12598

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CHI/00CN/LSC/2017/0045**
Property	**: Various flats at 1320-1332 Bristol Road South Longbridge, Birmingham B31 2TD**
Applicant	**: Blue Property Management UK Limited**
Representative	**: Mr A Beaumont, counsel**
Respondents	**: Amrick Singh Dehl Kulvinder Kaur Dehl Shiv-raj Soni Ranbir Padda Sonia Rakar Jaswant Singh Michael McGowan Michelle Bur Lucy Rosalind and Mwihhaki Lowther Spero Trading Limited**
Representative	**: DWF LLP, solicitors (for all Respondents bar Shiv-rSoni) and Mr A Verduyn, counsel**
Type of Application	**: Service charges**
Tribunal Members	**: Judge D. Agnew Mrs J Coupe FRICS Ms J Playfair**
Date and venue of Hearing	**: 10th and 11th October 2017 at Centre City Tower, Birmingham**
Date of Decision	**: 18th January 2018**

DECISION

Background

1. The Applicant is the Management Company specified in tri-partite leases of various flats in blocks numbered 1320 to 1332 Bristol Road South, Longbridge, Birmingham B31 2TD ("the Properties"). As such the Applicant has duties of maintenance and management of the Properties under the leases and has the right to receive service charges in respect of the cost thereof. The Respondents are the long lessees of various flats at the Properties. The leading Applicant is Kulvinder Kaur Dehl who is the lessee of 23 of the said flats which she sub-lets. In addition she manages 41 other flats at the Properties for other long leaseholders.

2. By an application dated 16th March 2017 the Applicant applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 for a determination of the Respondents' liability to pay and the reasonableness of service charges in respect of their respective flats for the service charge years 2007 to 2016 and for the on account service charge for 2017.

3. During the course of the proceedings the Applicant asked the Tribunal to determine also under section 27A(3) whether, if proposed expenditure on an emergency lighting system for the Properties were to be incurred, that would be reasonable expenditure for the Respondents to pay. Although neither party's representative addressed this point in the hearing the Tribunal was prepared to make a determination on the point as they had inspected the Properties and were familiar with them. The tribunal therefore asked for post hearing written representations on the issue. The Respondents did not object to the Tribunal determining the matter and submitted its written representations. A determination on that point is therefore included in this decision.

4. Directions were issued by the Tribunal on 18th May and 29th June 2017 which were complied with and the case came before the Tribunal for hearing on 10th and 11th October 2017. Mr Beaumont of counsel appeared for the Applicants. Also present were Mr Pennington from the Applicant's legal department and the Applicant's witnesses Mr A Howard, Mr D Collins and Mr Peter Evans, Managing Director of the Applicant. Attending for the Respondent were Mr A Verduyn of counsel, his instructing solicitor and witnesses Mrs Dehl, Mrs Lowther, Mrs Haywood, Mr Chavda and Mr Athwal.

Inspection

5. The Tribunal made an Inspection of the Properties immediately prior to the commencement of the hearing on 10th October 2017. There are 8 blocks of flats which are the subject of this application. They are situated on the very busy Bristol Road South in Birmingham, one of the main roads into and out of the City. Between the Bristol Road and the Properties there is a grass verge and a service road. The Properties have the appearance of having originally been Council flats but they were "redeveloped" in or about 2006. They are of brick construction, partly

rendered, with tiled roofs. There are 8 flats in each block, two on each of 4 floors. As the ground slopes away behind the Properties, flats 1 and 2 are on what is called the "lower ground floor". A light well immediately in front of the block provides some light to these two flats. Some of the coping stones surrounding the light wells were dislodged. A wire mesh with a wooden surround covers each light well presumably to prevent leaves and other detritus from being blown into the light well. This mesh covering is not very robust. Some window sills were in a poor condition with paint flaking off. There was vegetation in some places in the guttering at the rear and weeds growing in the gravel and between paving slabs.

6. Inside the communal areas of the blocks the Tribunal noted that the letter boxes within the front entrances were crudely constructed of poor quality wood and poorly finished. The carpeting was basically sound but in several places tears in the carpet had been taped over and in some places on the stairs was loose. The Tribunal noted that the lighting in the communal areas was on continually. The emulsioned hall and stairs walls were badly marked and scuffed. There were some bicycles in the hallways. There was ingrained dirt on skirtings, between the balustrades and in the carpets and there were cobwebs near the ceilings. The windows were not clean and were particularly dirty at the rear of the Properties.

