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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UH/LSC/2017/0107**
Property	:	**1-26 Kilby Road, Stevenage SG1 2LT**
Applicants	:	**Mr Jason Anderson and other long lessees at Kilby 1-26 as listed on the Appendix to the Directions dated 27 November 2017**
Representative	:	**Mr Jason Anderson**
Respondent	:	**Notting Hill Genesis (formerly known as Genesis Housing Association Limited)**
Representative	:	**Mr Ben Maltz Counsel**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 Determination of service charges payable**
Tribunal Members	:	**Judge John Hewitt** **Ms Marina Krisko BSc (Est Man) FRICS** **Mr N Miller BSc**
Dates and venues of hearings	:	**20 August 2018 Stevenage Magistrates Court** **12 October 2018 St Albans Magistrates Court**
Date of Decision	:	**29 October 2018**

DECISION

The issue(s) before the tribunal and its decision(s)

The issues

1. An application pursuant to s27A Landlord and Tenant Act 1985 (the Act) in respect of the service charges payable by the applicants for:

Estate costs	1 April 2016 to 31 March 2017
Unit fees	1 April 2016 to 31 March 2017
Block costs	1 April 2016 to 17 January 2017

2. An application pursuant to s20C of the Act in respect of any costs incurred or to be incurred by the respondent (the landlord) in respect of these proceedings; and

3. An application made at the hearing by the applicants pursuant to rule 13 (2) for the reimbursement of fees of £300 paid by the applicants to the tribunal in respect of these proceedings.

The decisions of the tribunal

4. The service charges payable by each of the applicants to the landlord in respect of the periods mentioned are:

Estate costs	£283.48
Unit fees	£161.00
Block costs	£294.77

   As shown in column 6 of the Scott Schedule appended to this decision.

5. In the absence of any objections by the landlord an order shall be made (and is hereby made) pursuant to section 20C Landlord and Tenant Act 1985 to the effect that none of the costs incurred by the landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the applicants.

6. The application for reimbursement of fees is refused.

NB Later reference in this Decision to a letter and a number in square brackets ([ ]) is a reference to the volume and page number of the files provided to us for use at the hearing.

Procedural background

7. On 22 November 2017 the tribunal received an application from the applicants. It was made pursuant to s27A of the Act. In the application the applicants challenged some of the expenditure incurred by the landlord and sought a determination of the amount of their contributions.

8. This was the third such application the applicants (or some of them) had made in which broadly similar challenges had been made but in respect of prior years. Those applications were processed under Case References:

CAM/26UH/LSC/2016/0002 which concerned the period 1 April 2014 to 31 March 2015 (the 2015 decision)

CAM/26/LSC/2016/ 0073 which concerned the period 1 April 2015 to 31 March 2016 (the 2016 decision)

Two members of the present tribunal (Ms Krisko and Judge John Hewitt) were members of the tribunal which determined the previous applications.

This current decision ought to be read in conjunction with the two previous decisions, the 2015 decision and the 2016 decision. It should also be read in conjunction with our decision (dated the same day as this decision) on a related s20ZA dispensation application issued by the landlord and which is mentioned in more detail below.

9. In the current application the applicants asserted that some of the estate services had been provided by Just Ask Estate Services Limited pursuant to a qualifying long term agreement (QLTA) and further asserted that the landlord had not consulted properly under s20 of the Act in relation to that agreement with the consequence that the contributions to the costs incurred were limited to £100.

10. The landlord's primary assertions in that regard were that:

10.1 None of the estate costs in the period 1 April 2016 to 31 March 2017 had been carried out under the QLTA because the QLTA had not been signed-off until 11 April 2017; and

10.2 In any event the s20 consultation exercise in respect of the QLTA had been properly carried out.

However, as a further response to applicants' assertion about the QLTA, the landlord issued a protective application pursuant to s20ZA of the Act in which it sought retrospective dispensation in case, contrary to its primary case, the tribunal found that some of the costs incurred and now claimed had been carried out under the QLTA and/or in case the tribunal found that there had been some defect in the consultation process.

