



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

Case Reference : BIR/00FN/LSC/2014/0005

Property : Flat 1, 50 Cross Hedges Close,
Leicester LE4 0UD

Applicants : J H Watson Property Investment Limited

Representation : Mr Warren

Respondent : Hammercliffe Estates Limited

Representation : Mr Vezis

Type of Case : (1) Under Sections 27A and 20C Landlord
and Tenant Act 1985 ('the 1985 Act') (2)
Under Schedule 11 Commonhold and
Leasehold Reform Act 2002 ('the 2002
Act')

Date of Court Order : 2nd May 2014

Tribunal : Judge W J Martin
Mr P W Hawksworth
Mr C Gell F R I C S

Date : 08 AUG 2015

DECISION

Background

- 1 On 2nd May 2014 District Judge Wood ordered ('the Court Order') that the case ('the Case') arising from Claim Number A33YJ137 ('the Claim') be transferred from the Harrogate County Court to the First-tier Tribunal (Property Chamber) ('the Tribunal').
- 2 For the purposes of Rule 28 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Procedure Rules') the Tribunal directed that J H Watson Property Investment Limited (the Claimant in the Case) is the Applicant in the Tribunal proceedings and Hammercliffe Estates Limited (the Defendant in the Case) is the Respondent.
- 3 The Particulars of Claim (dated 31st January 2014) claimed in respect of Flat 1, 50 Cross Hedges Close, Leicester LE4 0UD ('the Property'):
 - (i) Service Charge arrears amounting to £4,626.82 and continuing to accrue;
 - (ii) interest arrears in the sum of £4,962.57 and interest to judgement accruing at the rate of £2.20 per day; and
 - (iii) arrears of Administration Charges in the sum of £21,867.55 and continuing to accrue.The total of the claim was said to be £31,456.94
- 4 By its Directions Order No 1 dated 15th July 2014 the Tribunal notified the parties that it has no jurisdiction in respect of the interest. The Respondent's obligation to pay interest on outstanding service charges arises from Clause 2 (28) of the Lease under which the Property is held. The rate is fixed at 18% and is therefore a contractual arrangement between the parties. Because of this it does not fall within the definition of a variable administration charge contained in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 Act ('the 2002 Act').
- 5 The Tribunal's jurisdiction arises as follows:

In respect of the service charges from section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'); and

In respect of administration charges from Schedule 11 to the 2002 Act.
- 6 On 28th February 2014 the Respondent filed a Defence and Counterclaim in the County Court. The administration charge was disputed, as was the liability to pay the service charges. The Counterclaim (inter alia) is in respect of £4,500 loss of rent arising from a fire at the Property. The Respondent alleges this was due to the failure of the Applicant to maintain the fire alarm serving the Building of which the Property is part. The matters arising from the Counterclaim are outside of the jurisdiction of the Tribunal.
- 7 The Lease ('the Lease') under which the Respondent holds his Flat is dated 19th June 1992 and is made between Rexhaven Limited (1) and Macmillan Stewart Securities PLC (2). The demise is for a term of 125 years from 19th June 1992, reserving a ground rent of £100 per annum and also the service charge as defined in the Third Schedule to the Lease.
- 8 The Service Year is defined in the Lease as the period commencing on 29th September in each year, and terminating on 28th September in the following

year. There is a regrettable lack of detail in the Lease relating to the Service Charge, but the Tribunal notes the following:

01. The demise in Clause 1 of the Lease reserves the Service Charge as rent by use of the words: *'AND ALSO paying by way of further or additional rent from time to time the service charge as defined in the Third Schedule hereto'*
02. *'Service Charge'* is defined in the Third Schedule as *'..one third of the Service Costs for the preceding Service Year less the amount of any Estimated Service Charge already paid in respect of that Service Year'*
03. The *'Service Costs'* is the amount the Lessor spends in carrying out its obligations to repair and maintain the Building of which Flat 1 forms part. There are two other flats in the Building.
04. Paragraph 4 of the Third Schedule defines the *'Estimated Service Charge'* as *'the Lessor's estimate of the amount which the Service Costs will be for the then current service charge year'*
05. Clause 2 (27) contains a covenant by the Lessee *'to pay on 29th September in each year the Estimated Service Charge then appropriate without any deduction'*
06. Paragraph 5 of the Third Schedule obliges the Lessor to keep *'a detailed account of the Service Costs'* and to *'prepare a Service Charge Statement for each Service Year which shall be certified by a Member of the Institute of Chartered Accountants that it is a fair summary of the Service Costs ...'*