7. The meter cupboards on the ground floor were unlocked and there were gaps in the plasterwork. The woodwork of these cupboards was of poor quality. The roof hatches had padlocks fitted to them.

8. At the rear of the Properties is an extensive area extending the width of all 8 blocks. At the time of the Inspection the grass was mown and reasonably weed-free. There is an extensive expanse of close boarded fencing separating the Properties from other properties at the rear and sides. In general this fencing was in fairly good condition. One side fence was in need of repair but this was the responsibility of the neighbouring property. Storage sheds at the rear of the Properties, in some instances, had their doors wide open providing an opportunity for intruders to enter. There is a pair of substantial double gates in the rear fence to allow machinery to be brought into this grassed area. These gates were sagging in the middle. There was some exposed wiring running down the rear wall of one of the blocks.

The Applicant's case

9. It was agreed that the most appropriate way of managing the application was for Mr Beaumont on behalf of the Applicant to take the Tribunal to the service charge demands, service charge statements and invoices in support to be found in Folder 2 of the hearing bundle. Thereafter, Mr Verduyn would call his witnesses to give their evidence, largely by confirming their witness statements, and for them then to be cross-examined. This is the form that the hearing took. The Tribunal noted the said documentation.

The Respondent's case and evidence

10. The principal Respondent was Mrs Dehl who, as has already been mentioned, is the long lessee of 23 of the flats and is the letting agent for 41 other flats in the Properties. She gave evidence as to her extensive experience in property management. She said that she was aware that when she acquired her properties in 2007 that the service charges would be £600 per annum per flat. All outstanding service charges were settled on completion of the purchase of the flats via the solicitors. Thereafter, she received no demands for payment of service charges until 2008. This was when one of her tenants forwarded to her a letter from Cobbetts, solicitors, which had been sent to Apartment 8 at 1328 Bristol Road South. This demanded payment of service charges totalling £1051.03 plus Management Company's fees of £195 plus vat and solicitors' fees of £395 plus vat. This was in respect of that flat alone. She immediately contacted the solicitors who advised her that they had been writing to her at 287 Lordswood Road which was a previous address from which she had moved in 2007. The next day she received a statement showing that she owed a total of £24,260 for 22 flats including the solicitors' charges.

11. She contacted the Applicant and requested a meeting. This took place on 11th July 2008. At this lengthy meeting she was adamant that she would not pay the solicitors' charges. On 17th July 2008 she was sent details of the amounts alleged to be outstanding minus the solicitors' fees which the Applicant agreed to waive.

12. From 15th August 2008 to 19th September 2012 she has paid the Applicants £91,286.94 in service charges during which time she has made numerous requests for information as to how the demands have been made up and what the expenditure has been on. She says that until recently, in these proceedings, she has not had full disclosure of this information. She says that the Applicants never hold any formal meetings with lessees, they occasionally send out budgets but they do not send out any information as to what works have been done or need to be done. They simply incur expenditure and then simply send out invoices balancing charges and demands for payment.

13. In 2013 she decided she would pay no more as the increase in the amount being demanded for service charges was escalating enormously and the increasing costs did not reflect the poor state of the Premises. By 2016 the charges have increased from £600 per year to £1,100 per flat.

14. On top of this are balancing charges ranging from £250 to £450 per flat per year and these are, on occasions, invoiced more than 2 years after being incurred.

15. In 2013 she asked for a further meeting with the Applicants which eventually took place in January 2014. She was presented with 6 to 8 lever arch files of invoices. These were all from companies associated with the Applicant with the same Director, Peter Evans. She considered that

this showed that the Applicant was circulating business from one of their companies to another.

16. She requested further documentation which was not received until 2 months later. But this was still not complete. During January 2017 she made a final attempt to resolve matters. The outstanding documentation was requested. Some documentation remained outstanding. She proposed two options going forward: one, to make every effort to resolve the past issues and agree a way forward for the future or proceed to the Tribunal. The Applicant chose the latter path.

