12204

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/00FY/LIS/2016/0024 & BIR/00FY/LLC/2016/0003**
Property	:	**Raleigh Square, Raleigh Street, Nottingham NG7 4DN**
Applicants	:	**Mr K Stanley (1)** **Mr J McCourt (2)** **Mr B Oliver (3)** **Mr C Caldwell (4)** **Mr & Mrs G W Fish (5)** **Thomas Fish Ltd (6)**
Representative	:	**Mr K Stanley**
Respondent	:	**Metropolitan Housing Trust Limited**
Representative	:	**Mr A Redpath-Stevens, Counsel, instructed by Mr M Mian, Solicitor for the Respondent**
Type of Application	:	**Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985 and an Application for an order under section 20C of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge C Goodall LLB** **Mr C Gell FRICS**
Date and venue of Hearing	:	**8 December 2016 at Nottingham Magistrates Court**
Date of Decision	:	- 5 JAN 2017

DECISION

Background

1. The Applicants in this case are all long leaseholders of flats at Raleigh Square, a residential development of some 96 flats situate behind the Respondents Nottingham office on Alfreton Road. Raleigh Square was built in about 2004 and it is let and managed in separate phases. All the Applicants own flats in what is known as Phase 2, comprising 61 flats being partly new build and partly created from a refurbished and converted old industrial building. The first four named Applicants above own one flat each, and the fifth and sixth Applicants each own two flats.

2. Raleigh Square is owned and managed by the Respondent, which is a housing association. The Tribunal has seen the lease for the First Applicant's flat and has been informed that the leases are in similar form. They are shared ownership leases, so in some circumstances a lessee can purchase a proportion of the flat and pay rent for the proportion of the flat not purchased. The lease contains a covenant by the lessee to pay a service charge (clause 7), which includes the reasonable fees charges and expenses payable for the:

   > "... management and maintenance of the Building and Common Parts including the computation and collection of rent (but not including fees charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge..." (Paragraph 7(5)(c))

3. This case concerns the management charge levied by the Respondent on the Applicants in a budgeted service charge account for 1 April 2015 to 31 March 2016. The case commenced by an application for a determination by the Tribunal of the liability to pay a service charge for that year (which of course included the management fee) dated 15 June 2016, which was coupled with a further application of the same date for an order under section 20C Landlord and Tenant Act 1985 in relation to these proceedings. Directions were issued and complied with, and an oral hearing took place at Nottingham Magistrates Court on 8 December 2016 to hear the case.

Inspection

4. The hearing was preceded by an inspection attended by the Respondent's counsel, solicitor, and their witness, Ms Rebecca Davies. Mr Fish, representing the Fifth and Sixth Applicants also attended.

5. At the inspection, the Tribunal noted that Raleigh Court and the Respondents associated commercial offices occupied an approximately square site bounded by Alfreton Road, Raleigh Street, Gamble St, and Newdigate Street. There is a central courtyard with car parking accessed by two sets of gates on Raleigh Street. The lower set of gates leads into a partially covered parking area described as an undercroft before accessing

the central courtyard. There are also two further car parking areas, one on the corner of Raleigh Street and Gamble Street, and one on the corner of Newdigate Street and Gamble Street.

6. The Tribunal observed that the four sets of metal gates to the three car parking areas had clearly not been painted recently and were showing signs of flaking paint and rust, as were the railings around the two corner car parks. On the sixth floor, the Tribunal observed that the railings to a roof top open area available to one flat owner were exhibiting signs of rust. In a lobby area between the undercroft and the corner car park on Raleigh St / Gamble St, there was a clear water stain on the carpet. An alarm display on the pedestrian door onto Raleigh St showed a fault which had apparently been uncancelled for over a year.

7. The flats themselves are arranged over approximately six stories in part new build and part refurbished accommodation. Phase 2 comprises about half of the total site area and contains the 61 flats referred to in paragraph 1.

