	**£1,265.32**
2011	**£2,915.95**	**£1,318.54**
2012	**£3,216.24**	**£1,404.03**

B. The application for an order under section 20C of the Landlord and Tenant Act 1985 is refused.

REASONS

Background

1. On 16 January 2013, Mr Melvin Taylor applied to a leasehold valuation tribunal for a determination of the service charges payable in respect of his lease of Apartment 706 Old Sedgwick, which is part of the Royal Mills development in Manchester. The application related to the 2010, 2011 and 2012 service charge years and included an ancillary application for an order restricting the Respondents' ability to recover the costs of these proceedings by means of future service charges.

2. As originally presented, Mr Taylor's claim was made jointly with Mrs Margaret Halliwell, the leaseholder of a neighbouring apartment at 705 Old Sedgwick. Although Mrs Halliwell withdrew the application in relation to her own apartment before this matter reached a hearing, she has remained closely involved at every stage in the conduct of Mr Taylor's case, in a representative capacity, and it seems clear that the submissions which were ultimately before the Tribunal would have been no different if Mrs Halliwell had not withdrawn. Nevertheless, the Tribunal's determination relates to Mr Taylor's service charge liability only.

3. This is not the first occasion on which a tribunal has been asked to determine Mr Taylor's (or, indeed, Mrs Halliwell's) service charge liability. In a decision dated 24 May 2010 ("the 2010 Decision"), an LVT determined the service charge liability of Mr Taylor and Mrs Halliwell for the 2007 and 2008 service charge years. A subsequent application in respect of the 2009 service charge year was settled by agreement during the course of a hearing in 2012. In addition, Mr Taylor was at one time a party to a service charge application made by a large number of Royal Mills leaseholders in respect of the period from

2006 to 2009. He sought (and was granted) permission to withdraw from those proceedings in order to pursue his 2009 application jointly with Mrs Halliwell. Nevertheless, the proceedings brought by the remainder of the group culminated in an LVT decision dated 1 February 2012 ("the 2012 Decision") which clarified a number of important principles concerning the operation of the service charge regime for Royal Mills.

4. A description of the Property, the building in which it is located and of the wider Royal Mills development can be found in paragraphs 10 – 14 of the 2010 Decision. A description of Mr Taylor's lease, and of the service charge machinery it contains, can be found at paragraphs 15 – 27. It is unnecessary to repeat the detail here. However, it should be noted that, as at the date of the hearing, the company entitled to receive the Building Service Charge had changed from ING RED UK (Royal Mills) Limited to RM Sedgwick Residential Limited (the First Respondent in these proceedings). The Estate Service Charge continues to be payable to Royal Mills Management Limited, the Second Respondent.

Proceedings, issues and evidence

5. On 1 July 2013, the functions of leasehold valuation tribunals transferred to the First-tier Tribunal (Property Chamber) and so this matter now falls to be determined by the Tribunal.

6. A hearing was held on 18 September 2013, during the course of which Mr Taylor's complaints were clarified to a significant extent and it was agreed that the issues for the Tribunal to decide (in respect of each of the 2010, 2011 and 2012 service charge years) were as follows:

- Whether the amount of the management fee included in the service charge was reasonable (in light of the standard of management services provided);
- Whether the cost of insuring the building was reasonable (having regard, in particular, to the fact that it includes unoccupied commercial and retail units in addition to residential apartments);
- Whether costs incurred in respect of the atrium were properly apportioned between the various leaseholders on the estate;
- Whether the amount included for staff costs was reasonable (both in terms of the aggregate cost and in the manner in which staff costs were apportioned between the building and the car park);
- Whether the amount charged to Mr Taylor for the supply of gas was reasonable;

- Whether costs incurred in relation to the management suite were reasonable (having regard, in particular, to costs incurred in connection with internet, telephone and mobile telephone services);

- Whether costs incurred in respect of waste disposal were reasonable; and

- Whether the amounts demanded as contributions to reserve funds were reasonable.

7. Although both parties had lodged statements of case in advance of the hearing, the Tribunal decided in the light of the clarification of the issues that, in order to deal with the case fairly and justly, it was appropriate to adjourn the proceedings to afford the parties opportunity to make further written submissions and to submit additional documentary evidence. Additional directions were therefore given, further to which both parties lodged amended statements of case and bundles of documents. They also consented to the matter being decided without the need for a further hearing.