9 The Fourth Schedule details the services to be provided:

1. *Repairing and maintaining the roof hallway stairs and landing outside main structure and foundations of the Property.*
2. *Decorating the outside of the Property once every three years.*
3. *Repairing and maintaining those services in the Property and its grounds which serve both the Property and other parts of the Property.*
4. *Obtaining insurance valuations of the Property from time to time.*
5. *Providing the insurance cover referred to in Clause (2).*
6. *Repairing and maintaining the gardens footpaths rights of way and bin areas within the land shown edged brown and blue on the plan.*
7. *Providing lighting and carpeting (if any) to those parts of the Property edged blue on the plan.*
8. *Providing water supplies to the property for used water and sewage to be taken away from the Property.*
9. *Providing and repairing and maintaining a television aerial system to serve both the Property and other parts of the Property.*

- 10 On 7th July 2014 a Case Management Conference ('CMC') was held at Leicester Magistrates Court. This was attended by Mr Warren, a credit manager of Watson Property Management limited, the managing agents appointed by the Applicant, and by Mr Vezis, on behalf of the Respondent. The Chairman explained that, as regards the two elements of the Statement of Claim over which the Tribunal has jurisdiction, the issue of the service charges is the most straightforward. There was a Decision of the Leasehold Valuation Tribunal ('LVT') dated 18th September 2009. This determined the service charges for the years 2005 to 2008, based on the certified accounts. Adjustments were made for each of these years as follows:

2005:	£25.00
2006:	£10,231.86 *
2007:	£ 3,861.78
2008:	£684.82

* Of this sum £10,133.97 was professional fees in respect of the previous LVT Hearing, which the Landlord conceded are not recoverable as part of the service charge. However, it appears that some or all of this sum has been recharged as an administration charge, and is part of the Claim.

- 11 The provisions in the Lease under which the Respondent contends that the administration charge the subject of the proceedings may be charged are said by the Respondent to be the covenant in Clause 2 (24) of the Lease, which reads as follows:

'(24) Pay all expenses including Solicitors costs and Surveyors fees incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 whether incurred in or in contemplation of proceedings under section 146 or 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the court'

- 12 Another issue arising is whether the Limitation Act 1980 limits the period within which the Applicant may bring a claim. The Applicant maintains that section 15 of the Limitation Act 1980 permits claims for up to twelve years prior to the commencement of proceedings, whereas the Respondent maintains that the appropriate limitation period is six years, meaning that all legal fees incurred before 27th June 2006 are barred.
- 13 The Tribunal considered that the issue of whether the legal costs the subject of the administration charges are recoverable under the terms of the Lease and the question of limitation should be determined as preliminary issues on the basis of the written submissions of the parties and issued Directions appropriate to the case.
- 14.1 The Tribunal's Decision (dated 21st November 2014) on the above preliminary issues ('the Preliminary Issues Decision') was:
- (a) That Clause 2 (24) of the Lease does not provide a contractual right to the recovery of the entirety of the variable administration charges amounting to £21,865.55 included within the Claim. Because of the wording of the Clause, only those '*expenses including Solicitors costs and Surveyors fees incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925*' are recoverable under Clause 2 (24) of the

Lease, and (for the avoidance of doubt) does not include costs incurred in contemplation of any other matter than the service of a section 146 notice or Notices.

(b) The service charges are reserved as rent, and therefore the limitation period in respect of them is, by virtue of section 19 of the Limitation Act 1980, six years. However, the claim for administration charges arises from a covenant in the Lease. The Lease was executed under seal, and therefore an action in respect of such charges is an action on a specialty. Section 8 (1) of the Limitation Act provides that the limitation period is 12 years.

- 14.2 After the Preliminary Issues Decision was made it came to the Tribunal's notice that, a Decision of the Upper Tribunal had since been handed down, which, had it been available to the Tribunal, would have affected the way the it dealt with the issue of limitation within the Preliminary Issues Decision. The Upper Tribunal Decision in question is *Parissis v Blair Court (St John's Wood) Management Limited* [2014] UKUT 0503 (LC). Briefly, the effect of this case is that the First-tier Tribunal, when considering an application under section 27A of the Landlord and Tenant Act 1985 in respect of service charges (and by extension an application under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of variable administration charges) should make no determination as to any issues surrounding limitation. The First-tier Tribunal's jurisdiction relates to whether a service charge or administration charge is payable. Whether it is recoverable is a matter for the Court, which will determine any questions of limitation.
- 14.3 The Tribunal cannot amend or review the Preliminary Issues Decision, and would, in the ordinary way, apply the findings contained within it to this Decision of the substantive issues. However, had *Parissis* materially affected the findings contained in the Preliminary Issues Decision, the Tribunal would need to apply *Parissis* (as the decision of a superior Tribunal) in this Decision. In the event, the Preliminary Issues Decision arrived at the same result as if the Tribunal had been aware of and considered *Parissis*. This is because all of the service charges and the administration charges contained within the Claim (except those excluded for the reasons referred to in paragraph 14.1 (a) above) are the subject of this Decision. The Preliminary Issues Decision, although it made findings as to limitation (referred to in paragraph 14.1 (b) above), did not exclude any item within the Claim as statute barred.
- 14.4 Despite the above, the Tribunal nevertheless decided that it was proper that the parties were made aware of the situation, and invited to make written submissions within the period of 14 days of notification, if they wished. The Applicant made no submissions, but the Respondent replied to the effect that if the effect of *Parissis* is detrimental to its case, it would have no alternative but to claim that the Preliminary Issues Decision was a 'Misdirection, with inevitable consequences'.
- 14.5 It is clear to the Tribunal that the Respondent has not fully appreciated that there is no material difference to its claim as a result of *Parissis*. The position of neither party is adversely affected and the Tribunal therefore determines that it will proceed to determine the service charges and administration charges contained within the Claim (with the exception of the administration charges excluded for the reasons referred to in paragraph 14.1 (a) above).
- 15 The Tribunal had already issued Directions with regard to the production of a Scott Schedule in respect of the Service Charge. These Directions stated that