The Law

8. The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985 (" the Act").

9. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

    a. The person by whom it is or would be payable
    b. The person to whom it is or would be payable
    c. The amount, which is or would be payable
    d. The date at or by which it is or would be payable; and
    e. The manner in which it is or would be payable

10. Section 19 of the Act provides that:

> "(1) Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:
>
> and the amount payable shall be limited accordingly.
>
> (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after

the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charge or otherwise."

11. A service charge is only payable if the terms of the lease permit the lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41).

12. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2EGLR100).

13. In relation to the test of establishing whether a cost was reasonably incurred, in Forcelux v Sweetman [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

> "39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.
>
> 40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence..."

14. In Veena v Cheong [2003] 1 EGLR 175, the Lands Tribunal (Mr P H Clarke FRICS) said:

> "103. ...The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

The Leases

15. In this case, little turns on the exact wording of the leases under which the Applicants hold their interests at Raleigh Court. In summary, the leases oblige the Respondent to manage and maintain Phase 2 of Raleigh Court (clause 5), including the structure of the buildings and the common parts. The Applicants' complaints centre around the way in which the Respondent has dealt with repairs, and it is common ground, and correct

in the view of the Tribunal, that the repairs concerned are within the Respondents repairing covenant.

16. The lessees covenant to pay a service charge, which comprises the costs of maintaining, managing, insuring, decorating, and provision of services for Phase 2. Each lessee pays a specified proportion, probably being an equal proportion of the costs incurred by the Respondent in providing the services (the Tribunal has not seen all the leases to confirm this assumption). As is identified in paragraph 2 above, there is an express right for the Respondent to charge a management fee.

The Applicants' Case

17. The Applicants say the service provided for the management fee is inadequate and does not justify the amount charged.

18. The nub of their case is set out in the First Applicant's initial statement sent with his application to the Tribunal, and repeated in his full statement of case and is:

> "We contend that we are not liable to pay the full Management Fee because of multiple and persistent failures of management by Metropolitan."

19. At the commencement of the oral hearing, the Tribunal asked the First Applicant, who also represents all other Applicants, to clarify the issue he wished the Tribunal to determine, and specifically whether he was challenging the level of the management fee per se (i.e. irrespective of whether the Tribunal were to find that there were grounds for determining that the service provided was not of a proper standard). The Tribunal was concerned that the challenge to the level of management fee in the Applicants case was limited to a claim that it was too high because of the actual conduct of management in 2015/16 rather than the wider question of whether it was unreasonable per se. It noted that there were no representations, nor was there evidence on the wider question in either the Applicants nor the Respondents documentation and to deal with the wider issue at the hearing without considered written representations and sufficient presentation of evidence on the issue from both sides would not be fair.

20. The First Applicant confirmed that he wished to limit the matter for consideration in the case to the narrower issue. That was whether the performance of the Respondent as manager, which he would provide evidence on, was so below standard that a reduction was justified. He did not ask the Tribunal to determine whether the management fee was too high per se.

21. The management fee demanded from the Applicants is £348.96 per annum. This is currently a budgeted charge rather than an actual charge. It

is contained in the service charge budget sent by the Respondent to each Applicant by letter dated 18 February 2015 for the budgeted service charge year 1 April 2015 to 31 March 2016.

22. The Applicants evidence of failure of management was provided in the form of four case studies. The First Applicant's case was that these were examples of failure of management and that the Tribunal would be invited to extrapolate from them to find a systemic failure of management for which he argued that a reduction in the management fee of at least 50% would be justified.

Case Study 1

23. The First Respondent noticed and reported a water leak in the undercroft car park in November 2015. Water was flowing down through the electric strip light fittings. He was initially told it would be two days before a repair could be arranged, but he was able to persuade the Respondent that the repair was urgent and an immediate inspection was arranged.

24. The fault is accepted by the First Applicant as being complex as there were multiple leaks. The Respondent's repairer stripped the ceiling surface from where the leak has emanated in two places to allow inspection. Barriers were placed around the area affected. The leak itself seemed to the First Applicant to have been repaired by Christmas 2015.

