12337

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UL/LSC/2017/0006
Property	:	Flats 1 & 3 Allan Court, Lower Road, Haslemere, Surrey GU27 2NX
Applicant	:	Nigel Fisher and Sheila Victoria Fisher
Representative	:	-
Respondent	:	Mrs E Weissbraun
Representative	:	R A Management Limited
Type of Application	:	Determination of service charges: section 27A Landlord and Tenant Act 1985
Tribunal Members	:	Judge Tildesley OBE
Date and venue of Hearing	:	20 June 2017 by telephone conference
Date of Decision	:	29 June 2017

DECISION

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Decisions of the Tribunal

(1) The Tribunal determines that the sum of £ 150 per annum for each Flat is payable by the Applicants in respect of the insurance charges for 2008, 2009, 2010 and 2011, which makes a total of £1,200 for the two Flats.

(2) The Tribunal determines that the Applicants are not liable to pay the two outstanding invoices for managing agent's fees in the total sum of £175 for each Flat.

(3) The Tribunal determines that the Applicants are liable to pay costs of £107.99 for the electricity used to power the sewage pump in respect of each Flat. The additional administration charge of £16.18 for each Flat is disallowed. This makes a total liability of £215.98 for the two Flats.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondents' costs of the Tribunal proceedings may be passed to the Applicants through any service charge.

(5) The Tribunal determines that the Respondent shall pay the Applicants £ 50 within 28 days of this decision for part reimbursement of the Tribunal fees paid by the Applicants

(6) The Applicants are liable to pay in respect of outstanding charges £707.99 for each Flat making a total of £1,415.98 less the £50 reimbursement of Tribunal fees.

The Application

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act") of service charges payable for years 2008-2012. The total amount in dispute for each Flat was £1,187.94 [R:124].

2. The Applicants also applied for an order under section 20C of the Act preventing the Respondent from recovering its costs through the service charge.

3. On 20 February 2017 the Tribunal issued directions offering the parties mediation and in default a case management hearing.

4. The Respondent's representative indicated its willingness to participate in mediation provided it was held in London. The Applicants are resident overseas and would have had difficulty in attending a session

in the UK. The Tribunal noted that the parties have been unable to settle their dispute.

5. The Tribunal reviewed the file and the issues involved. The Tribunal decided that it would be proportionate to go straight to a hearing which could either be done on the papers or by means of conference call.

6. The Respondent requested a hearing by conference call.

7. The Tribunal directed the parties to exchange their evidence which they did. References in the decision to the parties' hearing bundles are in [A/R followed by page number].

8. Mr Nigel Fisher and Mr Alan Mendelsohn of RAM Ltd attended the conference call. The Tribunal afforded Mr Fisher and Mr Mendelsohn the opportunity to ask questions of each other.

Background

9. The property comprises two buildings which share a common roof with a ground floor and first floor flat in each building. Flats 1 and 3 are the ground floor flats in the property. The property is of brick construction with a tile pitched roof and built in or around 1986. The Respondent supplied three photographs of the property [R145-146]. The Applicants said the photographs did not show the various improvements made to the building since the management of the property was acquired by the RTM company.

10. The Applicants purchased the leaseholds of Flats 1 and 3 in 2001 and 2003 respectively. Allan Court RTM company have managed the property since 2011. The Applicants are directors of the RTM company.

11. At the time of the application the Applicants held a lease for a term of 99 years from the 24 June 1985 in respect of each flat. The leases for Flats 1 and 3 were dated 24 January 1986, and made between South Bucks Developments Limited of the one part and Sheila MacSherry of the other part. The leases were in the same format. At the hearing Mr Mendelsohn, however, informed the Tribunal and the Applicants that there had been a deed of variation dated 2 June 1999 in respect of the lease for Flat 3. Mr Mendelsohn supplied the Tribunal by email with a copy of the deed of variation.

12. Since the commencement of the proceedings the Applicants have secured new leases for their Flats which have extended the term by 90 years.

The Law

13. The Tribunal has power under Section 27A of the 1985 Act to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant or determined by a Court.

14. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

15. When determining whether a service charge has been reasonably incurred the Tribunal must be satisfied that the decision to incur costs is reasonable and that the actual costs are reasonable.

16. The question of whether works or services have been done to a reasonable standard is a matter of evidence. If the Tribunal determines that the standard has fallen short, the appropriate order is to make a deduction in the amount charged rather than excluding the costs in their entirety.