the periods in respect of which it would make a decision in respect of the Service Charges would be for the years ending 28th September 2009 to 2014 inclusive. The Preliminary Issues Decision contained additional Directions with regard to the administration charges. As a result of the Applicant's compliance with these Directions the Applicant's claim with regards to the Administration Charges was reduced to £858.23, comprising the items listed in the Administration Charge Scott Schedule at paragraph 36 below.

Inspection

- 16 The Tribunal inspected the exterior and common parts of 50 Cross Hedges Close ('the Block') on 21st April 2015 in the presence of Mr Warren and Mr Patel on behalf of the Applicant, and Mr Vezis on behalf of the Respondent. The Block comprises a semi-detached building of three storeys containing three self-contained flats. The Block has been converted into its present layout from a single dwelling, which was originally a council house, but which had since been acquired under the Right to Buy provisions of the Housing Act 1985.
- 17 The entrance to Flat 1 is independent of the entry to Flats 2 and 3, which share a common entry with stairs giving access to the front doors of those Flats. The entry also provides a separate door to the rear, shared garden. The entrance lobby and landing are painted and the stairs are carpeted. There is interior emergency lighting.
- 18 The Tribunal's attention was drawn to the newly wooden cladded exterior to the rear elevation. The Applicant had recently removed the existing concrete cladding following a fire, although the concrete cladding remains in place on the side elevation. The garden area has also been provided with a new wooden fence to the rear elevation.
- 19 The obligations of the Applicant with regard to the service charge therefore are (a) the maintenance of the fabric of the Block, (b) the cleaning and decoration of the internal common parts and (c) the emergency lighting.

Submissions and Hearing

- 20 The submissions of the parties and the Tribunal's decisions with regards to the service charges were included in Scott Schedules provided by the Respondent from information supplied by the Applicant. These are reproduced in a modified form in paragraphs 30 to 35 below. The adjustments made are to ensure that they agree as to the amounts claimed with the service charge accounts enclosed with the Applicant's letter to the Tribunal dated 22nd April 2015. The Tribunal's determinations in respect of the service charges are contained in the Scott Schedules. However, before considering the service charges in detail, the Tribunal addressed the issue of payability, which had been raised by the Respondent, and the accountant's fees.

Accountant' fees, management fees and payability

- 21 It is apparent from a perusal of the service charge accounts, and the service charge estimates, that the Applicant has not administered the service charge strictly in accordance with the provisions of the Lease. As has already been mentioned, there is a lack of detail in the provisions, which are summarised in paragraph 8 above. It should be noted that, in addition to those provisions, Clause 2 (27) of the Lease obliges the Respondent *'to pay on 29th September 1992 and on the same day in each year thereafter the Estimated Service Charge as defined in the Third Schedule then appropriate without deduction'*.

Clause 2 (28) then provides that the Respondent is to 'pay interest on any rent or Estimated Service Charge seven days after it falls due at the rate on eighteen per cent per annum...'

- 22 Paragraph 5 of the Fifth Schedule, as already noted, obliges the Lessor to 'keep a detailed account of the Service Costs and shall prepare a Service Charge Statement for each Service Year which shall be certified by a member of the Institute of Chartered Accountants that it is a fair summary of the Service Costs and shall be conclusive as to the information contained in costs and shall be inclusive as to the information contained in it'.
- 23 It seems likely that the final words in Paragraph represent a typing error, and that the Paragraph is intended to provide that the Statement is to be conclusive as to the information contained within it.
- 24 However, there is no provision, other than the reservation of the service charges as rent, that obliges the Lessee to pay any shortfall, if the Estimated Service Charge is insufficient to cover the actual costs as contained in the Statement. This is perhaps the reason, as highlighted by the Respondent, that the amount estimated for each year (apart from the year 2011/12) is higher in each case than the actual expenditure, and substantially so in the years 2008/9 and 2009/10. The following table shows the comparisons for the years the subject of the Claim.