11. The s20ZA dispensation application was allocated Case Reference CAM/26UH/LDC/2018/0004.

The current s27A application and the dispensation application were case managed together and both applications were listed to come on for hearing together on 9 April 2018 but due to a family bereavement the hearing was postponed to 20 August 2018.

On that day the tribunal had the benefit of a site inspection of the development 1-26 Kilby Road and the estate on which it is situate. We

were accompanied by several of the long lessees, and several representatives of the landlord. A number of physical features were drawn to our attention by both sides.

12. The hearing commenced at about 11:15 on 20 August 2018. The applicant landlord was represented by Mr Ben Maltz of counsel. Mr Maltz called two witnesses, Ms Chomba, Leasehold Services Manager and Mr Declan Burns, Procurement Manager for Building and Property Services. Both of the witnesses had provided detailed witness statements which they said were true and both were cross-examined by Mr Anderson.

Mr Jason Anderson, a joint lessee of flat 10 Kilby Road, represented several of the long lessees, some of whom were present to assist and support him. Mr Anderson did not call any witnesses but he made submissions to us.

Evidence and submissions on the s20ZA application were concluded on 20 August 2018 and a start was made on the s27A application. The hearing was adjourned part-heard to 12 October 2018.

13. At commencement of the hearing on 12 October 2018, Mr Maltz sought permission to rely upon a witness statement of a Mr Conrad Stephenson, a Service Charge Partner who had been employed by the landlord since April 2012. The gist of his evidence concerned the cost of block communal internal electricity. Originally this had been claimed at £2.855.17 and challenged by the applicants who had offered £1,250.00. Mr Stephenson was able to explain that the supplier had accepted there had been a mix up with regards to meters and meter readings and the supplier had re-billed reducing one invoice to £310.32 and another to £556.94. In consequence the landlord proposed to limit its claim to £556.94 only, which equated to a contribution of £21.44. The application for permission to rely on Mr Stephenson's evidence was not opposed and Mr Anderson said the reduced claim of £556.94 was not challenged. In these circumstances permission was granted.

14. It also emerged that Mr Anderson wished to call and rely upon the evidence of a Mrs Catherine Marshall, the lessee of flat 2. Mr Anderson had with him copies of a short witness statement made by Mrs Marshall the previous day but he had not provided copies to the landlord's representatives. The application was initially opposed by Mr Maltz. Mr Anderson accepted that he had received and understood the directions which had been issued concerning the service of written statements of witnesses of fact. Mr Anderson had no (or no acceptable) explanation as to why the witness statement had not been served prior to the hearing that was scheduled for 9 May or the hearing which commenced on 20 August and why the statement had not been signed until 11 October 2018, save that is was poor case management on his part. He said the evidence went to cleaning in the block common parts and was related to the evidence on that subject that was to be given by Miss Brady on behalf of the landlord.

15. After some further discussion Mr Maltz accepted the suggestion from the tribunal that Mrs Marshall's witness statement be admitted in evidence but limited to the issue of common parts cleaning, and that Mrs Marshall be allowed to give oral evidence on that topic limited to the one paragraph in her statement that dealt with that. Mr Anderson also accepted that limitation and permission was granted accordingly.

The leases and the service charge regime

16. This has been detailed in the previous decisions, it is not controversial and thus we can summarise it in brief:

Title Number:	HD440683
Estate:	The land now or formerly comprised in the above mentioned Title
Building:	The block of flats constructed on the Estate and comprising the Premises (i.e. the block containing flats 1-26 Kilby Road
Specified Proportion of the Building Services Provision:	A fair proportion of the elements of the Service Provision (as defined in clause 7 hereof) in relation to the costs of the Building
Specified Proportion of the Common Parts of the Estate:	0.52% of the elements of the Service Provision (as defined in clause 7 hereof) in relation to the costs of the Common Parts of the Estate

17. Clause 7 of the lease provides:

The account year means the year ending on 31 March;