8. The Tribunal therefore reconvened on 18 November 2013 to make its determination in the absence of the parties. The Tribunal did not inspect Royal Mills on this occasion (although the tribunal members had done so in the course of the various earlier proceedings referred to above).

Law

9. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

> *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.*

10. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

11. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

12. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *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.*

13. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *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.*

Mr Taylor's challenge to his service charge

14. During the hearing the Respondents were able to demonstrate to the Tribunal's satisfaction the basis upon which they had calculated Mr Taylor's BSC and ESC contributions for each of the disputed service charge years. They were able to show, by reference to the service charge demands and certificates which he had been sent, cross-referenced with the service charge accounts for each year and, in turn, tables of apportionments of service charge costs, how Mr Taylor's individual contributions had been arrived at. The resulting BSC and ESC contributions for each year are shown in the table at the beginning of this Decision. The Tribunal was also satisfied that the apportionments which underlie these calculations had been made in conformity with the process which had been approved by the LVT in the First and Second Decisions.

15. The Tribunal thus had a starting point, in respect of each year, for the amount of Mr Taylor's service charge liability: it would be the amount demanded by the Respondents – unless, of course, the Tribunal finds that relevant costs should be excluded by virtue of section 19(1) of the 1985 Act.

16. The Tribunal accordingly went on to consider the individual complaints about the reasonableness of the service charge, as identified at the hearing.

Management fees

17. Dissatisfaction with the standard of management of the development (and disaffection with the landlords and their managing agents) appears to underlie much of Mr Taylor's (and, indeed, Mrs Halliwell's) unhappiness about the service charge. They say that the Respondents (and their agents) are unresponsive to complaints and have failed to deal with problems relating to defects in their apartments. A particular bone of contention concerns repairs to the roof of the building (which impact upon Mr Taylor and Mrs Halliwell more than most, given that they occupy top-floor apartments). The Respondents are also criticised for delays in the production of service charge accounts, and Mrs Halliwell expressed the view that, but for the intervention of the Tribunal, the Respondents would not have produced service charge accounts at all. In written submissions, it was stated that "Mr Taylor does not see how he can be charged for any management services at all" and that "Mr Taylor is quite emphatic about the management fee not being paid at all".

18. Relations between the parties have been at a low ebb for a number of years now, and it is possible that this fact is clouding a couple of basic truths: the first is that disputes about matters which do not concern the service charge do not give a tenant grounds for not paying their service charge. The second point is that, provided his or her lease requires it, a tenant must expect to contribute to the reasonable costs of the services provided by his or her landlord.

19. Mr Taylor and Mrs Halliwell have complained about the manner in which problems with their apartments (relating to things such as soundproofing, toilets and windows) have – or have not – been addressed. However, it is plain that these issues do not concern the provision of services to the tenants of Old Sedgwick collectively. Nor do they concern the reasonableness of management costs which are recovered through the service charge. In our judgment, the same can be said about the ongoing dispute about roof repairs and the manner in which the Respondents' contractors gain access to the roof. Mr Taylor and Mrs Halliwell clearly have strong feelings on this subject (and we express no view about whether they have reason to complain that current arrangements infringe their rights as leaseholders). However, it is clear that, even if they do have a reason to complain, the appropriate redress is not by means of a challenge to the reasonableness of the general management fees for the development.

20. It is also clear that Royal Mills is a complex development and one which is management intensive. Mr Taylor's stance of refusing absolutely to contribute to management fees is, in our view, an unreasonable one: he is obliged to contribute to the cost of managing the development, provided that the cost is reasonable in amount and the management services are provided to a reasonable standard.

21. As far as the reasonableness of the overall cost of management is concerned, the Respondents' position is that the annual fixed management fees have remained unchanged throughout 2010 – 2012 at £21,000 plus VAT for Old & New Sedgwick and £16,000 plus VAT for the Estate. Once these overall charges are subjected to the various layers of apportionment which govern the attribution of service charge costs at Royal Mills, it can be seen that, on average, leaseholders in Old Sedgwick contribute £125 plus VAT towards the annual building management costs and £65.34 plus VAT towards estate management costs (Mr Taylor's actual contributions are higher than this because costs are apportioned between the residential leaseholders on the basis of relative floor area, and OS706 is a relatively large apartment).