Year	Estimate	Actual
2008/9	£4,142	£2,642
2009/10	£4,150	£2,382
2010/11	£3,070	£2,678
2011/12	£3,070	£3,273
2012/13	£3,170	£2,873
2013/14	£3,050	£2,978

The Estimate for 2009/10 includes a figure of £1000 for 'Major Works'. There is no corresponding figure in the service charge account. Mr Vezis complained that this, and other charges, amounted to a 'tactic' to extract more money from the Leaseholders. Against this it could be said that, as the Leaseholders have historically been constantly in arrears with the service charge contributions, there was insufficient cash to carry out the proposed major works. However, be that as it may, the substantial overprovision in the Estimates for the first two years is a matter that the Tribunal disapproves of, particularly in view of the penal rate of interest that accrues on the Estimated Service Charge by virtue of Clause 2 (28) of the Lease.

- 25 The leaseholders were for each year provided with an abbreviated version of the annual accounts, which contain the following certificate:

'We hereby certify that our Client Accounts are audited in accordance with the Royal Institution of Chartered Surveyors rules and regulations'.

This certificate is signed by Watsons, and not by a member of the Institute of Chartered Accountants, as required by the Lease. Although it is not clear whether they were in fact supplied to the Lessees, the annual Service Charge Statements provided to the Tribunal show on their front page that they were prepared by Brays, Chartered Accountants of Wetherby. These accounts, from

2011 onwards also contain a certificate signed by Watsons in the following terms:

'In accordance with our terms of engagement, we approve the financial information which comprises the service Charge Income and Expenditure Account, the Balance Sheet and related notes. We acknowledge our responsibility for the financial information, including the appropriateness of the accounting basis, and for providing Brays Ltd with all information and explanations necessary for its compilation.'

- 26 In addition to the above, for the years from 2011 onwards, Brays provided in each year an Accountant's Report to the effect that their work was carried out having regard to the Technical Release 03/11 'Residential Service Charge Accounts' published jointly by the professional accounting bodies with ARMA and RICS. However, the report makes it plain that as the procedures did not constitute either an audit or a review, Brays were not able to express any assurance as to the service charge accounts other than as to the factual statements set out in the report.
- 27 Current case law suggests that when considering the provisions of the lease as to the payability of the service charge, First-tier Tribunals should adopt a business-like approach, with particular reference to certification. Applying this test, the Tribunal finds that the service charges (as adjusted by it) are payable by the Respondent, even though there is no direct covenant to pay any shortfall. In any case, as pointed out by the Applicant, the only year in which the lack of certification could go to payability is in respect of the balancing charge for the year 2001/12, as in all the other years, the Estimated Service Charge is in excess of the actual service charge expenditure, and Clause 2 (27) of the Lease provides a clear contractual route to payment, independently of certification. However, although the Tribunal has no jurisdiction as to the amount of the interest rate in Clause 2 (28), it is axiomatic that, when calculating the interest due from the Respondent, the amounts upon which it is calculated should be adjusted to take account of the actual service charges due for each year (as modified by the Tribunal), the date for the calculation of such adjustment being the date of the abbreviated Statement of Service Charges provided at the end of each year.
- 28 For the purposes of its assessment of the Accountants fees, the Tribunal has adopted the approach of considering the accounts in the years in which they were issued. For the years 2008/9 and 2009/10, the service charge accounts provided to the Tribunal (but not the abbreviated Statements sent to the Lessees) include the sum of £60 as the accountant's fee for each year. However, the invoice that covers the accountant's fees for these two years appears in the accounts for the year 2011/12 (155 in the Applicant's bundle). Accordingly the two items of £60 are disallowed by the Tribunal for the 2008/9 and 2009/10, although account 155 is approved by the Tribunal in 2011/12. The Tribunal's determinations as to the remainder of the accountant's invoices are contained in the Scott Schedules.
- 29 As to the actual amounts charged for each year, it is clear that the sum doubled after 2011. At the Hearing Mr Warren explained that historically the certificate had not been provided, but that now it is, and therefore the additional sum is justified. The Tribunal does not accept this submission. Although the Tribunal has found that the failure to comply strictly with the Lease does not result in

the service charge not being payable, it is nevertheless the case that the certification is not as required by the Lease. It was suggested at the Hearing that certification by Watsons amounted to 'passive' certification, as it was clear the accounts had been prepared by Brays. However, this argument, too, is rejected by the Tribunal. The additional charges for certification are said to have been made by the accountant, but in fact the certificates were signed by Watsons. However, the accountant's charges are modest, and the Tribunal has approved the fee at £120 per annum post 2011. The additional fees of Watson's, however, which escalate after 2009 are disallowed. It may be that the additional charges were made because of certification, or because of additional work. Whatever the cause, the Tribunal finds no justification for any increase in the management fees from the 2009 level.