25. By March 2016, the ceiling was still awaiting reinstatement. The First Applicant contacted the Respondent to find out why not. He received no reply. He asked again a week later, also with no response. He followed this up with an email on 8 April 2016, to which he received an answer on 11 April 2016 to say the ceiling holes had now been resealed. Unfortunately, this was not true. Unsurprisingly, the First Applicant complained and on 12 April 2016 he was told that an area of one square metre had been left unsealed because there was still evidence of dripping water, and one hole had intentionally been left unsealed until the leak had been resolved. He also received an apology for being provided with incorrect information and an explanation that the writer of the 11 April 2016 email had genuinely not realised there were two holes in the roof and he had simply noticed that the one he was aware of had been resealed, which was why he had written as he had on 11 April.

26. The specific complaints are:

    a. The Respondent did not respond sufficiently urgently to the initial report. Only through the First Respondent's good offices did they eventually realise this water leak had to be dealt with urgently

    b. The First Applicant asked three times to be informed of the situation on repair to the roof, and it was only on the third occasion that he received a response

c. The response was incorrect

27. Because of these circumstances, the First Applicant demanded compensation, or he would refer the matter to the relevant Tribunal for determination in the courts and he gave notice that he intended to charge the Respondent for the legal costs of this action.

28. A compensation offer of £20 was made to which the First Applicant responded with a request for £80. The Respondent agreed to this sum which was paid to the First Applicant at about the end of May 2016.

29. Then between April and July 2016, the Respondent sent seven emails to the First Applicant giving him information about progress on the repair (sometimes unsolicited, sometimes in response to a chasing email from the First Applicant), and explaining that it had taken some time to finally track down the cause of the water leak, and arrange access to the apartment for repairs to be carried out. The repairs were finally concluded on 11 July 2016.

Case study 2

30. In October 2015, the Fourth Applicant complained to the Respondent about the upkeep of communal areas, including a car park. The complaint is fairly generalised, being a complaint that the "whole complex" has deteriorated, with specific complaints that an entrance door shows bare wood, the railings have not been maintained, there is graffiti on entrance doors and the car park railings, and weeds and moss on the car park. The Fourth Applicant and his letting agent asked the Respondent for details of any proposed maintenance.

31. A reply to this email was received the following day, providing confirmation that a number of the issues raised were being attended to, including grounds maintenance. On painting the car park railings, the reply said that "the outdoor railings have been authorised and I believe works are due to commence before Christmas I will ask for an exact date on this." About two weeks later, the Respondent updated that information by saying that planned cyclical maintenance was not in fact scheduled until 2018.

32. Around six months later (on 13 May 2016), the Fourth Applicant raised a number of maintenance issues with the Respondent, being:

a. The redecoration of the car park railings

b. Repairs to the undercroft ceiling

c. A car park gate that he said had been left open, he said, since Christmas

33. That email was acknowledged on 16 May 2016 with confirmation that the queries would be investigated. The response, after a further chasing email from the Fourth Respondent on 30 May 2016, was dated 31 May 2016. It confirmed that the railings and the communal areas are scheduled for cyclical maintenance in the 2016/17 year (commencing 1 April 2016). At the hearing, it was confirmed that a consultation process on these works had commenced in the summer of 2016.

Case study 3

34. This case study concerns a long running series of complaints brought by Mr William Fish, who is, jointly with his wife, the Fifth Applicant, and who is assumed by the Tribunal to be the owner/director of the Sixth Respondent company.

35. The Tribunal has not been provided with a complete dossier of the complaints; the documents that were provided pick up the story on 3 March 2015, on which date 4 emails passed between Mr Fish and the Respondent. The Tribunal was told that a list of outstanding repairs had been provided to the Respondent, although that list was not provided. The essence of the emails on 3 March are that Mr Fish is frustrated and concerned that repairs requested were not being done fast enough, and that communication back to the lessees is poor. He says "the call centre is so ineffective, no timescale/management controls and no checking of works ordered...".

36. The Respondent's replies to Mr Fish's concerns on 3 March and to a separate email on 6 March 2015 included the admission that "Metropolitan is aware of recent failures of service standard and is actively working to improve the situation."