22. Bearing in mind the nature, size and complexity of the development, we find the overall amount of the management fee to be reasonable. Mrs Halliwell sought to argue that it was unreasonable by reference to a development known as New River Head in London which she asserted to be of at least comparable complexity but where leaseholders were required to contribute significantly less to management costs. The Tribunal has no knowledge of the London development referred to (which is obviously remote from Royal Mills and the local management market geographically) and had insufficient evidence to evaluate the claim that it offered a useful comparable. We concluded that we must therefore disregard what was said about the London development, and we heard nothing else to displace our conclusion that the amount of the management fee is reasonable in the context of the Royal Mills development.

23. Turning to the standard of management, the LVT has (in respect of previous years) found that "in most respects the day to day management of the estate and building was of a satisfactory standard". We take the same view now. However, we also note that, in both the First and Second Decisions, the LVT saw fit to reduce the management fees for previous years by a factor of 25%. This was done in recognition of "serious deficiencies in the administration of the service charge itself". The LVT concluded that the standard of management had fallen below acceptable levels by virtue of a persistent failure to produce service charge accounts or intelligible financial statements which complied with the requirements of the apartment leases. We therefore considered whether this aspect of the management of the development had improved by 2010, or whether the Respondents' performance in this regard had continued to fall short of acceptable standards.

24. Having reviewed the available evidence, we find that the provision of financial information had been brought up to an acceptable standard as from the 2010 service charge year. This is not to say that the Respondents had achieved total clarity in the presentation of information about the service charge, or that the accounts were produced speedily after the end of each year – for this is patently not the case. However, it is clear that, from 2010 onwards, the Respondents have made considerable efforts to administer the service charge in

accordance with the LVT's decisions and to present the leaseholders with accounts and statements which accord with the LVT's recommendations. The fact that litigation concerning the service charge has been ongoing for much of the intervening period (particularly that which culminated in the LVT's Second Decision) led to further delay in the production of final service charge accounts, but we consider that it would be harsh to penalise the Respondent for that delay in these circumstances.

25. We therefore determine the management fees claimed by the Respondents to be reasonable.

Insurance

26. Mr Taylor and Mrs Halliwell have previously made an unsuccessful challenge to the reasonableness of the cost of buildings insurance in respect of 2007 and 2008 (see paragraphs 92 – 97 of the First Decision). Mr Taylor renews his challenge in respect of 2010, 2011 and 2012.

27. It is apparent that there has been a significant increase in the cost of buildings insurance over this period. Mr Taylor argues that the resulting cost is unreasonably high. He complains, in particular, that the building is insured on the basis that it includes commercial and retail units. He says that this will have resulted in an increased premium when, in fact, most (if not all) of those units remain vacant. Mr Taylor also considers it unreasonable that the policy does not provide cover against damage to cars parked in the car park.

28. The Respondents have confirmed that damage to parked cars is not an insured risk. Mr Taylor's lease does not require such insurance to be maintained and no charge is made for such cover. We agree.

29. The Respondents also confirm that Royal Mills is insured as a mixed use development including residential apartments, offices, bar, restaurant and retail. Evidence was produced from the Respondents' insurance broker to the effect that the insurance premiums paid were actually cheaper as a result of the insurance being effected on this basis – the reason being that empty retail units attract a higher rate of premium than occupied retail units. Mr Taylor says that this assertion "is not consistent with his experience in the hospitality trade". However, other than an email from an unknown individual describing in anecdotal terms discussions with underwriters, Mr Taylor provided no evidence of how that experience may cast doubt on the Respondents' broker's view.

30. As to the overall level of the insurance premium, Mr Taylor offers no evidence to substantiate his view that it is unreasonably high other than a comparison with what is said to be the premium paid for New River Head in London. We again fail to see how such a comparison can be of assistance when considering the cost of insuring Royal Mills. In

contrast, the Respondents' evidence is that the insurance renewal has been competitively tendered to 15 insurers in each year, and that the insurance has been effected with Aviva on each occasion as the provider of the least expensive quote at in the region of £93,000. Given the absence of evidence to challenge the basic assertion that the Respondents had tested the market and then selected the most competitive available insurance quote, the Tribunal could find no permissible basis for finding that the overall cost of insurance was unreasonable.

Atrium

31. Mr Taylor challenges the basis upon which costs incurred in respect of the Atrium are apportioned between the occupiers of Royal Mills. He says that the basis of apportionment has changed in recent years (there is no evidence that this is the case) and that, in any event, he no longer considers the basis of apportionment to be fair.