Prior to each account year the landlord is to estimate the amount likely to be incurred in the year by the landlord of the costs of and incidental to the performance by the landlord of its covenants contained in clause 5(2)-(4) of the lease, plus costs of insurance of the Building and the common parts of the Estate, plus the fees and charges payable to persons employed in connection with the management or management of the Building plus:

"(g) any administrative charges incurred by or on behalf of the Landlord including but not limited to:

(i) The grant of approvals under this lease or applications for such approvals;

(ii) *The provision of information or documents by or on behalf of the Landlord;*
(iii) *Costs arising from non-payment of a sum due to the Landlord; and/or*
(iv) *Costs arising in connection with a breach (or alleged breach) of this Lease"*

Plus an appropriate amount as a reserve towards certain future expenditure.

Each lessees share of the estimated service charge is payable by equal monthly instalments in advance on the 1st day of each month.

As soon as practicable after the end of each account year the landlord is to certify the amount by which the estimate of expenditure shall have exceeded or fallen short of the actual expenditure. Any balancing debit is payable by the lessee forthwith and a balancing credit shall be allowed to the lessee.

18. The landlord has allocated 3.85% as being a 'fair proportion' of Building costs. Evidently this was arrived at on the basis that all 26 flats within the Building were broadly of similar size and thus the costs should be shared equally by all 26 long lessees. This allocation was not in dispute.

Of course the allocation of 0.52% to Estate costs is fixed by the lease.

Although there is no provision for it in the leases the landlord has got into the habit of charging auditors' fees, insurance and management fees on a unit basis, that is to say a cost per flat per year. Technically that is not right. For example, as regards insurance, what ought to be done is the cost of insuring the Block should be ascertained and entered on the account as the gross block cost which is then shared equally between the lessees in the block each contributing 3.85%. Similar exercises ought to be carried out with regards to auditors' fees and management fees associated with the Block. As regards Estate costs the exercise is the same but of course the lessees' contribution is limited to 0.52%. That said, so far as we are aware none of the applicants has objected to the practice adopted by the landlord and thus we have followed it. It may well be that a change in practice is now required given that the landlord no longer has responsibility to manage the Block.

The expenditure in dispute

19. The application concerns the service charge year 1 April 2016 to 31 March 2017.

On 17 January 2017 an RTM company acquired the right to manage the Block. Thus the landlord's claim to Block expenditure is limited to that expenditure reasonably and properly incurred in the period. Of course

the landlord is entitled to recover contributions to Estate costs reasonably and properly incurred throughout the period.

20. Directions were given for the parties to complete a Scott Schedule. At the commencement of the hearing on 20 August 2018 with the parties we endeavoured to establish the Block and Estate costs certified by the landlord and the extent of the applicants' challenges.

Eventually a consensus was arrived at. Column 2 of the Scott Schedule appended to this decision records the landlord's certified expenditure. Column 3 identifies the expenditure challenged by the applicants and records a sum which they consider it would be reasonable for them to contribute. Column 4 records the landlord's response. Column 6 records the amount of the gross expenditure which we found was reasonably incurred and was reasonable in amount. Column 6 records the amount of each lessee's contribution payable.

Estate Costs

Bulky refuse

21. One of the services provided is the removal of bulky refuse fly tipped on the estate or in or near bin stores. It was common ground that the culprits ranged from (some) lessees, residents or former residents, lawful visitors and strangers who drive onto the estate dump goods and then drive away. Some of the cause is the result of anti-social behaviour. The estate is close to Stevenage town centre. Some drug taking, graffiti and other activities have taken place taken place on the estate which the landlord's contractors have had to deal with.

22. The gist of the applicants' complaints are that the landlord does not do enough to make the estate, the blocks and its bin stores more secure. Mr Anderson said that after some pushing the landlord agreed to install locks to the bins stores and he claimed anecdotally that this has resulted in some reduction of the fly tipping in or around the bin stores by third parties.

23. The service was provided by E & P Cleaning Contractors from 1 April until 31 October 2016 and then by Just Ask on an ad hoc emergency contract from 1 November 2016 until 31 March 2017.