17. The relevant legal provisions are set out in the Appendix to this decision.

The Dispute

18. The items and charges in dispute for Flats 1 and 3 are set out in the table below. The amount recorded represents the value of the charge for one flat. There is no difference in the amount of the charge for Flats 1 and 3.

Charge	**2008 (£)**	**2009 (£)**	**2010 (£)**	**2011 (£)**	**2012 (£)**
Insurance	231.18	191.80	239.01	226.78	
Electricity Sewage Pump	16.72		8.42	41.61	20.69
Electricity	8.24		16.63		
Electricity	11.86				
Management Fee		75.00	100.00		
Total	268.00	266.80	364.06	268.39	20.69

19. The Respondent demanded the above charges by sending separate invoices for each amount to the Applicants.

20. The Applicants denied liability to pay the charges on various grounds. The Applicants alleged that they had not received the invoices for the individual charges when they were incurred. The Applicants maintained that the Respondent was now too late to recover the said charges. The Applicants, in the alternative, argued that the charges for insurance, electricity and management fees were excessive and unreasonable.

21. The Respondent disagreed, contending that it had posted the invoices to the Applicants. Further Mr Mendelsohn stated that the costs had been incurred, and that they were reasonable in amount.

22. The provisions of the lease which are not straightforward. Under the Reddendum of the lease the Applicants covenant to pay a sum equal to one quarter of the maintenance fund together with the aggregate of the sums which the Respondent shall pay from time to time by way of premiums for effecting insurance in accordance with the insurance covenant of the Respondent and for effecting insurance of all other flats in the building. The clause then specified the timing of the insurance payment by the Applicants, namely, "that the said yearly sum to be paid on the rent day next following the date of payment of such premium or premiums".

23. Clause 5 sets out the Applicants' liability to pay their share of the maintenance fund on the 24 June in every year being one quarter of the aggregate of

> (i)"The amount expended by the lessor to the then last previous 25th December and the amount then estimated by the lessor to be reasonably required to be expended by the lessor during the then current year from the said 25th December and the amount of any reserve fund then estimated by the lessor to be reasonably required by the lessor all in connection with the performance and observance in respect of the estate of the obligations of the lessor under this lease and under the respective leases of which the lessor is a party of the other flats in the building".
>
> (ii) The remuneration of any employees of the lessor in dealing with the performance and observance in respect of the Estate and of the obligations of the lessor under this lease and the rent postage administrative office and other expenses and the audit fees all incidental to the incorporation management and performance of the lessor and all incurred by the lessor during the then last previous year ended on the said 25th December in respect of the performance and observance as aforesaid of the said obligations of the lessor"

24. The Tribunal concludes that the lease establishes the following structure for demanding payments from the Applicants for services supplied by the Respondent:

a) The Applicants' liability is one quarter of the expenditure incurred on services for each Flat.

b) The service charge year in the lease runs from 25 June to 24 June. The rent days are the 24 June and 25 December I any one year.

c) The Respondent is entitled to demand the Applicant's annual contribution to the insurance of the building on the rent day next following the date of payment of the insurance premium.

d) The Respondent is entitled to demand that the Applicants pay their contribution to the maintenance fund on 24 June in each year. The payment will be for the actual costs expended on the maintenance and repair and other obligations in the six month period ending on the preceding 25 December plus the estimated costs from 25 December to 24 June together with the actual costs of management for the whole year to the preceding 25 December.

e) The variation to the lease of Flat 3 enables the Respondent in respect of that Flat to hold onto unspent monies paid in connection with the estimated amount and to defray them against actual costs for the subsequent six month period.

25. The effect of these arrangements is that the Respondent issues two demands each year on 24 June, one for maintenance fund and the other for insurance. The demands are for actual expenditure except for the estimated amount for the six month period included in the maintenance fund. A balancing of the estimated amount against actual expenditure is performed in the next year's demand for maintenance fund.

The Evidence

Insurance

26. The Applicants disputed their liability to pay insurance for the four years in question. The Respondent supplied the invoices[1] for those insurance charges for Flats 1 and 3.

- 2008: £231.18[2] due on 21 January 2008 [3606 & 3608]
- 2009: £191.80 due on 15 February 2009 [5394 & 5396]
- 2010: £239.01 due on 3 February 2010 [6691 & 6693]

[1] Invoice Number in [ ].