17. One of the objections to the service charges on the part of Mrs Dehl was that the Applicants had not served her with demands at her proper address. Since 2009 they have been sending demands to 9 Portland Road, Smethwick which was her business address at that time. However, she moved her office from there to 464 Bearwood Road in November or December 2010 and then to 472, Bearwood Road in 2014. In September or October of 2015 she moved her business to 433 Bearwood Road. She maintained that the applicants were aware of her proper business address although she had not formally notified them in writing of her change of address. She said that her address was on her emails which had been sent to the Applicants although there was no such address on the emails contained in the hearing bundle. She said there had been a meeting with representatives of the Applicant at Bearwood Road in 2011 and on one occasion she asked for some information to be sent to her at 464 Bearwood Road in 2011.

The Tribunal's decision on the validity of service of service charge demands

18. As the Tribunal's decision on the validity of service of the service charge demands was essential for determining the future course of the hearing, the Tribunal decided that it would make a determination on this point at this stage of the hearing and retired to consider the point. Having come to a decision it proceeded to announce the decision so that the parties would know whether or not there was any need to continue with the hearing, for if the demands had not been served correctly, none of the amounts claimed would be payable unless or until valid demands were served.

19. The Tribunal decided that the demands had been validly served. It was Mrs Dehl's responsibility formally to notify the Applicant of her change of address for service of documents including service charge demands and there was no evidence that she had done so. In the Tribunal's view it was not sufficient for her to say that the Applicant ought to have known of the correct address because they knew the address of her business. However, the Applicant was not to know whether this was her only business address and the fact that there was a meeting held at a different address again did not necessarily mean that the original address was no longer her address for service. The Tribunal would therefore proceed to determine the case on the basis that the demands had been validly served.

Mrs Dehl's further evidence

20. The following are the main points of Mrs Dehl's case. She made many other points which the Tribunal has taken into account but they are too numerous and detailed to set out herein.

21. The service charge accounts for 2007 to 2015 were not certified by accountants until 2015. The invoice for the accountant who certified the 2014 accounts is on a letterhead with the same address as Blue Property Group.

22. Mrs Dehl questions the authenticity of the certificates for buildings insurance or, at least, questions whether value for money has been obtained as the cost of insurance has doubled since 2007. She produced a quotation from Towergate quoting £4906 for insuring the Properties compared with £13055 being charged in 2016 by the Applicant.

23. The cost of cleaning of communal areas has risen from £450 in 2007 to £832 in 2015 yet the communal area "remain dirty, uncleaned and uncared for". She says that the lessees seem to be being charged for cleaning 104 flats instead of 64. Invoices all have an identical generic description. Cleaning is carried out on an ad hoc basis and consists of a quick vacuum each week. The cleaners are the same people who carry out general maintenance on their scheduled days on site.

24. As for communal electricity, bills are addressed to Raybone Developments. Why is Blue Property Management paying bills not correctly addressed?

25. With regard to the fire risk assessment and health and safety risk, assessment, the recommendations are not carried out and the same recommendations appear year after year.

26. With regard to the excess on the buildings insurance, Mrs Dehl maintained that some insurance claims (such as the unblocking of sinks) were not communal matters but should have been the responsibility of the leaseholder in question. Further, excessive claims have been made on this insurance. For example, in 2015 a claim for £1740.80 was made to remedy graffiti underneath the stairs in one block whereas on a different occasion half that amount, £978.08, for painting the whole block. She says that it is claims like this that cause the insurance premium to rocket.

27. With regard to landscaping and grounds maintenance, the invoices are generic and give little information as to what was actually done. The maintenance men on site carry out gardening so why are the lessees being charged in addition by Enviroscape. A large amount appears to have been spent on fencing and gate repairs but the fences and gates are in a poor state. The cost of gardening has increased from £310 per month to £422 per month when the gardens are in a worse condition.

28. With regard to management fees, these increased from £9270 in 2007 to £16129 in 2012. Mrs Dehl asks what justification there is for such an increase. She says that the management company's accounting is poor, its supervision is poor, they have no formal meetings to set a budget or receive leaseholders' views and they do not communicate fully with the leaseholders.

29. With regard to general repairs and maintenance, Mrs Dehl complains that 50% of the invoices give little or no indication as to what they are for. She singles out the cost of fitting 64 letter boxes at a total cost of £1556 when they are not fit for purpose and of poor quality.