24. The landlord had provided the detailed invoices submitted by the contractors. We went through a number of them, mostly those provided by E & P Cleaning. Mr Anderson was critical that checks on the work claimed for may not have been effective and that there was inconsistency in the charges. For example he highlighted that [A/370] the cost of removal of a microwave was £8 whereas at [A/371] it was £10. Mr Anderson also asserted that pricing items individually made it too expensive and collections on a bulk or per skip basis would be more economical.

25. As we went through a number of the invoices Mr Anderson identified a number which did not relate to Bulky Refuse removal but to other services provided. In addition to Bulk Refuse removal E & P Cleaning Contractors had contracts for grounds maintenance and Block common parts cleaning. Thus it is easy to see how some invoices were mis-posted.

It was not in dispute that the following invoices were mis-posted and did not refer to Bulky Refuse removal:

[A/233] £240.00
[A/237] £456.00

Mr Maltz suggested that these costs were plainly grounds maintenance expenditure and that it should be taken out of this cost heading and added to Gardening and external cleaning and he invited us to do that. Mr Anderson opposed that saying that Gardening and external cleaning had been agreed and if that was to be amended or increased the applicants would need to consider the extent of their agreement.

We decided to decline Mr Maltz' invitation. We preferred the submission of Mr Anderson. We also took into account that the amount of Gardening and external cleaning had been certified and agreed via the Scott Schedule. If that cost head was revised and was controversial neither party was in a position to present their case and evidence on it. That would entail a further adjournment and a further hearing. Given the modest amounts involved and the overriding objective we decided that it would not be fair or just to permit the landlord to re-certify the amount of Gardening and external cleaning.

We have therefore adjusted the cost of Bulky Refuse by the removal of the mis-posted items. Thus it is reduced by £696.00 to £6,371.17.

26. Ms Grace Brady, the landlord's Neighbourhood Manager, gave evidence on this subject and took us through the working arrangements with E & P Cleaning. Ms Brady accepted that there was no schedule of rates for Bulky Refuse removal and there was no focus on prices. Invoices were approved if overall they appeared reasonable; there was no express attention given to the cost of each item. Ms Brady explained that some items can vary in size quite considerably. For example a mattress' might be a single, double or queen size.

27. Ms Brady also explained that the Estate was difficult to manage in that it was open with free access to all and sundry and some of the fly tipping was clearly external. Also quite a few of the flats and houses were sublet, whether lawfully or not and there was quite a high turn-over of occupiers which exacerbated the quantity of items discarded as people moved out.

28. Having carefully considered the rival evidence we find that the adjusted expenditure of £6,371.17 was reasonably incurred and is reasonable in

amount. We accept Ms Brady's evidence that the make-up and location of the Estate renders it vulnerable to a high level of internal and external fly-tipping which is difficult to control or limit. We find that Mr Anderson has an unrealistically high expectation of what the landlord can reasonably achieve to manage anti-social behaviour. We acknowledge that perhaps in a perfect world the landlord might have introduced locks to the bin stores a little sooner than it did but ideas put forward to a landlord cannot always be implemented straightway. Inevitably there has to be a period of evaluation and evolution. Further there was no credible evidence before us as to what level of savings might have been enjoyed had the locks been installed earlier.

Block costs

Communal internal electricity

29. We have already mentioned that at the hearing the landlord reduced the gross cost from £2,855.17 down to £556.94 and this reduction was accepted by Mr Anderson on behalf of the applicants.

30. For ease we simply record here that Mr Anderson claimed that this reduction was only achieved because he had campaigned and pursued it vigorously with both the landlord and then directly with the supplier which, eventually, looked into it and identified the errors in the meters and meter readings. Mr Anderson submitted that this is an example of mis-management on the part of the landlord and that the landlord ought to have pursued the supplier and not simply left it to Mr Anderson to do so. These point may be of some relevance when we come to consider the reasonableness of the amount of the management fees.

