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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/40UE/LSC/2016/0117
Property:	36 Castlemoat Place, Taunton TA1 4BB
Applicant:	Yvonne McDermott
Respondent:	Ash Management (Taunton) Ltd
Representative:	Ashfords, solicitors
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 (Liability to pay service charges) Tenant's application for the determination of reasonableness of service charges for the years 2014 to 2017 inclusive.
Tribunal Member:	Judge A Cresswell (Chairman)
Date and venue of Hearing:	Determination on the Papers
Date of Decision:	26 April 2017

DECISION

The Application

1. This case arises out of the Applicant tenant's application, made on 23 November 2016, for the determination of liability to pay service charges for the years 2014 to 2017 inclusive.

Summary Decision

2. The Tribunal has determined that, subject only to limited exceptions, the Respondent has demonstrated that the charges in question were reasonably incurred and are payable by the Applicant.

3. The Tribunal specifically found the following not to be reasonable and payable:

   - Meals of £6.60 (9/1/14), £5.90 (7/11/14), £4.60 (20/11/14)
   - £482.22 of the £1125 proposed for Director's Remuneration for 2016

4. The Tribunal refuses the Applicant's application under Section 20c of the Landlord and Tenant Act 1985, thus permitting the Respondent to recover its cost in relation to the application by way of service charge.

Preliminary Issues

5. The current application follows the Tribunal's Decision of 8 July 2016 ("the earlier Decision") involving the same parties. Both parties have been supplied with a copy of the earlier Decision and it would be otiose to repeat what that Decision contains in detail. This Tribunal takes the earlier Decision as its starting point.
6. The current application raises two issues and seeks a Decision for the years 2014 to 2017 inclusive. There being no actual Demand for the year 2016/2017, the Decision cannot deal with the specific service charge demand, but should be read as instructive for the composition of the Demand relating to that year.
7. The Tribunal must restrict its consideration to the issues raised by the application. The Applicant makes a number of points and queries in her submissions which, whilst understandable, are not relevant to the Tribunal's consideration of the issues in accordance with its jurisdiction detailed in the section "The Law" below.
8. Much of the Applicant's attention has been focused on the Respondent company's bank account statements. Unfortunately, neither party included the Respondent Company's bank account statements with their various submissions.
9. A tenant has, under Sections 21 and 22 Landlord and Tenant Act 1985, limited rights to inspect the accounts, receipts and other documents supporting a summary of relevant costs; it is not the role of the Tribunal to advise how or whether a tenant should seek to exercise such rights, but this is a route to inspection of relevant documents.
10. In this case, there is an element of criticism of transactions on the bank statement by one side and soothing words by the other side to the effect that many of the transactions are not relevant to the Service Charge.

Directions

11. Directions were issued on 6 December 2016 and 14 February 2017. These directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013.

12. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration. Unfortunately, neither party included the Respondent Company's bank account statements with their various submissions.

13. This determination is made in the light of the documentation submitted in response to the directions. The Tribunal is aware that considerable sums have already been expended by the parties in litigation to date (an eye watering figure of some £39,000 is mentioned by the Applicant in respect of legal fees for the Respondent in the earlier application); a large body of papers has been assembled; further to delay the case and seek yet more papers and submissions would be out of proportion to what is challenged here, a little less than £10,000 for the whole property over a three year period.

The Law

14. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002. These sections can be seen in the Appendix to the earlier Decision.

15. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The statutory provisions were set out in an Appendix to the earlier Decision and so are not set out in detail here.

16. In reaching its Determination, the Tribunal also takes into account the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.

17. *"Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available:* **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

18. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The**

Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman Shamsizadeh [2015] UKUT 0333 (LC)).

19. *"It is common for advocates to resort to [the burden of proof] when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law... It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out...: the burden of proof is a last, not a first, resort."* (Sedley LJ in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38 at paragraph 86).

Ownership and Management

20. This was detailed in the earlier Decision. The Respondent's Reply indicates that the Respondent has been also the freeholder since February 2014.