30. In respect of window cleaning the charges have increased from £324 per visit in 2010 to £576 per visit in 2016. This is not justified particularly as the cleaning of windows is poor. She has been informed by residents that the window cleaners attend twice per year rather than the six times that are charged.

Mrs Lowther's evidence

31. Mrs Lowther is the long leaseholder of Flat 1 at 1326 Bristol Road South which she bought in March 2007. She says that when she bought the property it had been newly refurbished and was in good condition. Mrs Dehl's company, Knightsbridge Lettings, manages the sub-letting of her property.

32. She says that the Properties were not properly looked after from the outset. The gardens became overgrown and the tenants started complaining. Service charges started to increase but the state of the properties deteriorated. When she tried to speak to the management company it was a different person every time. They promised to get back to her but they never did.

33. Several leaseholders tried to fix up a meeting but it was difficult to get a convenient date. Eventually they went to the Applicant's offices only to be shown lever arch files full of invoices and they were unable to answer their concerns.

34. She visits the flat three times per year and has steadily watched it, and the other Blocks, deteriorate. Any work done seems to be superficial. She wants to know how the "extra charges" can be justified.

Mrs Haywood's evidence

35. Mrs Haywood is a tenant who lives at flat 3, 1326 Bristol Road South. She has lived there since December 2008. She says that in all that time she has only seen two people doing the communal cleaning and maintenance. The cleaning consists of a quick vacuum, perhaps once per week. The doors, skirtings and internal windows are never cleaned and are filthy. Rips in the carpet have been taped over. The intercom system has not worked for a while as the speaker has been taken out. This has been

reported to the applicant but nothing has been done about it. If the front door is kicked hard enough it comes open. The letter boxes are insecure. Windows are rarely cleaned, perhaps twice per year and those at the rear are missed out. The maintenance man is present on site at most twice per week and sometimes he does nothing when there..

Mr Chavda's evidence

36. Mr Basil Chavda is a Director of Hambros Estates Limited which company holds 11 shorthold tenancies of flats from Mrs Dehl's company, Knightsbridge Sales and Lettings, within the Properties which they sub-let. His evidence was that they receive many complaints from their sub-tenants who live in these flats. He detailed some of the complaints as follows:-
    a) Very dirty communal stairs and landings being uncleaned for lengthy periods
    b) Front door entry system not working for most of the time
    c) Front door not closing automatically and securely
    d) Rubbish, old appliances and furniture being dumped all over the site and not cleared away for long periods
    e) Post being interfered with

    They have also received complaints about cleanliness from Health Visitors and Social Workers. He will consider terminating the assured tenancies if matters do not improve in the near future.

37. Mr Chavda considered that the Applicants could not "pass the buck" for the condition of the Properties by blaming it on vandalism. He said that he managed over 300 properties some in similar area to Longbridge but he does not have the same problems. He feels that the Applicant makes no positive effort to stop the vandalism.

Mr Athwal's evidence

38. Mr Harry Athwal used to be the Property and Maintenance manager for Knightsbridge sales and lettings from March 2014 to November 2015. For the past 10 years he has worked in the building trade and has managed five building projects from refurbishment to new build. He has worked with 15 building contractors and numerous tradesmen. He considers that he has a good understanding of the standards of work to be expected from tradesmen.

39. When with Knightsbridge he was the go-between between the tenants who had complaints and the management company. In his opinion the standard of work and materials used by the management company is sub-standard. He cites the post boxes as a prime example.He says that the way they have been fitted has weakened the door frame structure, hence the need for constant door repairs.

Other evidence for the Respondent

40. Witness statements were included in the hearing bundle from Joanne Trevis, Barry Leonard and Weir Housing. However, they did not attend the hearing to give evidence or, more importantly, to be cross-examined and so the Tribunal has been able to attribute little weight to their evidence.

The Applicant's response

41. Mr Anthony Howard was the principal witness for the Applicants. He joined Blue Property Management Limited in 2009 as the property area manager for the West Midlands. Previously he had no property management experience. He currently manages only one other employee, Dean Collins although he has managed others in the past. It is part of his job to allocate work that needs to be done and monitor it. He inspects work done such as cleaning and caretaking and keeps in touch with employees by mobile phone, site visits and email. He is responsible for the management of the Properties.