37. Nothing then happened until 20 April 2016. The Tribunal has an email dated with that date which refers to an email from Mr Fish dated 12 April 2016 (not supplied to the Tribunal). The Respondent regarded that email as a new customer complaint, and they promised to respond to it by 3 May 2016, but alerted Mr Fish to the possibility that extra time might be needed to reply in which case they would write to him requesting extra time.

38. The Respondent did not respond by 3 May, nor request extra time, so Mr Fish followed up his complaint on 4 May with a chasing email. He received a holding reply the same day saying a response to his email was being drafted and the writer was "confident this will be with you by close of play tomorrow. If I am not able to provide a response within this timeframe I will let you know."

39. True to this promise, the Respondent provided a detailed reply the next day (5 May 2016). That reply included the words "I have now closed your

complaint, however, if you believe this does not resolve the matter please contact the customer care team ... within 20 days of this letter."

40. Mr Fish was not satisfied that all issues were resolved and he contacted the Respondent again on 9 May, though that email was not supplied to the Tribunal. On 24 June, a Mr Jamie Rogers emailed him to confirm that in response to his request for a more detailed update, he would "work with Clayton [Hayward, a senior customer care officer] next week to try and provide further details". However, no further details were received so Mr Fish wrote another chasing email on 4 July. He received a reply on 13 July to this email from Mr Hayward, who apologised for the delay in responding but said he needed more time to establish what progress was being made on the issues Mr Fish had raised. He said he would set aside some time "next Wednesday" to focus purely on Mr Fish's case and that he would be able to provide a response by Thursday 21 July 2016.

41. Mr Hayward missed his deadline of 21 July to respond to Mr Fish. He emailed him on 25 July to say the person he needed to speak to had been away from work. He promised to provide a substantive response by 1 August 2016. Mr Fish never received this or any response. He gave up trying to obtain a response as he felt his efforts were a lost cause.

42. Mr Fish's principal complaint was that the Respondent had closed his complaint in their email of 5 May 2016, meaning he was left with little recourse.

Case Study 4

43. This case study is the complaint of the Second Applicant. He lives in a flat overlooking the car park on the corner of Newdigate Street and Gamble Street, which has an electronically controlled gate opening system. On 4 March 2016, the Second Applicant reported that the gate closure system was broken, meaning it was left open, exposing the cars to a greater risk of theft and vandalism.

44. No repair had been undertaken by 29 March 2016, so the Second Applicant wrote an email to the Respondent asking for a report on progress. The response was a short email apologising for the problems the Second Applicant had been experiencing, and asking if the "door" was still damaged.

45. The next email in the documentation is dated 27 April 2016, and it is from the Second Applicant to the Respondent; he names two individuals who have some role in the delivery of services to the Applicants. He says he understands new fobs needed to be issued to residents, and says he doesn't understand why there needs to be any delay in issuing them. He complains that he phoned the Respondent's helpline and held for 20 minutes only for the call to be answered and immediately cut-off. He asked for compensation.

46. The final email in the documentation supplied to the Tribunal is from a Housing Services Officer for the Respondent, who said that she needed to find out from the repairs team on the anticipated time for the repair, and from the service charge team on the request for compensation. The Second Applicant said the gate was finally repaired on 9 May 2016.

47. The Second Applicant felt the gate repair should have been treated as an "absolute priority" because of the proximity of the car park to a late night bar where anti-social behaviour had occurred on a number of occasions. He also said that his insurance was jeopardised because he had informed his insurer that his car was kept in a locked compound at night, which was plainly not the case while the repair remained outstanding.

General

48. The First Applicant said that the Tribunal should extrapolate from the case studies and determine that the Respondent was providing a poor service and that the management fee it demanded should be reduced by 50% to compensate the Applicants.

49. The Applicants' key issue was a failure by the Respondent to communicate properly with the Applicants as shown in the case studies. The First Applicant said that the Respondent seemed incapable of taking simple and quick actions to communicate, for example by putting laminated notices up informing residents of progress on repair issues. The Respondent's administrative offices were only yards from Raleigh Court, and these simple communication steps would be at virtually no cost.