The Lease

21. In addition to what was detailed in the earlier Decision, there are further clauses of the lease relevant to the current application. Some are detailed here and some later in the Decision.
22. Clause 1.19 defines the Service Charge Period as being 1 December to 30 November each year. Unfortunately, and wrongly, the Respondent has operated on the basis of periods ending on 31 May each year.
23. Clause 1.18 defines "*the Service Charge Expenditure*" as "*all expenditure properly incurred by the Management Company in carrying out its obligations in this Lease as set out in Clause 5*". This is an important provision, as will become clear.
24. As detailed in the earlier Decision, Clause 1.17 details the percentage of the Service Charge Expenditure to be paid by the Applicant.
25. Clause 5.10: "*If no managing agents are employed a fair and reasonable management fee shall be charged by the Lessor and the Management Company or its successors in title*".
26. The construction of a lease is a matter of law and imposes no evidential burden on either party: **((1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).
27. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

> 15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "*what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean*", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that

the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

28. There is an issue here between the parties as to the scope of the meaning of the term "*the Service Charge Expenditure*", particularly in the light of Clause 5.10 of the lease in a context where a managing agent has been employed.

The Respondent's Company Bank Account and Director's Salary and Expenses
The Applicant

29. The Applicant questions whether the salary of a Director of the Respondent company and expenses incurred by him can be recovered through the Service Charge.
30. The Applicant queries a number of entries on the Respondent's bank account statements and also asks whether deposits properly attributable to Service Charge items have been incorrectly used. She raises 22 specific questions in her application.
31. After receiving details of the 22 queried entries in a Response to Directions by the Respondent, the Applicant focused on the £159 "*Share of Group Directors' and Officers' Insurance*", £5,625 Director's Remuneration (said to be £1500 in 2004, £3000 in 2015 and £1125 in 2006, all for Mr Burns who, the Respondent submitted, had acted as Managing Director between December 2013 and May 2015), £861.59 Director's Expenses and Management and Professional and £2006.54 PAYE for the Managing Director and £1092 for payroll preparation and sundry company matters.
32. Prior to this, she said,there had been no such claims for Directors.
33. The Respondent is the freeholder (stated to be so since 2014 in a letter of 30 August 2016 to the Applicant from Blenheims, managing agents).
34. Clause 5.10 of the Lease only permits the management company to charge a reasonable management fee if no managing agents are employed. There appear to be charges by both the agents and the leaseholder in the form of the Respondent management company.
35. Tenants are being to ask to pay the Respondent's payroll function including any necessary RTI submissions to HMRC.
36. Legal fees are unreasonable in sum and are passed to leaseholders without any prior consultation.
37. Having seen the Respondent's fuller submissions in response to the Tribunal's further Directions, the Applicant makes further detailed comments.
38. The tenants should not be required to pay £14.60 (travel) and £11.25 (mileage) expenses for Mr Burns to interview prospective managing agents; it is unreasonable to charge £53.75 (train and meal) to attend a flat site visit re a roof defect even at the insistence of the flat owner; £98.85 (train and hotel) to attend a Leaseholders' Association meeting was unreasonable because the attendance was as a freeholder and there was no need for a hotel stay if an early train had been used; the mileage claims for the Director's interview, discussion of terms and conditions, monitoring of performance and appraisal are not sums reasonably due under the lease given the availability to the Respondent of company monies to meet these costs. Refreshments claims were unpleasant to read.

39. £861.59 was claimed over a 2-year period.
40. There is a disparity between the submitted role of Mr Burns and what he himself said in an email to the Applicant of 12 March 2015. His role does not appear to have been formalised. He now appears to be being paid for dealing with the Tribunal application as well as the costly employment of solicitors on a whim of the Respondent.
41. Why was a Janet Gompertz paid monies from the Respondent company account?
42. Why are other items said to be not applicable to the Service Charge?
43. How was the Service Charge money passed to the landlord's solicitor at purchase used?
44. Having seen the Respondent's final submissions, the Applicant still had concerns.
45. She was unable to confirm that previous Directors had been paid.
46. She remained unclear about the transactions relating to Ms Gompertz and what modest sums of money received related to.
47. There is, she believes, an informal residents' association rather than a tenants' or leaseholders' association.
48. It is important to focus on the main issues, she says. Should Mr Burns' salary and expenses be met by the Service Charge? Clearer explanations for the genesis and transactions of the company business account are required.