The Scott Schedules

30 29th September 2008 - 28th September 2009

Category	Total	Respondent	Applicant	Tribunal	£
<u>Common Parts electricity</u>	£35.05	Accept principal that must be paid as long as it relates to common parts.	There is a separate meter for the common parts. Copies of the accounts are provided showing how the total is arrived out.	Accept the Applicant's calculations.	£35.05
Common parts cleaning	£315.00	Agrees (share £105)			£315.00
<u>Maintenance and repairs</u>	<u>£809.81</u>				
M R Hayton (60) Investigate and repair roof leak	£200.00	Dispute as there is no break down between materials and labour.	Mr Hayton is a good local contractor. This account is reasonable	The Tribunal agrees that there should be a breakdown between parts and labour. The Tribunal finds this account only reasonably incurred as to 80%.	£160.00
M R Hayton (62) Supply and fit new consumer unit and connect supply to fire alarm panel	£260.00	Similar work done by Blaby Electrical in 2008 (copy invoice supplied - total £499.22)	Not a duplication. The works order shows the supply was not connected	On the balance of probabilities this is a duplication. In any case work to the electrical system should be undertaken by a qualified electrician where there are residential tenants. This account is disallowed.	Nil
M R Hayton (58) Replace door entry system	£300.00	Not authorised by the Lease so not payable. If the Tribunal	Paragraph 3 4 th Schedule provides the authority.	Agree with Respondent. Clause 3 (7) of the Lease	Nil

		finds that it is, the amount is challenged.		authorises the provision of the services listed in the 4 th Schedule 'for all the occupiers of the Property'. Paragraph 3 can only be read as meaning services which benefit all parts of the Property. The door entry system only benefits Flats 2 and 3. This account is therefore disallowed.	
Tranter Fire and Security Systems (64) Replacement of batteries during maintenance visit	£49.81	Should the leaseholders be responsible for battery replacements outside of annual visits?	This is a legitimate expense.	Agree a legitimate expense. Allowed in full.	£49.81
Gardening and grounds upkeep	£667.00	Agreed			£667.00
Annual Maintenance Contract: Tranter Fire and Security Systems	-£153.50	No work carried out	This is a credit from the previous LVT		(£153.50)
Building Insurance	£195.70	Agreed			£195.70
Management Fee (Watsons)	£713.17	Agreed			£713.17
Accountancy Fee	£60.00	No submissions as not in Scott Schedule	No submissions as not in Scott Schedule	This item appears on the accounts but not in the Scott Schedule. There is no account and it is therefore disallowed. See paragraph 29 as to accountancy fees.	Nil
Total (as Account)	£2,642.23				£1,982.23
Respondent's Share					£660.74

31 29th September 2009 - 28th September 2010

Category	Total	Respondent	Applicant	Tribunal	£
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<u>Common Parts electricity</u>	£90.75	89 and 91 are the only two bills that are within the period - total £41.69	Copies of the accounts are provided (85 - 96) showing how the total is arrived out. All accounts relate and the Applicant has to decide which accounts to include within a service charge year.	Accept the Applicant's calculations and apportionment.	£90.75
<u>Common parts cleaning</u>	£330.00	There are only 11 accounts so total should be £302.50	Treated as a pre payment. Last account not received until after the period end.	Agree with Applicant. Whole cost allowed.	£330.00
<u>Maintenance and repairs</u>	<u>£230.00</u>				
M R Hayton (101) Provide new lock and keys	£75.00	Agreed			£75.00
M R Hayton (102) Check gutter causing leaks to Flat 3. Clean Out	£100	No proof work done.	Mr Hayton is a good local contractor. This account is reasonable.	The Tribunal considers the charge excessive for a gutter clean. Only reasonably incurred as to 50%.	£50.00
M R Hayton (104) Provide key box	£55.00	There is no key box.	It was vandalised and later removed. This account is reasonable.	Agree with Applicant.	£55.00
<u>Gardening and grounds upkeep</u>	£486	Agreed			£486
<u>Annual Maintenance Contract:</u> Tranter Fire and Security Systems	£220	Agreed			£220
<u>Building Insurance</u>	£212.97	Agreed			£212.97
<u>Management Fee (Watsons)</u>	£743.73	Agreed			£743.73
<u>Accountancy Fee</u>	£60.00	No submissions as not in Scott Schedule	No submissions as not in Scott Schedule	This item appears on the accounts but not in the Scott Schedule. There is no account and it is therefore disallowed. See paragraph 26 as to accountancy	Nil

				fees.	
Total (as Account but see across)	£2373.45 (Note: the above sums total £2373.45, but the accounts show £2,382)				£2,263.45
Respondent's Share					£754.48