[2] This is the amount for each Flat.

- 2011: £226.78 due on 19 March 2011 [8925 & 8927]

27. The Respondent said that the property Allen Court was insured on a block policy covering some 150 properties comprising approximately 500 flats. The Respondent supplied copies of the certificates of insurance covering the disputed period [R:132-135]. AXA insurance issued the certificates in 2008 and 2009, whilst in 2010 and 2011 the Respondent changed insurers to Allianz. The insurance provided cover for the building to the value of £570,847 (£554,220 in 2008) against a declared value of £380,564 and cover for property owners' liability to the sum of £5 million.

28. The Respondent did not produce evidence of the annual charge for the block policy. Instead the Respondent supplied a letter from Kruskal Insurance Brokers which gave the amount of the block policy premium allocated to Allan Court [R:136]. The amounts allocated were £924.72 (2008), £767.20 (2009), £956.04 (2010) and £907.12 (2011). The Respondent offered no explanation for how the allocation was calculated. Mr Mendelsohn said he would expect a figure of around £200 per flat.

29. The Respondent adduced an e-mail from Sam Burton of Kruskals dated 3 May 2017 which said that the Brokers reviewed the rates and cover of the insurance at each renewal, and that the reason for changing from AXA to Allianz was that AXA's proposed renewal terms in 2011 were not competitive.

30. The Applicants asserted that they had not received the invoices for the insurance charges. Mr Fisher pointed out that the invoices exhibited in the bundle were addressed to the Applicants at their address in France which they did not move to until October 2010. Mr Fisher contended that this indicated that the Respondent had not sent the invoices at the time the charges were due, and that the copy invoices in the bundle had been created following the Application to the Tribunal.

31. Mr Mendelsohn insisted that the original invoices for the insurance charges had been sent to the Applicants at their previous address in Petworth, West Sussex. Mr Mendelsohn explained that the copy invoices in the hearing bundle had been printed from the managing agent's records, and the software automatically updated the address details on the invoice when the managing agent had been notified of a change of address.

32. Mr Mendelsohn pointed out that the Applicants had supplied a copy of the invoice (3608) for the 2008 insurance charge in the sum of £231.18 addressed to the Applicants' address in Petworth, West Sussex, which in Mr Mendelsohn's view, undermined the Applicants' assertions that they had not received the original invoices.

33. Mr Fisher maintained his assertion that the Applicants had not been given the original invoices for the insurance charges. Mr Fisher stated that the managing agent had not sent out reminders and final demands for non-payment. Also Mr Fisher insisted that the Applicants' correspondence with the managing agent demonstrated that the Applicants had been requesting copies of invoices for the insurance charges over a prolonged period of time, which in his view, supported the Applicants' assertion of not receiving the original invoices.

34. The Applicants included in their bundle correspondence addressed to Mr Mendelsohn complaining about the state of the managing agent's accounting records. The letters were dated 2 February 2008, 18 July 2008, 17 August 2008, 24 September 2010, 23 November 2010, 21 February 2016, 27 September 2011, and 26 November 2015 [A: 1,2,3, 29, 30, 31, 34 & 21].

35. The Tribunal notes that the letter of 2 February 2008 [A:1] referred to invoices 3606 and 3608 for buildings insurance, whilst the letter of 27 September 2011 [A: 32] states that

> "Turning to the matter of insurance.
>
> We first wrote to you in 2006 querying the high cost of insurance cover for the whole block of four flats. Nothing was done and we contacted you again in late 2007 and again in early 2008 requesting further quotes. This after we have made our own enquiries. Despite providing you with full details of our quotation you did nothing and we believe, therefore, that you were not acting in our best interests. We, therefore, took out our own insurance, at a saving of several hundreds of pounds. For that reason we will not pay the invoices including in your, now unfounded, claims".

36. The Applicants contended that the charges for insurance were unreasonable. The Applicants after requesting the managing agent to obtain more competitive quotations for insurance without success decided to insure their flats with Direct Line insurers. In July 2008 the Applicants secured a quotation of £209.49 from Direct Line for building insurance of the whole block. In August 2008 the Applicants went ahead and insured their two flats with Direct Line. At that time the owners of Flats 2 and 4 decided to stick with the Respondents' insurance arrangements. The Tribunal understands the RTM company has carried on insuring the property with Direct Line and currently pay an annual premium of £402.63 for a building value of £359,000. Finally the Applicants referred to the premium that they paid for buildings insurance for their property in Burpham Guildford which was £92.84 per flat in 2010 compared with the charge of £239.01 for the subject flats. According to the Applicants the value of their flat in Burpham was worth £90,000 more than the value of Flat 1, Allan Court.