The Respondent

49. The Respondent argues that payments of salary and expenses claimed in respect of the Director, Mr Burns, are recoverable by way of Service Charge in accordance with the terms of the Lease.
50. The Respondent has commented on all of the queries raised by the Applicant. Of the 22 matters raised, some 15 are stated in a "Respondent's Table" to have no relevance to the Service Charge. Of the remaining 7 matters, 5 are said to be "Management Remuneration", 1 to be "Legal Fees" and 1 to be "Insurance".
51. In its further submissions, the Respondent's Reply, the Respondent adds more detail.
52. Previous Directors have charged for their services; whether this has been claimed via the Service Charge is not known.
53. Only 3 of the matters queried relate to income to the account. Item 2 was a loan, broadly to assist the purchase of the freehold; item 10 was for building management services for another company on a cost recovery basis (a contribution from that company to payroll costs was credited to the Service Charge account); item 18 was similar to item 10. There is other small income too and there is no requirement for it to be used for the Service Charge account.
54. Director's expenses relate to the Lease, but the Respondent has never sought to include them in the Service Charge.
55. The Respondent has accounted for the legal costs element of the earlier Decision.
56. The Respondent is both Lessor and Management Company. Mr Burns attended meetings as a Director of the latter. It is normal to charge a client for travel expenses. The Leaseholder meetings are held in or around Taunton.
57. The journey from London involving a hotel stay was the cheaper option for a 10.30 meeting at late arrangement.
58. The purchase of refreshments can procure space in premises for meetings far cheaper than the booking of a room.
59. On 10 September 2014, Mr Burns met a prospective managing agent on site and paid £6.20 for refreshments.

60. On 12 February 2015, the cost of a croissant, Danish pastry and Americano were not included in the Service Charge.
61. The £159 is for insurance protecting the Respondent which has given an indemnity to its Directors under Company Act 2006 Model Articles.
62. Director's Remuneration was £1500 in 2004, £3000 in 2015 and £1125 in 2006 (yet to be claimed against the Service Charge).
63. The figure of £1092 is not accepted. In any event, there has been no duplication of work with the auditor.
64. Paying a Director through PAYE is the HMRC recommended method and is the cheapest way to charge, in this case saving some £480.
65. Clause 5.10 of the Lease relates solely to a fair and reasonable management fee to reflect the type of work that would otherwise ordinarily be undertaken by the managing agent and not to any other expenses recoverable under other provisions of the Lease and not to Director's Remuneration and Expenses where such relates to work etc that would not or could not have been undertaken by the managing agent.
66. Between December 2013 and May 2015, Mr Burns acted as Managing Director. He was paid £250 per month for a range of services on behalf of the Respondent Company. This included taking on supervision of the managing agents after a period of receivership (and subsequently appointing new managing agents), visiting the site, ensuring that statutory and other duties were performed, supervising the budgetary process and undertaking work not included in the agreements with the managing agents, which work included giving evidence at court, insurance claims, prior period information and adjustments and compromises. Detail of the performance of these services is set out in the Respondent's submissions.
67. Claims for remuneration until May 2015 equate to £35.71 per hour.
68. Subsequent to May 2015, Mr Burns, as a Director, has claimed at a rate of £62.50 agreed by the Board of the Respondent, a total sum of £1125 for work not included in the agreements with the managing agents, which work included preparing for 2 court disputes.

The Tribunal

69. The Tribunal would normally focus on Service Charge Demands made or to be made by a landlord. Here the focus of the Applicant has been partly on demands, but also on the Respondent's bank account.
70. There is a further difficulty caused by the disparity in accounting periods detailed in paragraph 22 above.
71. It can be an offence under Section 387 Companies Act 2006 for an officer of a limited company in default where the company fails to comply with any provision of Section 386. Section 386 requires a limited company to keep adequate accounting records including entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and a record of the assets and liabilities of the company. It follows that if the Respondent is keeping such adequate accounting records, there should be an accurate record of relevant payments. In its response to the Tribunal's Direction 8 of the first Directions, the Respondent says that "*the service charge related items are accounted for in the statutory accounts of the company*". Oddly, the Respondent has not provided comprehensive copies of these records, which would help make sense of the bank account queried by the Applicant.
72. A limited company is not required by law to have a bank account. A landlord is required to keep proper records of Service Charge payments because the landlord

holds those payments on trust. Similarly, funds held as a sinking fund should be separately identified and held on trust.