42. He says that when he took over his role as Area Manager, he was informed that there were already substantial arrears of service charges, the majority being owed by Mrs Dehl. His main point of contact is with Mrs Dehl's husband, Amrick, who is also a Director of Knightsbridge Sales and Lettings, with whom he has had many discussions. Amrick would ask him to carry out various tasks but he would have to respond by saying that without the funds he was unable to act. He said that this made little impression on Amrick.

43. He said that there was a lot of vandalism at the Properties. He was responsible for the insurance of the buildings and Amrick would often report incidents to him for claiming on the insurance.

44. As for cleaning and caretaking, in the early days of his involvement the cleaning was carried out on two full days per week. As the service charge arrears increased it was no longer possible to sustain that amount of cleaning and caretaking and it was reduced to one full day per week. Due to the behaviour of some of the residents the communal areas would often become in an undesirable state very soon after cleaning had been carried out. It really required cleaning to be effected every day but because of the arrears situation this was not possible.

45. There is a constant need for general repairs and day to day maintenance. Vandalism caused damage that was not serious enough to justify a claim on insurance. Police were called on a number of occasions sometimes resulting in damage to flat and front entrance doors. The conversion had been carried out to a poor standard. This resulted in the carpets lifting and ripping and window cills perishing, for example.

46. Younger residents caused much damage to rear doors damaged when they had forgotten their keys. Children would also damage the rear garden gates and fences by climbing over them rather than having to walk round to the front .

47. The light wells would fill up with rubbish causing drains to be blocked resulting in flooding. There was a great deal of fly-tipping of rubbish and furniture from flats when tenants changed. The culprits could not be tracked down and the disposal of the rubbish had to be charged to the service charge.

48. On 3rd January 2017 Mr Howard contacted Mrs Dehl to arrange a meeting to try to resolve the arrears situation. The meeting took place in her office on 16th January 2017. He explained the difficulties experienced in managing the Properties. She understood this but had some queries over the invoices. He took with him to the meeting the paperwork in respect of 2013 to 2016. He believed that Mrs Dehl had already inspected the documentation for the earlier years. When he arrived at the meeting, however, Mrs Dehl said she needed the previous years as well, so he arranged for these to be sent to her. He arranged a further meeting in 4 weeks' time but he said there had to be a deadline for resolving the issue and he fixed this as 10th March 2017 as in the past previous attempts to settle the matter had dragged on and got nowhere.

49. On 20th February 2017 he chased Mrs Dehl for a response and to arrange the meeting for that week. He received no response until 7th March 2017. As a result of that call Mrs Dehl sent him a further request which he responded to on 8th March 2017. He said that if the matter had not been resolved and payment made by 13th March 2017 an application to the Tribunal would be made and that is what happened.

50. Mr Dean Collins is employed as the Applicant's Engineer for the West Midlands. He took on this role in 2012. At first he carried out repairs to the Properties but in 2015 he started caretaking. He carries out planned and reactive maintenance at the Properties and his line manager is Mr Howard.

51. Mr Collins said that the site is a very challenging one. Some of the tenants have little respect for the place. No sooner does he carry out work than it is vandalised. On numerous occasions he has attended to leaks, break-ins and problems with locks on the doors. He carries out cleaning and gardening and has regularly attended to rubbish dumped in the communal areas and gardens.

52. Mr Peter Evans is the Applicant's Managing Director. He gave evidence as to the addresses to which demands were sent and the company's knowledge or lack of it of any different address for demands and other documents to be sent to Mrs Dehl. He produced some emails which had no address for Mrs Dehl on them.

53. In the hearing bundle was a witness statement from Gytis Lazinskas, a paralegal with the Applicant company, who was tasked with collecting service charge arrears and in particular from Mrs Dehl. This witness, however, did not attend the hearing to give evidence and so could not be

cross-examined. This evidence was therefore given little weight by the Tribunal.