37. Mr Mendelsohn pointed out that under the lease the Respondent was required to insure the property. There was no obligation for the Applicants to take out insurance. According to Mr Mendelsohn, the question for the Tribunal is not whether insurance can be obtained cheaper but whether the cost of the Respondent's insurance is reasonable having regard to the cover achieved.

38. Mr Mendelsohn stated that the cover given by Direct Line was significantly inferior to the cover provided by Allianz. The Respondent's broker identified the following differences between the two policies:

- Property Owners Liability: £5 million (Allianz) to £2 million (Direct Line).
- Loss of Rent: £100,000 (Allianz) to £16,200 (Direct Line).
- Allianz supplied cover for accidental damage which did not appear to be included in the Direct Line policy.
- Allianz gave 50 per cent uplift on the declared value which meant that there would be sufficient monies if the building was destroyed and rebuilt. Direct Line did not appear to provide this cover.
- Credit Ratings: AA (Allianz) to A (Direct Line).
- Direct Line did not provide cover for DSS tenants.

39. The Applicants questioned why the managing agent claimed under the Direct Line insurance for a contribution to the costs repairing storm damage to the property in 2010. Mr Mendelsohn responded to the effect that the Respondent was entitled to do so because the policy was there. The repair costs were split between the two insurance policies (Allianz and Direct Line).

Managing Agent's Fees

40. The Applicants challenged the managing agent's fee of £75 in 2009 and £100 in 2010. This would appear to relate to the management fees of £75 for the period 25 December 2009 to 24 June 2010 (Invoice numbers 6561 & 6563) and of £100 for the period 24 June 2011 to 24 December 2011 (Invoice numbers 9361 & 9363)[3].

41. The Applicants maintained that they had not received these two invoices, and, therefore, should not pay them because they were now out of time. The Applicants contended that the statements of account supplied by the managing agent were confusing and inaccurate; the agent had failed to provide explanations for the discrepancies in the accounts; and also did not supply invoices and bills when requested. Finally the Applicants referred to their letter in November 2015 where they reminded Mr Mendelsohn that he had ignored their request made

[3] These are the invoices that remain unpaid for management fees as disclosed on the Customer Quick Report printed 14 March 2017.

on eight occasions for details of complaints procedures and of the professional body to which he belonged.

42. The Applicants included in their bundle the findings of their complaint against the managing agent to the Property Redress Scheme dated 18 August 2016 [A:23-26]. A Senior Case Officer of the Scheme recommended that RA Management Ltd pay compensation of £100 to the Applicants for poor service, provide a final response letter outlining the amounts owed for each flat, and make a written apology for the poor communication and lack of complaints procedure.

43. The Senior Case Officer noted in respect of the managing agent's written communications to the Applicants:

> "that the content and tone of a number of correspondences are dismissive, condescending and inflammatory. Despite now admitting errors and accidental over charging there is no recognition of fault or an apology for these. The later correspondence is minimalistic and perfunctory and the Agent's tone is dismissive and unhelpful".

44. The Respondent relied on clause 5(ii) of the lease for her authority to recover managing agents' fee from the Applicants as part of the maintenance fund.

45. The Respondent produced a copy of the agreement with RA Management Limited dated 31 March 2002 which provided that RA Management would manage the property in return for a 10 per cent commission on ground rents collected, further administration and legal costs for collecting service charges, and any other property related costs, an annual management fee, and the facility to levy extra charges which are justified by the level of management input.

46. The Respondent pointed out that the Applicant had not produced alternative quotations to suggest that an annual management fee of £150-£200 was unreasonable.

47. Mr Mendelsohn stated the accounting of the managing agent was not an issue, and that the statements produced were clear and accurate. Mr Mendelsohn acknowledged the criticisms of the case officer for the Property Redress Scheme in respect of the style and tone of the correspondence with the Applicants. Mr Mendelsohn said he took a commercial decision to accept the case officer's recommendation. Mr Mendelsohn gave the impression there was nothing to be gained by engaging in correspondence with the Applicants because in his view whatever he said it would not change their minds about paying the outstanding debts, and that the Applicants would continue sending him long letters.