32 29th September 2010 - 28th September 2011

Category	Total	Respondent	Applicant	Tribunal	£
<u>Common Parts electricity</u>	£225.83	This is a large unjustified increase	There was a change from Southern Power to Scottish Electricity. There was a huge overestimation for this year but it was put right in the following year.	The Tribunal accepts the Applicant's explanation. Reasonably incurred.	£225.83
<u>Common parts cleaning</u>	£275.00	No challenge			£275.00
<u>Maintenance and repairs</u>	£480.62				
Tranter Fire and Security Systems (138) Fire alarm call out	£97.52	Why was this not charged to Flat 2? This should not be charged to the other leaseholders.	This is a communal system so call outs are part of the service charge	Agree with Applicant. This is a proper service charge item	£97.52
Insurance excess	£250	Not challenged			£250
Uncollected balance of fire invoices	£133.10	Challenged as cannot see how this amount appears.	See below	Accept the Applicant's explanation. The course adopted was reasonable.	£133.10
Blaby Electrical Systems (139) Turn off electricity following fire damage	£138.60		The Total of these 4 invoices amounts to £1589.60. The invoices all relate to fire damage and the insurer's paid £1,215.50, there being an excess of £250. The remaining £133.10 remains in the accounts because to collect it from the insurer would involve a		
M R Hayton (142) Supply front and rear doors	£1150.00				
M R Hayton (142) Work to Flat 2 following break in by vandals who stole taps etc and left water running.	£250.00				
Rainbow International (141) Contents/building report	£60.00				

			further excess of £100, and an attendant risk of a higher premium at renewal. See above		
<u>Gardening Contract</u>	£494.00	16 visits at £27 is £432	There were more visits plus a reverse accrual of £100. The total is correct.	Accept the Applicant's explanation.	£494.00
<u>Annual Maintenance Contract: Tranter Fire and Security Systems</u>	£252.37 see p 110 includes emergency cover at £7.05	Disagree with the extra charge	The emergency cover represents good value for money.	Agree with Applicant	£252.37
<u>Building Insurance</u>	£161.47	Agreed			£161.47
<u>Management Fee and Accountant's Certificate (Watsons)</u>	£790.00	There is an increase not agreed with. The certificate does not comply with the Lease.	Historically the certificate was not provided. Now it is and the extra charge is recoverable.	The certificate is not as required by the Lease. The management fee is capped at the previous year's total.	£743.73
Total (as account)	£2,679.29				£2,233.02
Respondent's Share					£877.67

33 29th September 2011 - 28th September 2012

Mr Vezis made the general point that during this year the insurers were responsible for the service charge as there were no tenants living in the Block, owing to the fire damage. However, there was a new tenancy agreement from 2nd August 2012 (exhibited in the Respondent's bundle).

Category	Total	Respondent	Applicant	Tribunal	£
<u>Common Parts electricity</u>	- £32.86		Credit carried forward		-£32.86
<u>Common parts cleaning</u>	£137.50	The property was empty until Respondent's tenant moved in.	There were people living in the Block for several months, including the period before the Respondent's tenant moved in.	Accept the evidence from Mr Patel regarding occupancy. There were 5 visits from 30/9/11 which are accepted as reasonable.	£137.50
<u>Maintenance and repairs</u>	£798.90				
M R Hayton (178) Meet with WSP	£140.00	The insurer should be responsible	Agree that if possible this should form	Agree that it is reasonable to incur this	£100.00