Communal internal cleaning

31. This is a subject that has featured in all three applications. The 2016 decision records that the landlord had incurred £5,886.70 on communal cleaning but the tribunal reduced that to £3,000 (£250 per month) to reflect the imperfect quality of the service actually provided.

32. For the current year we are only concerned with 9 months. The landlord says that its actual costs for that period exceeded £250 per month but it had reduced its claim to £250 per month, to reflect the tribunal's 2016 decision and on the premise that the level of service delivered was broadly the same, and had adopted that figure for the nine months in order to arrive at its claim for £2,250.

33. Ms Brady gave evidence on behalf of the landlord and took us through her role as Neighbourhood Manager, her visits to the site and the inspections she carried out and the issues she took up with the contractor. Ms Brady was clear that whilst the service provided by E & P Cleaning Contractors had tailed off towards the end of October 2016 as regards estate gardening, a different squad of employees covered common parts cleaning and she had not noticed a tailing off of that service.

34. Ms Brady was cross-examined by Mr Anderson. Mr Anderson suggested to her several times that through no fault of her own she was too busy and had too many developments to look after such that she simply did not have sufficient time to devote a proper attention to Kilby Road. Ms Brady denied that and explained that the developments she looked after ranged in size and services delivered and she was well able to cope with her duties. As regards Kilby Road, Ms Brady said that she made regular inspections and tended to stay on site for the whole day, sometimes her manager joined her. Ms Brady also said that she tended to time her visits to be the day after the contractors had been on site so that she could make a reasonably prompt assessment of their work. Ms Brady acknowledged that at times there were service level issues and these were taken up with contractor and dealt with.

35. Mr Anderson called Mrs Marshall to give evidence on this topic. In her witness statement Mrs Marshall said: *"The cleaning of the block is also poor. Genesis did not clean the outside of the entrances, and when I use the lift to visit my neighbours I could see it had not been cleaned for some time."*

In cross-examination by Mr Maltz, Mrs Marshall said that she had not made any complaints to landlord about the cleaning.

In re-examination Mrs Marshall said she was not sure why she not made any formal complaints.

36. We accept the evidence of Mrs Marshall. We also accept the evidence of Ms Brady that there had not been any obvious lessening in the level of service delivered and that when issues were taken up with the contractors addressed them.

37. Mr Maltz reminded us that the applicants had not provided any direct evidence on which we could make findings of fact that the service delivered was below par for the cost claimed. He also reminded that the applicants had not submitted any documentary evidence of a failure to clean the common parts to a reasonable standard for the costs claimed.

38. We find that the landlord has discounted the actual costs incurred to reflect the view of the tribunal in the 2016 decision, hence its claim to £250 per month. On the evidence before us we find that in broad terms the level of service remained the same for the nine months in question. We thus find that the cost of cleaning claimed was reasonably incurred and that it was reasonable in amount for the level of service delivered.

Communal fire safety

39. A witness statement of Ms Reventi Jesani, who was employed by the landlord as a Service Charge Partner Region 2, is at [A/109]. The witness statement dated 23 February 2018 does not include a statement of truth. We were told that Ms Jesani has since left the employment of the landlord. We were also told that other employees of the landlord present at the hearing would be in a position to give

evidence on some of the matters covered by Ms Jesani if they were controversial. A witness statement of Mr Seren Ozgen [A/117a] was provided to us in which Mr Ozgen said that he had read Ms Jesani's witness statement and he adopted it because the matters set out were within his own information and belief.

40. In paragraph 31 of Ms Jesani's witness statement she explained in some detail how the costs of £1,827.07 claimed had been arrived at. They may be summarised as follows:

£122.08	03.02.17	Planned service to emergency lighting carried out by Keir under a master contract.
£61.05	03.02.17	Planned service to Automatic Opening Vent, also carried out by Kier.
£585.99	03.02.17	Planned service to dry risers, also carried out by Kier.
£506.34	03.02.17	Planned service to fall arrest – fixings on the building to allow safe access to the roof to carry out works safely, also carried out by Kier.
£480.63	14.11.16	Replacement of LED lights, also carried out by Kier
£70.68	31.08.16	Repair to top floor stairwell smoke vent window.