32. For the purposes of both the First and Second Decisions the LVT carefully reviewed the basis on which service charge costs are apportioned, including costs relating to the Atrium. At paragraph 86 of the Second Decision the LVT observed:

> "[A]ll occupiers of the Estate are asked to contribute to the cost of cleaning the Atrium windows because all occupiers have the right to access and use the Atrium. As such, the costs of maintaining this communal facility should not fall to the occupiers of Old and New Sedgwick Mills alone."

33. The LVT found that to be a reasonable position, and so do we.

Staff costs

34. Mr Taylor challenges the reasonableness of the cost of employing the seven staff who are engaged at Royal Mills. He challenges the basis upon which that cost is apportioned across the development (particularly in relation to car parks), and argues that there has been an unreasonable increase in staff costs between 2009 and 2012, which does not reflect employment market conditions. He also casts doubt on the veracity of the financial details provided by the Respondents. In effect, he does not believe that the staff are paid what the Respondents say they are paid.

35. The issue of the apportionment of staff costs was considered by the LVT for the purposes of the First Decision. The LVT summarised the position at paragraph 55 in the following terms:

> "[I]n apportioning the costs of staff time between the Estate and buildings service charges, the Tribunal heard that the initial apportionment was based on LCAM's experience in managing other complex developments, but that it was a decision tailored

to the particular circumstances of Royal Mills Estate, and was kept under review by monitoring staff timesheets to check that the actual allocation of staff time between the various component parts of the development reflected the apportionments used to allocate staff costs to individual occupiers service charges."

36. The basis on which staff costs are charged to the development's occupiers was also considered at length in the Second Decision (at paragraphs 83 – 94). Although Mr Taylor points out that he was not a party to those proceedings (to be strictly accurate, he was a party but he had withdrawn before the decision was made), the Tribunal is entitled to have regard to the LVT's findings and, in the absence of compelling evidence that we should do otherwise, we adopt the LVT's reasons for finding that staff costs are apportioned on a reasonable basis.

37. Turning to the overall amount of those costs for 2010, 2011 and 2012, the Respondents produced, in respect of each year, an analysis showing a breakdown of the total cost and an explanation of how this was apportioned. For 2010, total staff costs were £184,353; for 2011, £192,402; and, for 2012, £190,043. Staff costs for 2009 had been approximately £161,000. The Respondents assert that the increases in staff costs over the period in question are explained by a number of factors, including small increases for the lower paid staff; an increase in employer's national insurance contributions; recovery of employment legal protection fees; and increases in the standard rate of VAT in 2010 and 2011.

38. Mr Taylor's suggestion that the Respondents' evidence about staff costs is not to be believed is not one we should accept without substantial supporting evidence – and his assertion that some of the staff have told him that they have not had a pay rise is not, in our view, sufficient for that purpose. Having considered the costs breakdowns which the Respondents produced (and recognising that the total cost for each employee includes on-costs in addition to salary) we do not consider the costs to be unreasonable.

Gas costs

39. Comprised within the BSC contributions demanded from Mr Taylor for each service charge year is an amount attributable to the cost of gas consumed in providing heating and hot water to his apartment. Although, in practice, this cost is demanded separately from the rest of the BSC, it forms part of it. The reason why gas costs are demanded separately is that, whereas all other costs are apportioned between residential leaseholders on an area basis, gas costs are apportioned by reference to individual consumption figures (see paragraphs 83 – 91 of the First Decision and paragraphs 115 – 121 of the Second Decision).

40. In his current challenge, Mr Taylor has not raised substantive issues which have not previously been addressed by the LVT. For 2010, Mr

Taylor was asked to pay £182.85 for gas; for 2011, the charge was £357.56; and, for 2012, it was £447.62. In our view, this represents an eminently reasonable charge for supplying heating and hot water to what is, after all, a large apartment.

Management suite

41. The annual ESC includes the costs of a number of overheads relating to the central management suite, which is located within the Old and New Sedgwick building, but which serves the whole development. These overheads include the cost of internet connection, telephone and mobile phone contracts, cleaning materials and stationery/signage costs. For 2010, the total of these costs was £6,710; for 2011, it was £5,010; and, for 2012, it was £5,465.

42. Mr Taylor complains that these costs are excessive and complains about a lack of invoices to substantiate the underlying expenditure. He argues that the internet service costs were far too high and that the amount of telephone calls made from the management suite appears excessive.