Electricity for Sewage Pump

48. The Applicants' final challenge related to various invoices for the costs of the electricity used to power the sewage pump which was required because the waste pipes from the property were below the main sewer. The Applicants said they had not received the invoices for these charges, and that they wished to see the bill of the utility supplier to substantiate the amounts claimed. Mr Fisher also considered the charges to be unreasonable. He would have expected costs of 60 to 70 per cent of the actual amounts charged.

49. Mr Mendelsohn supplied in the bundle a breakdown of the disputed charges (seven in total) [R:139] together with a print-out from Southern Electric, the utility supplier, giving details of the electricity bills from which the charges were derived [R:138].

50. The Tribunal notes that the charges claimed for electricity corresponded with the amounts specified in the Southern Electric printout except that the managing agent added an administration charge in the region of 15 per cent of the costs to each invoice sent to the Applicants.

Reasons

51. The Applicants' principal concern was with the managing agent's invoicing processes. The Applicants maintained that they had paid the invoices that were sent to them, which in their view demonstrated their good faith in meeting their liabilities under the lease. The Applicants' dispute was with the outstanding invoices which they said they had not received until after making the application, and as a result the Respondent was barred from recovering the sums demanded in the invoices because of the Limitation Act. The Applicants also had a subsidiary challenge if their primary contention failed which concerned the reasonableness of the charges.

52. The Tribunal is of the view that this dispute could have been avoided if the managing agent had followed the procedure laid down in the lease for demanding property related charges from the Applicants. Essentially the lease required the issue of an annual demand for maintenance fund on the 24 June each year plus a separate demand for insurance charge also payable on the 24 June. Thus the Applicants should have received two demands each year setting out their liabilities, which would have made it easier for them and for the Respondent to keep abreast of the current state of the accounts. The managing agent instead chose to bombard the Applicants with a series of invoices during the year, which has led to this dispute, and caused the Applicants understandable confusion about the receipt of various invoices.

53. Despite the Tribunal's criticisms of the managing agent's accounting practices, the Tribunal does not consider that the Applicants' challenge in respect of the Limitation Act has substance. The Tribunal has reluctantly come to the conclusion on the evidence before it that the Applicants received the outstanding invoices when they were first sent by the Respondent. The Tribunal refers to its observation at paragraph 35 in connection with the invoices for insurance which indicated that the Applicants received the invoices. Also the Applicants accepted that the managing agent sent them Customer Quick Reports for Flats 1 and 3 in December 2014 and November 2015 which put them on the notice about the "missing invoices" and would have had the effect of restarting the limitation period.

54. The Tribunal also considered briefly whether the time limit of 18 months imposed by section 20B of the 1985 Act and whether the structure for issuing demands laid down in the lease was a condition precedent for liability applied to the circumstances of this application. The Tribunal, however, was not prepared to venture in unchartered waters because they were not raised specifically by the Applicants and no arguments were advanced by the parties.

55. The Tribunal is satisfied that this dispute is confined to the reasonableness of those charges specified in the Application.

56. The Tribunal starts with the insurance charges for 2008 to 2011. Under clause 4(1) of the lease the Respondent is obliged to keep the building insured against loss or damage by fire and other perils with such modifications and such improvements as the Respondent shall deem expedient or desirable in a sum which in the opinion of the Respondent represents the full reinstatement value of the property. Also under clause 4(1) the Respondent is entitled to insure against such other risks for such other amounts which in the opinion of the Respondent may from time to time be considered reasonably necessary.

57. In short, clause 4(1) gives the Respondent a wide discretion in respect of the nature of the risks covered by the insurance policy, and the value insured. There is no facility in the lease and in law for the Applicants to assume the responsibilities of the Respondent for insuring the property.

58. The authorities on reasonableness of insurance charges[4] establish the following general propositions:

> "The fact that the landlord might have obtained a lower premium elsewhere does not prevent him from recovering the premium which he has paid. Nor does it permit the tenant to defend the claim by

[4] See Havenbridge v Boston Dyers Ltd [1994] 49 EG 111(CA)) & Berrycroft Management Co Ltd v Sinclair Gardens Investments (Kensington) Ltd (1997) 29 H.L.R 444 CA

> showing what other insurers might have charged. Nor is it necessary for the landlord to approach more than one insurer, or to "shop around". If he approaches only one insurer, being one insurer of "repute", and a premium is negotiated and paid in the normal course of business as between them, reflecting the insurer's usual rate for business of that kind, the landlord is entitled to succeed. The safeguard for the tenant is that, if the rate appears to be high in comparison with other rates that are available in the insurance markets at the time, then the landlord can be called upon to prove that there was no special feature of the transaction which took it outside the normal course of business".