41. Mr Anderson said he did not say the above activities were not carried out but his concern was that the landlord had not provided any supporting invoices. Mr Anderson submitted that the landlord had a duty to provide such invoices if it wished to recover the costs and the applicants had a right to see them.

42. Mr Stephenson was called to give evidence about the paperwork because he was familiar with the documents and the services provided by Kier.

43. At [A/158] there is a master spreadsheet which records the Block expenditure incurred at 1-26 Kilby Road over the period. A section covers Communal Fire Safety and accords with the breakdown given in Ms Jesani's witness statement.

At [A/221] is a composite invoice from Kier. It is dated 13.10.16. Refers to an Order No. 400213824 and is in the total sum of £8,245.52. At [A/222] there is an internal spreadsheet that records an entry dated 21.10.16 which allocates £480.53 to 1-26 Kilby Road. Mr Stephenson explained that upon receipt of a composite invoice the accounts department would allocate the costs to the appropriate development.

Mr Stephenson assumed that the accounts office would have some form of breakdown from Kier to identify each repair so that the allocation and posting could be made.

At [A/223] there is an internal invoice generated by the landlord in respect of the £70.68 repair to the smoke vent window. Mr Stephenson said he was not aware of who had carried out the repair. He inferred it was under a master contract and the subject of a composite invoice and that an internal invoice is raised to post to the account for 1-26 Kilby Road.

44. As regards the planned services carried out by Kier, Mr Stephenson told us that he had been employed by the landlord since 2012 and he was aware that it took its health and safety and fire precaution responsibilities seriously and that for several years a master contract had been in place with Kier for the provision of a range of related services across the estate. Mr Stephenson was certain that Kier would have invoiced the landlord for those services and that the landlord would have paid the invoice. Mr Stephenson, who had only been brought into the proceedings recently, was not sure why the relevant invoice had not been included in the papers.

45. Mr Anderson reiterated that he did not say that the services had not been provided, his concern was the absence of a supporting invoice. Mr Anderson did not provide any authority to support his submission that the landlord was under a duty to provide supporting invoices and that if it did not, or could not, it was not entitled to recover the costs claimed.

46. We reject Mr Anderson's submission. It is not a correct statement of the law as we understand it. The starting point is that an applicant should make out a prima facie case that a cost claimed is or may be suspect and ought to be explained. In the present case Mr Anderson was not able to make out such a prima facie case. He simply had no evidence to show that the sums claimed might be suspect. Despite that the landlord has given a full explanation. It was set out in Ms Jesani's witness statement. For some reason, not explained to us Mr Anderson did not accept that explanation and has pressed on with his challenge, even though he freely admits he has no evidence to challenge what Ms Jesani had to say.

47. We accept that the landlord has a fiduciary duty to account for the service charges which it collects and expends. That means in the absence of a proper account or explanation there is an evidential burden on the landlord to satisfy a tribunal that the costs have in fact been incurred.

48. In this case the landlord put forward an explanation which on the face of it was clear and credible and in the absence of any evidence to the contrary or any reason to doubt the correctness of the explanation, Mr Anderson, acting reasonably ought to have accepted it.

49. On the compelling and credible evidence before us we do not hesitate to find that services challenged were provided, the cost of them was reasonably incurred and that the amount incurred was a reasonable amount.

Unit fees

Audit fee

50. The fee is modest being only £11.00.

51. Mr Maltz submitted that the lease provides for the recovery of such a fee and reminded us that no separate fee for accounting services was imposed by the landlord. Mr Maltz drew attention to the relevant passages of Ms Jesani's witness statement, which were not challenged by the applicant. The evidence was to the effect that the landlord had entered into an arrangement with a substantial national accountancy firm to effect a modest range of audit services and that the cost was spread across the whole estate on a unit basis. Mr Maltz accepted that the service actually provided was not a sophisticated audit in the conventional corporate sense, but equally the cost incurred was not commensurate with such a service.