surveyors to give access for asbestos report. Re-secure after visit.			part of the insurance claim. In discussion with insurers, but the work was necessary and properly forms part of the service charge. If some of the amount is recovered it will be credited then.	charge, but the amount is excessive. Only reasonably incurred as to £100.	
M R Hayton (179) Meet with Mark Brooks to investigate. Take off plasterboard etc. Re-secure after visit	£280.00	The insurer should be responsible	See above	Agree that it is reasonable to incur this charge, but the amount is excessive. Only reasonably incurred as to £200.	£200.00
Cristal Glass and Glazing (180) Board up following call from Fire and Rescue	£358.80	The insurer should be responsible	See above. This was to attend the day after the fire to board up and re-secure.	Agree with Applicant. Reasonably incurred	£358.80
Birstall Shoe repairs (183) Cutting keys	£8.10	Not challenged			£8.10
Land Registry office copy	£12.00	Not a repair	No explanation	Disallowed as clearly not a repair	Nil
<u>Gardening Contract</u>	£108.00	Gardening carried out by tenant of Flat 1.	There was a problem with fly tipping etc so it was necessary to send contractors.	Accept that this was a proportionate response. Reasonably incurred	£108.00
<u>Annual Maintenance Contract:</u> Tranter Fire and Security Systems	£265.51	Not necessary because Flats were empty.	Flat 2 was not empty all the time. The Landlord is still required to provide this service.	Agree with Applicant. Reasonably incurred.	£265.51
<u>Building Insurance</u>	£140.06	Agreed			£140.06
<u>Management Fee (Watsons) and Accountant's Certificate (155) Brays</u>	£835.01 £120	Not admissible - excessive and should be reduced to £360.	It is reasonable that the managing agent appoints a chartered accountant. £835.01 is reasonable for the management fee given the problems with managing a small 3 unit development.	See paragraphs 28 and 29. The accountant's fee is allowed as it relates to 2009 and 2010. Management fee capped at 2010 level as the Tribunal considers that the insurance claim was not handled particularly	£713.17 £120.00

				well.	
<u>Unwarranted and avoidable expenses</u>	£864.47				
Cunningham Lindsay Loss adjuster	£604.47	Part of insurance claim	Agree - credit next year	Approved as credited next year	£604.47
M R Hayton (186) Fit new locks and call out to alarm	£215.00	Padding to justify amount.	This is for refitting of locks and is reasonable. It could have appeared under general maintenance, but Watsons have attempted to separate the 'avoidable' costs arising from the fire.	Agree that this is reasonable	£215.00
M R Hayton (188) Refit locks to front and rear doors	£45.00	Padding to justify amount.	This is also for locks and is reasonable.	This appears to be a duplication and is disallowed.	Nil
Total (as account)	£3236.58				£2,817.75
Respondent's Share					£939.25

34 29th September 2012 - 28th September 2013

Category	Total	Respondent	Applicant	Tribunal	£
<u>Common Parts electricity</u>	£101.41	Agree			£101.41
<u>Common parts cleaning</u>	£0				Nil
<u>Maintenance and repairs</u>	£150.60				
M R Hayton (221) Door numbers, remove creepers, replace bulbs	£55.00	Consider amount should be reduced as glass replacement appears in unwarranted expense.	Necessary Expense. Applicant mistaken as these accounts do not relate to glass	Agree with Applicant. This account is reasonable.	£55.00
Tranter Fire and Security Systems (223) Replace batteries	£95.60	As above	As above	See above	£95.60
<u>Gardening Contract</u>	£50.00	Agreed			£50.00
<u>Annual Maintenance Contract:</u> Tranter Fire and Security Systems	£279.46	Agreed			£279.46
<u>Building</u>	£146.31	Agreed			£146.31

<u>Insurance</u>					
<u>Management Fee (Watsons) and Accountant's Certificate (196 and 197) Brays</u>	£880.00 £180.00	Not admissible. No justification for increase. Should be £720	As previous year. The development is not cost effective at previous levels. The amount of management fees is reasonable. The accountant's bills are also reasonable.	The management fees are capped at £713.17 for the same reason as in y/e 2012. The Accounts are now in a more amplified form. These two invoices are both stated to be for y/e 2012. The Tribunal allows account 196 at £120 and disallows 197 at £60.	£713.17 £120.00
<u>Unwarranted and avoidable expenses</u>	-£514.47				
Cunningham Lindsay Loss adjuster	-£604.47				-£604.47
M R Hayton (230) Replace double glazed unit to landing window	£90.00	This ought to be in general.	Agreed, but account reasonable as work needed to be done.	Agree in wrong category but account reasonably incurred.	£90.00
<u>Insurance Claim Repairs</u>	£100.00	Not challenged as to excess			£100.00
M R Hayton (224) Replace vandalised door	£320.00				
Insurance claim re above (less excess)	-£220.00				
<u>Major Works Contribution to reserve</u>	£1,500.00	A tactic to get money from leaseholders. Inadmissible.	Prudent to provide for the future.	There is no provision in the Lease permitting the creation of a reserve. Disallowed.	Nil
Total (as account)	£2,873.31				£1,236.48
Respondent's Share					£412.16