59. In this case the Respondent through her managing agent insured the property with a reputable insurance company, and that before taking out the policy the Respondent's insurance brokers carried out a review of the market. Further the Respondent explained that the policy taken out with Allianz offered better cover than the Direct Line policy. In those circumstances the Tribunal is satisfied that the Respondent was justified in taking out this level of cover, and that the extra cover merited an higher premium than the one paid by the Applicants to Direct Line.

60. The Respondent, however, has not given evidence of the premium paid for the block policy and has supplied no rationale for the method of arriving at the apportionment of the block policy premium for the property. Mr Mendelsohn responding to a question by the Tribunal on apportionment said he would have expected a figure of £200 per annum for each Flat.

61. Given the Respondent's failure to supply evidence of the premium the Tribunal is obliged to do the best it can on the evidence before it. The Applicants supplied evidence of the premium currently paid by the RTM company for the property which was £402.63 for a building reinstatement value of £359,000, and of the premium (£92.84) for their Flat in Burpham. Mr Mendelsohn stated that he would have expected a premium in the region of £800 per annum for the property.

62. Having regard to the evidence, the Tribunal is satisfied that a premium of £600 per annum for the property is reasonable which gives a significant uplift from the premiums charged by Direct Line to reflect the higher cover secured by the block policies with AXA and Allianz.

63. **The Tribunal, therefore, determines that the Applicants are liable to contribute £150 for each Flat and for each year in dispute in connection with the insurance charge.**

64. The Applicants contested two invoices to the value of £175 for each Flat in respect of managing agents' fees.

65. The managing agent apologised to the Applicants for their poor communication and lack of complaints procedure following the investigation of the Applicants' complaint by the Property Redress Scheme. The Tribunal adopts the findings of the Senior Case Officer as set out in paragraph 43 above which was not challenged by Mr Mendelsohn. The Tribunal also found that the managing agent did not follow the correct procedures in the lease for demanding contributions to the maintenance fund and insurance. The managing agent's insistence on issuing invoices for individual items of expenditure generated unnecessary complexity and confusion to the process for the collection of charges from the Applicants

66. The Tribunal is satisfied that the above failings by the managing agent amounted to providing services below a reasonable standard which would justify a reduction in the charge for its fees to the Applicants. Normally the Tribunal would reflect such a reduction by a percentage discount on the actual charges. **However, in this case the Applicants have already made a significant contribution to the managing agent's fees, which in the Tribunal's view, warrants an order that the Applicants are not liable to pay the two invoices for each Flat in the total sum of £300.**

67. The final dispute concerns the charges for electricity for powering the sewage pump. The Applicants' contribution to these charges for each flat comprised £107.99 in charges to the utility supplier and £16.18 in administration fees to the managing agent.

68. The Tribunal is satisfied that the Respondent has substantiated the charges to the utility supplier. The Respondent obtained from Southern Electric, the utility supplier, a print-out of the bills paid in electricity which corresponded to the amounts claimed from the Applicants for the costs of electricity used. The Applicants supplied no alternative quotations to challenge the reasonableness of those charges. The Tribunal, however, does not consider that a separate administration charge by the managing agent presumably for issuing the individual invoices is justified. The Tribunal would expect the administration costs of the managing agent in connection with the electricity bills to be covered by the annual management charge.

69. The Tribunal, therefore, determines that the costs of the electricity in the total sum of £107.99 for each Flat have been reasonably incurred but the administration charge of £16.18 is unreasonable and disallowed.

Application under s.20C and refund of fees

70. The Applicants have paid £100 in Tribunal fees in bringing this application. Having regard to the outcome of the proceedings the Tribunal is satisfied that the fee of £100 should shared equally between

the parties. The Tribunal orders the Respondent to reimburse the Applicants with £50 which represents half of the fees. The Respondent to pay the £50 within 28 days of the date of this decision.

71. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Although the Tribunal is of the view that the lease does not allow the Respondents' costs in these proceedings to be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. Mr Mendelsohn raised no objections to the making of a section 20C order.

RIGHTS OF 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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the

Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.