52. Mr Anderson accepted the terms of the lease allowed the landlord to incur such an expense but argued that it was not reasonable to do so and that the amount incurred was not reasonable.

53. Having regard to the evidence before us and the submissions made to us we were not persuaded by Mr Anderson that the costs were unreasonably incurred or unreasonable in amount. We find the costs claimed are payable by the applicants.

Management fees

54. Mr Anderson has long been highly critical of the management service provided by the landlord, both as regards management on the ground at site level and as regards the back-office and accounts function. This is borne out by the considered amount of correspondence that has been generated quite a bit of which includes intemperate and unbusinesslike comments and observations.

55. For the year 2015/16 the landlord claimed a unit fee of £275. The tribunal reduced that to £200 in its 2016 decision to reflect the not so good level of service provided.

In the estimate of service charge expenditure for 2016/17 the landlord had inserted £220.

In the final certificate for the year the 2016/17 the landlord claimed £150. We were told this reflected a starting point of £200 to accord with the 2016 decision and was adjusted by 25% to reflect that, as regards the Block management services were only provided for nine months, and not twelve months.

Mr Maltz submitted that this was a reasonable approach to adopt and represented a reasonable fee for the level of service provided, which was broadly the same as in the previous year.

56. Mr Anderson originally proposed a fee of £0. At the hearing Mr Anderson adjusted that to £50 accepting that the landlord had provided a range of services to include collection of rents and services charges, provision of accounts, the placing of insurance, dealing with lessee's enquiries, the placing and negotiation of contracts. Some level of supervision of contractors and undertaking emergency repairs as required.

57. Mr Anderson also set out a number of failings where errors or mistakes had occurred. Some examples include bulky refuse, the electricity account, auditing, block repairs, slowness to deal with anti-social behaviour and the locking of the bins stores, communal cleaning and the failure to hold a residents' meeting. This list is illustrative and not exhaustive. Mr Anderson contrasted the service provide by the landlord with the service provided by the managing agents engaged by the RTM company at a cost of £245 per unit.

58. Mr Anderson was at pains to make clear that the applicants did not say that Ms Brady was an untruthful witness, or that she cannot manage properly, but that she was simply too busy with other duties to be able to give the required time and attention to detail to 1-26 Kilby Road. Mr Anderson drew attention to what he regarded as incomplete, inaccurate and perhaps incompetent reports. We have some sympathy with these sentiments. We found that some of the inspections were not carried out fully and some reports continued to give the appearance of being identical, in terms of narrative and photographs, from which it can be concluded that they were not taken on the day of the inspection and thus might not be a true representation of position that day. We urge that this practice should cease.

59. Mr Anderson accepted that the landlord had made a reduction in its standard management rates but submitted that the reduction was not sufficient to reflect the very poor level of service which he says was provided.

60. We find that the landlord has discounted its standard management unit fee to reflect the view of the tribunal in the 2016 decision, hence its claim to £200. On the evidence before us we find that in broad terms the level of service remained the same for the nine months in question. The service provided was not perfect. Errors and omissions had occurred. Some things could and perhaps should have been done better. We can but stand back and take a broad overview. We bear in the mind the service level provided at a claimed £200 per unit on an annual basis with the fee of £245 per unit charged by the present managing agents, who evidently do provide a service level more in tune with the applicants' expectations.

61. In taking this broad view we find that a management fee of £200 pa reflected the shortcomings in management which continued into the 2016/17 year. This sum is then discounted to £150 to reflect that management services to the Block was for nine months only. We find that the £150 claimed was reasonably incurred and that it was reasonable in amount given the not so good level of service delivered.

S20C application

62. Mr Maltz said that on this occasion the landlord was not in a position to concede that in the light of the tribunal's previous decisions on the construction of the lease and the absence of any appeal from those decisions that the terms of the lease did not permit the recovery of costs through the service charge, but his instructions were not to oppose the making of an order pursuant to 20C of the Act. We have therefore made such an order.