50. The First Applicant, in summing-up, accepted that his request for a 50% reduction in the management fee was a "finger in the air", but he considered that communication failures led to breakdown of trust and should be viewed seriously by the Tribunal.

51. The First Applicant confirmed that the Third Applicant did not bring any specific complaint to the Tribunal.

52. The water stain on the carpet in the ground floor lobby, and the uncancelled fire alarm monitoring panel which were observed at the inspection were not referred to in the Applicants written case nor in the hearing.

The Respondent's case

53. The Respondent's Leasehold and Service Charge Manager, Miss Rebecca Davies, provided a witness statement and gave evidence to the Tribunal at the hearing.

54. On case study 1, she said that a works order to repair the leaks complained about was raised on 23 November 2015. However, the works were more extensive than anticipated because access to the individual flats which appeared to have a problem was difficult, drying time for the original leak was needed, there were further leaks that needed to be investigated and resolved, and that there were issues sourcing suitable matching materials to carry out the repair and make good. The work was finally completed on 29 June 2016.

55. Miss Davies said that redecoration of the railings, which was the subject matter of case study 2, was now projected to be undertaken as part of a major works project in 2016/17, and that the project was out for section 20 consultation, that process having been commenced in the summer of 2016.

56. Regarding case study 3, Miss Davies simply said that she could "neither confirm nor deny" the allegations in this case study in her written statement. At the hearing, she apologised for providing this response which she recognised as unhelpful. She acknowledged that there had been some failures to honour promises. She said the Respondent recognised there was room for improvement and she anticipated that the Respondent's communication systems would improve.

57. On case study 4, Miss Davies produced a summary time line giving the factual history of the car park gate repair. This showed that on 4 March 2016, someone had clearly inspected the gates and had found that old style fobs were no longer working due to a receiver fault. Residents would be provided with a new BFT remote.

58. Quotes had also been obtained for the installation of an entry and exit keypad, as an alternative method of operating the gates should the fobs stop working, and an order for this was raised on 6 May 2016 with a request that this be actioned as soon as possible. On 9 May, an order was raised for new fobs.

59. In her written statement, Miss Davies commented on the Applicants' request for a 50% reduction in their management fee, saying that would be unreasonable. She clearly intended to communicate an alternative suggestion for a reduction, but the language used was so confusing that the Tribunal was unable to interpret what that offer was. Mr Redpath-Stevens said he thought the offer was £4.33 per calendar month off the Applicants' management fee.

60. Summarising their case in his final submissions, Mr Redpath-Stevens reiterated that the Tribunal should not look at the overall headline management fee, as the reasonableness of that charge per se was not in issue. He criticised the request for a 50% reduction, saying it was not supported by any analysis. He said the Tribunal should recognise that all organisations did occasionally make mistakes and some allowance for that should be made by the Applicants. He said the level of criticism of the

Respondent was over-diligent, and pursued by individuals even when the effect upon them personally of any failure by the Respondent was minimal.

61. In answer to a question for the Tribunal, Mr Redpath-Stevens confirmed that although accounts for the year ended 31 March 2016 had not yet been prepared, there was no intention to claim any other management fee than the sum included in the budget for that year of £348.96 per annum.

Discussion and determination

62. The Tribunal is specifically not being asked in this case to carry out a general review of the Respondent's annual budgeted management fee of £348.96 per flat to determine whether it is a reasonable fee per se. This figure is therefore accepted as the starting point, without any determination by the Tribunal that it is a reasonable fee.

63. Rather, the question the Tribunal has to ask itself in this case is whether the management fee is reasonably incurred and whether the management is of a reasonable standard, in the light of the evidence produced by the Applicants in this case which they say shows the quality of the management provided is below a reasonable standard, and which they say justifies a reduction in that fee.

64. In considering this case, the Tribunal is conscious that it is being asked to review a budgeted management fee on the basis of the historic evidence of what actually happened during the year in question. The Respondent confirmed that there would be no change between the budgeted and the actual fee when final accounts for 2015/16 are produced. The Tribunal therefore regards the determinations it reaches below as applying both to the budget (which in practice all Applicants should have already paid) and to the final accounts. It would not expect the final accounts to increase the management fee beyond the budgeted fee.