73. The lease envisages monthly payments of an estimated service charge with a reconciliation once accounts have been completed for the year in question. This means that the landlord will hold tenants' monies in trust on account of planned expenditure. The Code provides guidance to landlords on how this should be done.

74. There is reference in an email of 30 June 2015 from an Administrative Receiver for the landlord company to the sale of the Respondent company by the landlord to Bridge House (Taunton) Limited ("the purchaser") when there was a provision that service charges would be held by the purchaser on trust for the lessees. A sum of £24,927.45 was to be transferred by Whitton and Laing, the former managing agents, to the landlord's solicitor, who passed the sum to solicitors acting for the purchaser on 4 December 2013.

75. It is not good practice for a management company to fuse Service Charge payments with other funds. This is particularly the case where, as here, the management company does not exist solely for the management of the Service Charge of a single building. It is apparent also from the Respondent's submissions that the company bank account was also used for the circulation of ground rent and loan monies.

76. There is an issue here between the parties as to the scope of the meaning of the term "*the Service Charge Expenditure*", defined in Clause 1.18, particularly in the light of Clause 5.10 of the lease in a context where a managing agent has been employed.

77. No Decision was made by the Tribunal in the earlier Decision as to the scope of Clause 5.10. The Tribunal has considered the competing submissions in the light of the wording of the Lease and has concluded that the interpretation offered by the Respondent is more correct. Clause 5.10 does, at first glance and if read in isolation, appear to deny the right for the reclaim from the Service Charge of Respondent company costs where a managing agent has been engaged. However, in context, what can be claimed is wider than the work of a managing agent. Clause 5.8, for instance, refers to "*Administering the Lessor and the Management Company itself....*", which can only be a role for the Lessor and Directors of the Management Company, and not for a managing agent. Also, if managing agents are not engaged to conduct all facets of the covenants of the Respondent company, then there can be a charge for those functions; so much is clear from Clause 5.2.9 "*generally managing and administering the Estate and protecting the amenities of the Estate and for that purpose if necessary employing a firm of managing agents or similar and the payment of all costs and expenses reasonably incurred by the Lessor and the Management Company*".

78. Section 18(1)(a) includes a sum payable, directly or indirectly, for "*the landlord's costs of management*" within the definition of sums which can be a "*service charge*" and the Lease here too includes such sums within Clause 5.8 as detailed above.

79. What is important, however, is that tenants are not required to pay twice for the same service and that the overall cost of the services provided is a reasonable cost to expect the tenants to pay by way of Service Charge.

80. Before dealing with the sums involved for Director's Remuneration and Expenses, a question arises as to the level of any remuneration. The Respondent states that the level increased for the last tranche of remuneration of £1125 subsequent to May 2015 to a rate of £62.50 (said to be agreed by the Board of the Respondent, although there is no written record of this) compared with £35.71 per hour charged prior to that date. No actual reason has been given as to why the Respondent believed it was reasonable to charge £35.71 when Mr Burns was acting as Managing Director and then hugely to increase that sum when he was assisting with the legal claims. There

being no such reason, the Tribunal finds that any claim for remuneration above £35.71 per hour is not a reasonable demand.

81. Clause 5.2.10 of the Lease includes within the ambit of the Service Charge "*the enforcement for the benefit of the lessees ... of the covenants ...in the Lease ...*". It is understandable that Mr Burns would wish to assist with the legal claims, the provision of evidence being outside the ambit of the agreement with the managing agents, and, the Tribunal finds, reasonable that he should do so. The hours claimed by Mr Burns in this role, some 18 hours in total appear, in the absence of any evidence to the contrary, to be reasonable. The Tribunal, accordingly, finds that the sum of £642.78 (18 x £35.71) can be reasonably demanded by way of Service Charge for the as yet undemanded period.