Reimbursement of fees

63. Mr Anderson made an application for the reimbursement of fees of £300 paid by the applicants to the tribunal. Mr Anderson submitted that recurring failings on the part of the landlord left the applicants no alternative but to make the application. He said the conduct of the landlord made the application unavoidable.

64. Mr Maltz opposed the application and invited us to look at the history of the several applications which rendered some aspects of the current application unreasonable.

65. In essence the applicants have lost and most of their arguments have failed. They achieved a minor adjustment to the Bulky refuse removal costs and during the hearing a concession was made by the landlord on Block electricity costs, but did not otherwise achieve success.

66. Rule 13(2) empowers the tribunal to require a party to reimburse fees. No criteria is set out as to matters to take into account or the threshold level to be applied. We infer that a requirement should not be made unless it is fair, just and equitable as between both parties to do so.

67. We bear in mind that the landlord has been put to substantial cost and expense in connection with these proceedings and has not opposed the s20C application with the consequence that it will have to bear its own costs.

68. In all of the circumstances in the present case we find it would not be fair, just or equitable to require the landlord to reimburse the fees paid by the applicants and thus we decline to require the landlord to do so.

Judge John Hewitt
29 October 2018

The Schedule

Statutory Provisions

Landlord and Tenant Act 1985

18.— Meaning of "service charge" and "relevant costs".

(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.

19.— Limitation of service charges: reasonableness.

(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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(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.

(2A)-(3) (4) ... [repealed]

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20C.— Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal or the First-tier 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 a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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.

27A Liability to pay service charges: jurisdiction

(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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

2013 No. 1169 (L. 8)
TRIBUNALS AND INQUIRIES, ENGLAND AND WALES
The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
Made 20th May 2013
Laid before Parliament 22nd May 2013
Coming into force 1st July 2013

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) ...

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Sum Claimed	Applicants' Comments	Respondent's	Tribunals' Determination	Lessee's Contibution	Tribunal's Comments
		? Challenegd/Sum Offered	Comments	Amount Payable	Payable	
2016/17						
Estate Costs (p150 & 224)						
Whole Estate (0.52%)						
Water personal consumption	£ 36,351.59	No		£ 36,351.50	£ 189.03	
Bulky Refuse	£ 7,067.17	Yes Unreasonable £2,000.00	£ 7,067.17	£ 6,371.17	£ 33.13	Adjusted amount reasonably incurred and reasonable in amount
Gardening & external cleaning	£ 11,250.00	No		£ 11,250.00	£ 58.50	
Estate repairs (roads/fencing)	£ 101.50	No		£ 101.50	£ 0.53	
Water services/sewage pumps	£ 439.50	No		£ 439.50	£ 2.29	
Sub-total					**£ 283.48**	
Unit fees						
Audit fee	£ 11.00	Yes, unreasonable £0	£ 11.00	£ 11.00	£ 11.00	Reasonably incurred and reasonable in amount
Management fees	£ 150.00	Yes, unreasonable £0	£ 150.00	£ 150.00	£ 150.00	Reasonably incurred and reasonable in amount
Sub-total					**£ 161.00**	
Block Costs (p158) (3.85%)						
Communal internal electricity	£ 2,855.17	Yes, unreasonable £1,250.00	£ 2,855.17	£ 556.94	£ 21.44	Claim adjusted and agreed at the hearing
Communal internal cleaning	£ 2,250.00	Yes, unreasonable £1,500,00	£ 2,250.00	£ 2,250.00	£ 86.63	Reasonably incurred and reasonable in amount
Electrical repairs	£ 214.05	No		£ 214.05	£ 8.24	
Lift maintenance	£ 586.00	No		£ 586.00	£ 22.56	
Security - door entry	-£ 39.43	No		-£ 39.43	-£ 1.52	
Communal fire safety	£ 1,827.07	Yes, unreasonable £400	£ 1,827.07	£ 1,827.07	£ 70.34	Reasonably incurred and reasonable in amount
Buildings insurance	£ 2,261.85	No		£ 2,261.85	£ 87.08	
Sub-total					**£ 294.77**	
Expenditure not challenged						