65. On the substance in this case, the Tribunal is not able to accept that there is a systemic failure of management on the part of the Respondent evidenced by the case studies. It does consider that the case studies demonstrate some management failures, as appears below, but the Tribunal has to reach its conclusions based on the evidence before it, and it considers that it is not possible on the evidence provided in this case to extrapolate from the particular to reach a general conclusion.

66. In respect of case studies 1, 3 and 4, the Tribunal determines that there has clearly been a failure in the service that has been provided to the relevant Applicant.

67. In case study 1, the First Applicant's requests for information in April 2016 on progress of the repair were reasonable requests and they should have been responded to in reasonable time. The Tribunal does accept that it is not possible for every operative employed by the Respondent to have the

same detailed knowledge of Raleigh Court as the First Applicant, and does believe that the Respondent's reply of 11 April 2016, although appearing incorrect to the First Applicant, was not intentionally misleading. It also regards the First Applicant's solution to the communication problems over the timing of the repair to the undercroft roof (a laminated notice) as being one practical way in which the Respondent could have communicated to lessees, but is unable to accept this would have been cost free. It would undoubtedly have involved management time and some consumables cost and may not have been the most cost effective solution.

68. Notwithstanding that the Tribunal have more sympathy with the Respondent than the First Applicant has in recognising that the process of managing Raleigh Court is not always straight-forward, it does accept that the failure to respond to the First Applicant's emails in April 2016 was not an acceptable service on the part of the Respondent.

69. In case study 3, it was again reasonable for Mr Fish to raise questions; indeed no issue regarding his right to raise queries was taken by the Respondent. The Tribunal considers that the mischief suggested by the First Applicant that the complaint was closed early is not made out. The Tribunal cannot micro-manage the detail of the Respondent's complaints procedure. It is not obviously unreasonable that a complaints procedure could allow the manager to "close" a complaint when a full and substantive reply has been received, as here. Even if it was unreasonable for a complaint to be "closed", the Tribunal cannot interpret the Respondent's action in its email of 5 May 2016 as being a genuine closure of the complaint. It was perfectly clear that the Respondent would continue to receive and consider representations on the complaint beyond the date on which it was "closed".

70. What was clearly a failure of management in case study 3, however, was the failure to meet a promised deadline on no less than three occasions, coupled with the clear admission of service failures in the Respondents email of 6 March 2015.

71. With regard to case study 4, the Tribunal is persuaded that the Respondent has not provided a service of a reasonable standard, evidenced by the clear difficulty the Third Applicant had in obtaining information from the Respondent, including usage of the frustratingly inefficient telephone system, and the fact that 10 weeks or so elapsed from report of the fault to action taken to resolve it.

72. The Tribunal has more difficulty with case study 2. The criticisms of the Respondent are that in connection with redecoration of the gates/railings, the Fourth Applicant had to "continually chase the matter himself" and that his enquiries were "unnecessarily" passed between different departments.

73. The Fourth Applicant wished to obtain information about the planned maintenance schedule for Raleigh Court. That was a reasonable request,

and it is arguable that the Respondent, as a good manager, would be keeping the residents informed in any event of their plans. The Tribunal notes however, that there is no requirement in law for the Respondent to do this, apart from the need to carry out statutory consultation when proposed expenditure above statutory limits on works on a building or on a long term qualifying agreement are contemplated.

74. Moreover, the Tribunal does not accept that incorrect information was provided to the Fourth Applicant on 23 October 2015. That email shows an early response to the Fourth Applicant's request, and the reply is appropriately qualified. When the indication that works to re-decorate, the railings would not be carried out within the time frame suggested came to light, the Fourth Applicant was informed within a reasonable time. The 2015 emails do not show a clear failure of management.

75. There was a second series of emails commencing on 13 May 2016. A holding response was sent the next working day. A substantive response was sent on 31 May 2016. It is correct that a chasing email was sent by the Fourth Applicant on 30 May, but the Tribunal is not able to accept that the substantive response was unreasonably late. It is reasonable for the Respondent to refer the query about repairs and maintenance to the department that deals with those matters.