35 29th September 2013 - 28th September 2014

Category	Total	Respondent	Applicant	Tribunal	£
<u>Common Parts electricity</u>	£171.22	Not challenged			£171.22
<u>Common parts cleaning</u>	£22.00	Not challenged			£22.00
<u>Maintenance and repairs</u>	£204.00				
Tranter Fire and Security Systems (264) and (265) Call outs at £102	£204.00	The flat should be responsible	Necessary Expense. No power to charge back.	Agree with Applicant.	£204.00

each					
<u>Insurance Repair</u> M R Hayton (266) Provide hit and miss fencing to rear	£400.00	Insurance claim. Damaged by fire brigade. Different sort of fencing to what was there before.	The matter is being pursued with the insurers and reimbursement is expected in the future less excess. In the meantime this is a legitimate expense.	Agree with Applicant. The choice of design is with the Applicant.	£400.00
<u>Unwarranted and avoidable expenditure</u> Tranter Fire Alarms (273) replace vandalised fire alarm panel.	£452.40				
<u>Insurance Claim</u> RSA payment of claim for above less £100 excess.	-£352.40	Dispute the excess		Excess as per policy and agreed.	-£352.40
<u>Gardening Contract</u>	£75.00	Agreed			£75.00
<u>Annual Maintenance Contract:</u> Tranter Fire and Security Systems	£336.19 Plus £16.20 24 hour fee and £36.00 emergency services fee Total	Main fee agreed but not the additions. This should be part of management.	These are very reasonably priced additional services.	Agree with Applicant. Invoice allowed in full.	£336.19
<u>Building Insurance</u>	£229.94	Agreed			£229.94
<u>Professional Fees</u> Keith James Building Surveyor (271) Measuring and inspecting for completion certificate	£600.00	No provision in Lease. No details supplied	Insurance valuation as per Schedule 4	Agree that this is a legitimate expense	£600.00
<u>Management Fee (Watsons) and Accountant's Certificate (237) Brays</u>	£720.00 £120.00		Don't know why reduced from previous year. Perhaps an error. The accountant's bill is also reasonable.	The Management fee at £720 and the Accountant's invoices (for the 2013 Accounts) are reasonable.	£720.00 £120.00
Total (as account)	£2,978.35				£2,978.35
Respondent's Share					£992.78

Administration Charges Scott Schedule

36

Date	and	Amoun	Responden	Applicant	Tribunal	£
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narrative	t	t			
24/09/03 Letter of contemplation fee	£70.50	Challenged	In contemplation of s 146 Notice	Agree reasonable and payable	£70.50
26/02/04 Land Registry Official copy	£4.00	Challenged	Obtained in contemplation of s 146	No evidence this is the case	Nil
15/06/04 Fee preparation of s 146 Notice	£204.00	Challenged	Copy Notice provided	Agree reasonable and payable	£141.00
10/01/05 Last Feather Cawthra (part of bill)	£91.07	Challenged	This part of the bill relates to a s 146 Notice	No evidence this is the case. Not payable.	Nil
09/11/05 Last Feather Cawthra	£145.70	Challenged	This bill relates to a s 146 Notice	No evidence this is the case. Not payable.	Nil
11/08/06 Last Feather Cawthra (part of bill)	£405.96	Challenged	This bill relates to a s 146 Notice	Agree narrative confirms this to be the case. Allowed as reasonable and payable.	£405.96
Total Admin Charges payable					£617.46

Summary of Findings

37 The findings of the Tribunal with regard to the elements of the Claim over which it has jurisdiction are summarised as follows:

Service Charges

Year	Amount
2008/9	£660.74
2009/10	£754.48
2010/11	£877.67
2011/12	£939.25
2012/13	£412.16
2013/14	£992.78
Total	£4037.08

Administration Charges

Total **£617.46**

The Section 20C Application

38 In opposition to the section 20C Application, Mr Warren submitted that it was entirely reasonable to bring the action against the Respondent in view of the large unpaid amount of service charges. The question of costs generally in the Court is a matter for that Court, but the Applicant ought to be able to recharge its costs in connection with the Tribunal proceedings through the service charge. Accordingly, the Tribunal is urged not to grant the Order sought by the section 20C Application.

- 39 The Tribunal considered the above submissions, but, although it considers that the Respondent, rather than not paying the service charges because it considered them excessive, ought to have applied itself under section 27A of the Act for a determination as to their reasonableness, nevertheless finds that it is just and equitable in the circumstances of the case to grant the Order requested. The service charges determined by the Tribunal are not, in the main, excessive, although the Tribunal has made a number of adjustments in most of the relevant years. However, the Tribunal considers that the demands for the administration charges were unreasonable to an excessive degree, as were the estimated service charges, particularly in the earlier years.
- 40 Accordingly, it is the decision of the Tribunal that it grants the Order under section 20C of the Act that the costs of the Applicant with regard to the proceedings before the Tribunal are not to be regarded as relevant costs for the purpose of future service charges.
- 41 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge W.J. Martin

06 AUG 2015