Emergency lighting expenditure

54. There was included in the hearing bundle a fire risk assessment dated 19th January 2017 carried out by DV Warren an accredited and certificated fire risk assessor. This states that the Properties require emergency lighting in all communal internal areas in case of power loss and/or emergency evacuation. This was given a "High Priority" status. Estimates for the proposed works were received from Logik Services in the sum of £4968.44 plus vat for option 1 and £8864.08 plus vat for Option 2. Option 2 included microwave sensors which would activate the lighting if anyone enters the building. It was claimed that this Option would save "£1000 in lamps and electricity". A further quote was received from OHS in the sum of £9162.00 plus vat. It is not clear how this quotation compares with that of Logik Services as to whether microwave sensors are proposed.

55. The Respondents do not object to the proposed work: indeed they say that this should have been done sooner. Of the two quotations submitted by the Applicant they prefer the more expensive Option 2 quoted by Logik Services, no doubt because microwave sensors will produce a considerable saving on lamps and electricity going forward. However, the Respondents have obtained their own quote for the proposed works from New Phase Electrical Limited at a cost of £6500 plus vat. Their proposal, too, involves microwave sensors and they confirm that this should result in a considerable saving in cost of lamps and electricity going forward.

Post-hearing documentation

56. At the Tribunal's request certain documentation was received from the Applicants after the hearing as follows:-
    a) information that the average commission received by the Applicant for insurance over the 11 years in question in this case was 20% of the premium. No documentation or further information was given in respect of commission.
    b) Details of the training and qualifications of the Applicant's personnel, including Dean Collins, was supplied.
    c) With regard to Cobbetts', solicitors, fees for "search fees" the Applicants were unable to obtain further documentation or information to explain the same as Cobbetts are no longer in existence (ironically, the practice having been acquired by DWF, the Respondents' solicitors). The Applicants believe, however, that these were Land Registry search fees to obtain leaseholders' details.
    d) An invoice from David Harrison, accountant re accounts certification
    e) A 2007 insurance invoice
    f) Service charge expenditure v service charge demands table
    g) 2007 Service charge demands.

57. The Respondents responded to these documents on 1st November 2017 and the Respondents' comments have been taken into account by the Tribunal in making its determination.

58. At the hearing the Respondent's counsel indicated that there was an issue with regard to balancing charges for certain years not having been demanded within 18 months of the date when the expenditure was incurred in accordance with section 20B of the Act.. However, it was agreed by both counsel that the computation as to whether any charges were caught by section 20B would depend upon the Tribunal's determination as to what was payable in those years. Consequently, the Tribunal ordered that a period of 2 months after delivery of the determination of the substantive application in this case would be given for the parties to try to agree the section 20B situation and whether any of the charges would be affected by that section and if so in what amount. If the parties were unable to agree the situation at the end of that 2 month period then a further application could be made to the Tribunal to determine that issue upon written representations, directions for which would be given if/when the Tribunal was asked to determine the matter.

The leases

59. There was no dispute between the parties that subject to the costs being reasonably incurred, of a reasonable amount and that the work done was of a reasonable standard, the expenditure incurred by the Applicant was recoverable under the leases of the flats at the Properties. The Tribunal does not propose, therefore, to set out in these reasons the particular service charge provisions of the leases.

The relevant law

60. This is set out in the Appendix to this determination.

The Tribunal's determination

61. The Tribunal first makes some general comments concerning the service charges before turning to comment on particular heads of expenditure. The detail of the Tribunal's determination in respect of every item of expenditure is then set out in the Scott schedule which is appended to this determination.

62. The first general point is that the Tribunal is concerned that with few exceptions the expenditure charged to the lessees has been incurred by the Applicant with other members of the same group of companies. Blue Accounting charges for preparing the accounts, Blue Risk carries out the risk assessments, Blue Property Maintenance UK Limited carries out the window cleaning, grounds maintenance and cleaning and caretaking in the communal areas. This is all very incestuous. Although the Applicant says that it tests its charges against others in the market to ensure that its

rates are competitive, the only evidence of this is the Applicant's bald statement that this is so. The Tribunal has therefore had to rely on its own knowledge and experience of the cost of such services to determine whether those costs are reasonable in amount.