43. The Respondents argue that the costs are justified and reasonable, given the central function which the management suite plays in the running of the development. A detailed breakdown of the costs was provided, together with an analysis of the principal categories of expenditure. The cost of internet services ranged from £858 in 2012 to £1,309 in 2010 and represented the cost of two broadband lines: one serving the estate-wide CCTV system, and the second providing internet/email facilities to the management suite. It is not necessarily appropriate to compare the cost of internet services used for such purposes with the cost of domestic internet connection and, in the circumstances, we find the cost to be reasonable.

44. The cost of the office landline ranged from £1,926 in 2011 to £3,067 in 2012. This certainly appears to be expensive. However, the Respondents assert that the cost is attributable to the large number of short calls made from the management suite due to night time security and weekend concierge staff working under lone worker conditions. A breakdown of the calls made shows that in the region of 4,500 calls were made in each of 2010 and 2011, and that more than 6,400 calls were made in 2012. This call volume is surprisingly high, but there is no reason not to accept the Respondents' assurance that the calls were made and that the associated charges were therefore incurred. There was no evidence before us from which we could conclude that the tariff for the office landline was inappropriate in the circumstances.

45. We were satisfied that charges for two mobile phones used by estate staff, and for other items falling under the central management suite overhead, were also reasonable. This conclusion is not undermined by the fact that detailed invoices to support every item of expense were not produced: the summary breakdown of expenditure was sufficient for

the Tribunal's purposes. We also note that, as a tenant, Mr Taylor could have exercised his right under section 22 of the 1985 Act to inspect those invoices independently of his application to the Tribunal for a determination of his service charge liability.

Waste disposal

46. Mr Taylor argues that it was not reasonable for the Respondent to incur two charges each of £90 plus VAT in 2010, and a charge of £140 plus VAT in 2011 for removing rubbish from the common parts: he says that the Council would have removed the rubbish for free.

47. This is an issue Mr Taylor has raised before. At paragraph 72 of the First Decision the LVT held that, whilst it was reasonable for the Respondents to pay for waste disposal services where it was appropriate to do so in the interests of good estate management, they should make use of the Council's free collection services where possible. On this occasion, the Tribunal was assured that council collection services are used where possible, but that there have been isolated instances where it has been necessary to pay for rubbish to be removed, either because the Council's contractor has failed to turn up or because of the need to deal with an incident more speedily. We accept this explanation: these minimal charges were reasonably incurred.

Reserve funds

48. Mr Taylor argues that he has been asked to pay an unreasonable amount by way of contributions to future service charge costs. His principal complaint appears to be that the Respondents have allegedly failed to comply with their obligations to maintain and decorate the development.

49. Mr Taylor's lease requires him to contribute towards service charge reserve funds and, whether or not a landlord has complied with its repairing obligations, it is in such circumstances entitled to collect reasonable contributions on account of future expenditure. As at the end of 2012, the Respondents had accrued reserve funds of £263,000 for the Old and New Sedgwick building; £55,000 for the Royal Mills estate; and £9,000 for the Royal Mills estate car parks. To the extent that these reserves are not spent in one year, they obviously remain available to meet expenditure in future years and, given the size and nature of the development, we find the amount of these reserve funds to be reasonable.

Costs

50. Given that Mr Taylor was been wholly unsuccessful in challenging the reasonableness of his service charges on this occasion, we consider it just and equitable to refuse his application for an order under section 20C of the 1985 Act: the Respondents will doubtless have incurred

considerable legal costs in defending Mr Taylor's application and, given that the service charges in question have been found to be reasonable, there is no basis for protecting Mr Taylor from potential liability to contribute to those costs by means of future service charges.

51. Given the long history of litigation concerning Mr Taylor's and Mrs Halliwell's service charge liability, it is worth adding a cautionary note about costs generally. Given that the current proceedings commenced before the functions of leasehold valuation tribunals were assumed by the Tribunal, Mr Taylor is protected from substantial direct personal liability for the Respondents' legal costs. For the future, however, the Tribunal's jurisdiction to make orders for costs is governed by the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. Under rule 13 of those Rules, the Tribunal may make a costs order for any amount if a person has acted unreasonably in bringing, defending or conducting proceedings. An applicant before the Tribunal should not have a costs order made against them simply for challenging the reasonableness of his or her service charge – even where that challenge is ultimately unsuccessful. However, the risk of a costs order is likely to arise if an application is based on arguments the substance of which has previously been aired before the Tribunal (or an LVT) with limited or no success.