76. On case study 2, the Tribunal is not convinced that the Respondent failed to provide a reasonable level of service to the Fourth Applicant.

77. In reaching its conclusions on the four case studies, the Tribunal has had to balance the reasonable expectations of the Applicants against what might be a reasonable level of service from the Respondent. The Tribunal is aware that the management of Raleigh Court requires the Respondent to possess competence in a number of different tasks. It notes a letter provided to it dated 9 December 2010 in which the Respondent set out the services it considered it needed to provide within its management service under twelve headings, and it accepts that these are all required for the management of Raleigh Court. One of these headings is "Dealing with correspondence and responding to enquiries".

78. The Tribunal considers that the standard of competence the Respondent must reach in its management is the standard of a reasonably competent manager. It is not required to be perfect. The Applicants must make reasonable allowances for occasional mistakes, particularly if they are acknowledged. The Applicants cannot expect that an expert on each repair at Raleigh Court will be available to reply to every query instantly. On the other hand, the Respondent must own up to mistakes and seek to learn from them.

79. In summary therefore, doing the best it can on the evidence before it, the Tribunal considers that the Respondent has fallen below the standard of a reasonably competent manager in its handling of case studies 1, 3, and 4 as

identified above. Some reduction in the management fee for the three Applicants concerned with these case studies is justified.

80. The amount to be deducted should, in the Tribunal's view, be related in some way to the element of the management service on which the Respondent has fallen down. There has been no complaint of failure to carry out repair works; it is the communication of the progress of repairs that has been criticised, and to a lesser extent the expeditious resolution of repairs, rather than the nature or quality of the repairs. There has been no criticism of the keeping of accounts, the processes of any required statutory consultations, ground maintenance, and insurance arrangements. It is clearly the case that the Respondent does provide a communication system for lessees at Raleigh Court, which has to be managed and monitored, and there are clearly staff working for the Respondent who have been involved in the repair, management, and administration of Raleigh Court, who have to be paid for out of the management fee. To reduce the management fee by 50% for the failures of communication shown in the case studies would, in the view of the Tribunal be a disproportionate reduction. The Tribunal's role is to decide what a reasonable reduction should be, and it should not impose a punitive remedy.

81. Taking all things into consideration, the Tribunal's decision is that the reduction for the management failures identified in this decision should in general terms be 10% of the management fee. That equates to £34.90 per flat.

82. Applying this determination to the circumstances of the individual Applicants:

    a. The Tribunal makes no reduction for the Third and Fourth Applicants, as there has been no evidence of management failures in providing management services to them.

    b. The First Applicant has already received £80 as compensation for what he regards as the Respondent's management failures. For him to receive an additional reduction in his management fee would, in the view of the Tribunal, be double counting, and therefore the Tribunal awards no further reduction in his management fee for 2015/16.

    c. The management fee for the Second Applicant in the final accounts for 2015/16 shall be reduced by the sum of £34.90.

    d. The management fee for the flats owned by the Fifth and Sixth Applicants in the 2015/16 accounts shall be reduced by the sum of £34.90 for each flat owned by each of these Applicants.

83. One further comment is made by the Tribunal, as it emerged during the hearing that the Respondent's budgeted service charge year did not align with its accounting year. This would seem to make the preparation of a budget under clauses 7(3) and 7(4) of the leases virtually impossible. It turned out that this did not affect the determination of the Tribunal in this particular case, but the Respondent is urged to resolve this dichotomy as quickly as possible to avoid further disputes.

Section 20C application

84. The Applicants applied for an order that none of the costs incurred by the Respondent in defending these proceedings should be included in the service charges levied by the Respondent on the Applicants.

85. Mr Redpath-Stevens told the Tribunal that the Respondent did not intend to include their costs in the service charge for Raleigh Court. He therefore would be content for the Tribunal to make the order requested by the Applicants.

86. The Tribunal so orders.

Appeal

87. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)