63. The next general point relates to the particular problems that the Applicants say exist with regard to these Properties: in particular, the vandalism and lack of respect shown to the premises by the residents which, the Applicants say has contributed to the high cost of maintaining the Properties. Although the Applicant issues budgets before each service charge year and although the Applicants say that they regularly discuss such problems with Mr Dehl in particular, it is not the Applicant's practice to hold any formal annual meetings with long lessees to discuss the budget and how particular problems might be addressed. In view of the high cost in repairing damage caused by vandalism, for example, the Tribunal would have thought that as soon as this emerged as a problem, a proposal to incur the cost of cctv surveillance could have been included in the budget and, if approved by the lessees the cost thereof could have been collected in advance. As it is, the high cost of repairs due to vandalism has continued year after year. This is reactive rather than pro-active management. The Tribunal considers that many of the problems that have been thrown up by this case could well have been avoided by the managing agents getting the long lessees to buy into the budget and to solving the problems at the Properties.

64. The main reason given by the Applicant for any shortcomings in the service provided at the Properties was that the arrears of service charges were such that the Applicants could simply not afford to provide the service they would like. This has led to standards dropping which in turn has led to dissatisfaction amongst the long lessees that they are not getting value for money. It is a Catch Twenty-two situation. However, it is the Applicant's duty under the lease to maintain and repair the Premises and to collect in the cost of doing so. Part of the problem here is that the Applicant has taken so long to initiate proceedings. No doubt it has attempted to resolve matters by negotiation, particularly with Mrs Dehl but the delay in obtaining a determination from the Tribunal has only prolonged the dissatisfaction on both sides.

65. It was, of course always open to the lessees to make an application to the Tribunal at an earlier stage. Mrs Dehl has known of the arrears situation since 2008. As soon as she was dissatisfied with the answers she was receiving from the Applicants to her queries it was possible for her or any other lessee to make an application. Until recently, Mrs Dehl's focus has been on obtaining the information to support the charges being made. It is only since the commencement of these proceedings that there is any evidence that the lessees have complained about the level of service they have been receiving. The Applicants have on a number of occasions considered that they had answered Mrs Dehl's queries only to find that she has come up with more and more questions. This could have been avoided by an earlier application to the Tribunal where, if necessary, orders for disclosure could be made.

66. The Tribunal does not find that there is any merit in Mrs Dehl's criticism that some of the invoices are generic in their description of what the invoice covers. It is not unusual, where there is an annual contract, for example for grounds maintenance, that the annual contracted sum is spread out over the year in equal payments notwithstanding that the work is done more predominantly in the summer months, where there is one generic invoice submitted each month. There is, however, valid criticism concerning the lack of detail for some of the invoices for repairs/maintenance. It is not unusual for contractors' invoices to be vague but managing agents can be expected to seek more detailed invoices in such circumstances. It may be that the close relationship between the management company and the maintenance company has led to an acceptance of a lack of clarity in invoicing. The Tribunal comments that, going forward, if the same arrangement for maintenance/repairs is maintained that it would be in the Applicant's interest to require more detailed invoices and perhaps a photographic record of the work needed to be done at which location and when.

67. Turning now to the specific heads of expenditure, the Tribunal makes the following findings:-

Management fees.

68. The basic management fees ranging from £126 plus vat per unit in 2007 to £210 per unit in 2016 the Tribunal finds would be reasonable if a good service was being provided. Particularly since 2013 when £210 plus vat per unit has been charged, this is at the top end of what the Tribunal would expect management fees to be. Such a fee would include the preparation of annual service charge statements and would typically include an annual meeting to discuss the budget for the following year. However, as the Tribunal has already indicated above, there have been shortcomings in the Applicant's performance as managers of the Properties. There is no annual meeting and management has been reactive rather than pro-active. The Tribunal has, therefore, reduced the basic management by 10%. The most concerning aspect of the management charges is that, since 2013, on top of the annual management fee the Applicant has made a charge for every call out received and acted upon and has also charged for "surveys" of the Properties that the Tribunal considers should be covered by such a high management fee. A reasonable charge for dealing with out of hours emergencies is acceptable but the Tribunal considers that what has been happening since 2013 has been a convenient way of boosting the management fees unreasonably. In the attached schedule, therefore, the Tribunal has disallowed some of the call-out fees.

Accountancy fees

69. As stated above, internal accountancy fees should, in the Tribunal's view, be included in the management fee. External accountancy fees are dealt with separately, below.

Gardening

70. The annual grounds maintenance contract has increased from £185.14 per visit in 2011 for 21 visits per year to £237.71 per visit for 21 visits in 2016. There is a fairly large expanse of grass to maintain at the rear of the Premises and the Tribunal considers that the amounts charged are reasonable.