82. The involvement of the Managing Director in bringing the Respondent company out of receivership and establishing a status quo with the managing agent, then being actively involved in the appointment of a new managing agent are all tasks which the Tribunal finds were reasonably undertaken and reasonably charged to the Service Charge account in accordance with what is detailed in paragraphs 77 and 78 above. It is significant that the Directors returned to a pro bono position after matters became more settled and that Mr Burns sought to charge only for legal claims work thereafter. Given the complexities involved with the receivership and the decision of the Respondent to cap remuneration at £250 per month a claim for remuneration of £1500 in 2004 and £3000 when seen against the list of duties undertaken by Mr Burns and detailed within the Respondent's submissions (some of which were at the request of tenants), the Tribunal finds that the sum totals of remuneration were reasonable in those discrete circumstances.

83. The Respondent has explained how savings were made on payroll and why the Director was paid via PAYE in line with HMRC requirements.

84. The Applicant has also queried the expenses claimed by Mr Burns and forming part of the demand for Service Charge made and to be made by the Respondent. Again, it is important to note that tenants should not be required to pay twice for the same service and that the overall cost of the services provided is a reasonable cost to expect the tenants to pay by way of Service Charge.

85. The Applicant has highlighted the issue of expenses in general, but focused on a small number of specific claims.

86. So far as the general query is concerned, the Tribunal finds that the expenses are recoverable if they are necessary in terms of the Director conducting services required by the Lease, which services are not duplicated by others and the expenses are reasonable in amount. The Tribunal has found above that the hours expended by Mr Burns are properly claimed. It follows that reasonable expenses necessarily related to that provision of Lease relevant services are too properly claimed.

87. Using the HMRC rate for mileage at 45p per mile is, finds the Tribunal, in the absence of any coherent argument to the contrary, a reasonable rate to use.

88. It is not possible for the Tribunal to be certain as to which expenses have been included within the Service Charge demands for the 3 years in question. Although there is a schedule of expenses included within the Respondent's submissions, that schedule does not always tally with other records (e.g. £43.70 for mileage, parking and meal on 9 January 2014, but £43.46 demanded by way of Service Charge). Also the submissions of the Respondent make reference to sums not being claimed by way of Service Charge Demand. The Tribunal will, therefore, use the expenses schedule as a point of reference as it is the only comprehensive list of expenses. Clearly the Tribunal's findings can relate only to any of these sums actually forming a part of the actual or proposed Demands for Service Charge.

89. As a general point, the Tribunal finds that it is reasonable to make a small expenditure on refreshments, where that expenditure secures a space for a meeting. It is common knowledge and certainly within the knowledge of the Tribunal that it is common practice for business people to meet at a place of refreshment for a discussion in the knowledge that time there can be secured for a token expenditure. Set against the cost of securing a meeting space via other means, this is likely to be by far the cheaper option.

90. The Tribunal views differently, however, the purchase of refreshments in other contexts. Why, it asks itself, should the Respondent be able to demand of the tenants recompense for a lunch purchased by Mr Burns when he would have been responsible for the payment of his own lunch wherever he was? It is a different matter if the Respondent itself wishes to pay for meals. On that basis, the Tribunal finds that meals of £6.60 (9/1/14), £5.90 (7/11/14), £4.60 (20/11/14) should not be demanded as Service Charge. Similarly, any Demand for future years (including to 2017) should be exclusive of refreshment claims not associated with the securing of meeting space (see above).

91. Dealing then with the specific items of expenses queried by the Applicant.

92. The Applicant said that the tenants should not be required to pay £14.60 (travel) and £11.25 (mileage) expenses for Mr Burns to interview prospective managing agents; the Tribunal has found that these services were reasonable when viewed against the requirements of the Lease and did not duplicate the work of others. It follows that the reasonable expenses of travel claimed by Mr Burns were too reasonably demanded via the Service Charge.

93. She said that it is unreasonable to charge £53.75 (train and meal) to attend a flat site visit on 7 November 2014 re a roof defect even at the insistence of the flat owner. The Tribunal has disallowed the meal element of this visit (see above). However, given the Applicant's concession that it was right that Mr Burns should attend the meeting at the flat, albeit as a Leaseholder rather than to represent the Respondent, the Tribunal concludes that the Demand for the travelling element is reasonable and is payable under the terms of the Lease whether the attendance was as Leaseholder or Respondent company representative (see the discussion of Clause 5.2.9 of the Lease above).