Window cleaning

71. The annual window cleaning contact has changed from £372 per quarter to £3402 per year in 2016. The Tribunal, having seen the windows, does not consider that the fees charged are reasonable. The windows at the front of the Properties were acceptable but there was evidence from Mrs Haywood, a resident, that the rear windows were missed out and they appeared to the Tribunal to be in a worse state than those at the front. The problem for the Tribunal is to assess how long the unsatisfactory situation with regard to the rear windows has persisted. It is clear that this has not happened just recently in view of their condition but there is no evidence of specific complaints being made to the Applicant prior to these proceedings. Doing the best it can the Tribunal has reduced the charges for window cleaning by one-half for 2015 onwards.

Letter boxes

72. The Tribunal finds that these are of a very poor quality wood, have been crudely constructed and appear to have weakened the front door structure. The Tribunal finds that they are not fit for purpose and all charges in respect of their construction and repair/maintenance have been disallowed.

Communal cleaning/caretaking

73. The Tribunal finds that the general standard of cleaning and maintenance of the common parts is poor. There is dirt and grime that has accumulated on the skirtings and banisters and cobwebs on the ceilings. This situation has accumulated over time but in the absence of any specific evidence of complaints having been made, it is difficult for the Tribunal to assess how long this has persisted. Doing the best it can the Tribunal has decided that there should be a reduction in the amount charged for cleaning and caretaking from 2015 when the number of men employed to do this work was reduced from 2 to 1.

Insurance

74. The Tribunal finds that the cost of insuring the Properties in 2007 at £4638 was reasonable. It considers that an annual increase of 10% since that year would be expected. Anything above that in the absence of special circumstances would, in the Tribunal's view, be unreasonable. Whilst there have been some claims on the policy they have not been numerous or of high value. There is no incentive on the management company to

keep the premiums down when they take a percentage of the premium cost in commission, as in this case. The Tribunal does not, however, find that the quotation obtained by Mrs Dehl is comparable on a like for like basis.

Conclusion and Summary

75. The amounts determined by the Tribunal to have been reasonably incurred, to be of a reasonable amount and the services to be of a reasonable standard are set out in detail in the attached schedule.
This results in the following amounts:-
2007: £20,565.84 or £321.34 per flat
2008: £25,895.46 or £404.61 per flat
2009: £33,338.13 or £520.91 per flat
2010: £38,936.14 or £608.38 per flat
2011: £46,614.63 or £728.35 per flat
2012: £42,571.03 or £665.17 per flat
2013: £45,732.95 or £714.58 per flat
2014: £60,560.34 or £946.25 per flat
2015: £51,821.65 or ££809.71 per flat
2016: £48,562.22 or £758.78 per flat
The above figures are subject to any amendment that might be made following representations regarding the effect of section 20B of the Act on any of the figures as provided for in paragraph 78 below.

76. In view of the above findings the Tribunal considers that a reasonable sum for the Applicant to have demanded on account of service charges for 2017 would be £800 per flat.

77. In addition, the Tribunal has found that if the sum of £6500 is incurred by the Applicant in installing an emergency lighting system to the Properties a charge of £6500 plus vat would be reasonable. Any amount in excess of that figure will have to be justified by the Applicant.

78. During the course of the hearing the Respondent's counsel wished to reserve the right to challenge some of the expenditure for some of the years in question on the basis that they fell foul of section 20B of the Act in that demands for the expenditure in question had not been made within 18 months of the date upon which they were incurred. It was not possible to ascertain whether or not this was correct and, if so, in respect of which items of expenditure until the Tribunal's determination in principle on the items in the attached schedule.

79. It was agreed by the parties at the hearing that it would be sensible to allow the parties 2 months from the date of this decision for them to try to agree the position with regard to the section 20B point. If agreement is reached a determination by consent can be made by the Tribunal. If agreement has not been reached within the 2 month period aforesaid the Applicant must apply to the Tribunal for further Directions for this point

to be determined on the basis of written representations. This application must be made before the expiry of the 2 month period, failing which the Tribunal will close its file.

Dated the 18th day of January 2018.

Judge D. Agnew (Chairman)

Appeals procedure

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.
   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

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.