94. She said that £98.85 (train and hotel) to attend a Leaseholders' Association meeting was unreasonable because the attendance was as a freeholder and there was no need for a hotel stay if an early train had been used. The freeholder attendance point has been covered in the immediately preceding paragraph. The Applicant's suggestion of an early train is not, the Tribunal finds, reasonable because it would involve Mr Burns in leaving home very early in the morning (on the basis of the train times provided by the Applicant) and has not been shown by the evidence to be a saving in monies in the particular circumstances of the journey and its time of booking.

95. She said that the mileage claims for Mr Burns' interview, discussion of terms and conditions, monitoring of performance and appraisal are not sums reasonably due under the lease given the availability to the Respondent of company monies to meet these costs. The Tribunal finds that this mileage falls within the ambit of Clause 5.8 of the Lease detailed above. Similarly, so do the Directors' Insurance and the cost of Returns to HMRC fall within the ambit of Clause 5.8.

96. The Applicant has quite properly asked questions about the Respondent's bank statement. Given the accounting practices it appears are operated by the Respondent, i.e. the fusion of Service Charge and other monies in the same account, and which have been commented upon above, it is, the Tribunal finds, not surprising that the Applicant should be, at the least, perplexed, not to say

concerned. However, upon analysis, the evidence available has not shown that any Service Charge monies, being the sums transferred on 4 December 2013 or payments by tenants since that date have been misused such that they are not available to meet proper Service Charge Demands. There is simply no evidence of misuse or missing monies.

97. Nor is there any evidence capable of supporting a claim that any income, specifically the sums challenged by the Applicant, to the Respondent's bank account should be used to defray the costs of the Service Charges so as to reduce the demands made of the tenants. There is no term of the Lease adverted to by the Applicant to support such a contention and no evidence that costs demanded as Service Charge are also met by other funding.

98. The Respondent has provided a cogent explanation of the sums relevant to the Service Charge within the bank statement queried by the Applicant.

Final Comments

99. In interpreting the Lease, the Tribunal has used the guidance from **Arnold v Britton and others** detailed above to assess *"what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean"*.

100. In her final submissions, the Applicant said that it is important to focus on the main issues. Should Mr Burns' salary and expenses be met by the Service Charge, she asked. Clearer explanations for the genesis and transactions of the company business account are required, she said. As the Tribunal has detailed above, it finds that some of the salary and expenses should be met by the Service Charge and has examined the issue of the genesis and transactions of the company business account.

101. The Tribunal is conscious that there are further matters of concern for the Applicant, but it has necessarily concentrated in this Decision on the issues raised by the Application.

102. The Tribunal makes clear that it has not considered whether the considerable sum of £39,616 for Legal and Professional Fees proposed by the Respondent's managing agent to be demanded by way of Service Charge is a reasonable sum as this did not form part of the current application.

Section 20c

103. The Applicant has made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings. This section can be seen in the Appendix to the earlier Decision.

104. In considering an application under Section 20C, the Tribunal has a wide discretion, having regard to all relevant circumstances. *"Its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them." "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."* (**Tenants of Langford Court v Doren Ltd** (LRX/37/2000).

105. *"An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those*

affected by it and all other relevant circumstances." □ *"The scope of the order which may be made under section 20C is constrained by the terms of the application seeking that order...;* □*"The FTT does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else".* □(**SCMLLA (Freehold) Limited** (2014) UKUT 0058 (LC)). *"In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."* (**Conway v Jam Factory Freehold Limited** (2013) UKUT 0592 (LC)).

106. The Tribunal has considered the above guidance in the context of the circumstances and its findings detailed above. The Respondent has been in financial difficulties. The Applicant has been largely unsuccessful, succeeding only in a reduction of the total Service Charge Demand of £17.10 for years demanded to date and £482.22 in respect of a Demand yet to be made, about 1/20th of the sum she challenged, a tiny sum for herself all told. Unfortunately, the effect of the below Decision is that all tenants will have to meet the Respondent's reasonable legal costs of the Applicant's application set against a very small reduction in Service Charge achieved by the application should the Respondent seek to recover it through the Service Charge.

107. The legal costs incurred by the Respondent in connection with the proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the lessees or their successors in title. Any such sums will be subject to their being reasonable in amount. The Tribunal reflects that the submissions of the Respondent were prolix and could have been far more relevant to and focused on the issues, shorter, crisper and better structured than they were.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.