12638

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00EU/LSC/2017/0082**
Property	:	**9 Mansfield Apartments, Priestley Park, Templeton Drive, Fearnhead, Warrington, WA2 0WR**
Applicant	:	**Paul Anthony Doyle**
Respondent	:	**The Priestley Park Management Co Ltd**
Type of Application	:	**Landlord and Tenant Act 1985 – s 27A** **Commonhold and Leasehold Reform Act 2002 – Sch 11(5)(a)** **Landlord and Tenant Act 1985 – s 20C**
Tribunal Member	:	**Mr John Murray LLB** **Mr John Faulkner FRICS**
Date of Hearing	:	**23 April 2018**
Date of Decision	:	**23 May 2018**

DECISION

DECISION

The Tribunal determines that the Service Charges payable in respect of Flat 9 for the years under review are as follows:-

a. 2004/5: £780
b. 2005/6 £780
c. 2006/7 £780
d. 2007/8 £780
e. 2008/9 £794.70
f. 2009/10 £852.65
g. 2010/11 £897.39
h. 2011/12 £900.39
i. 2012/13 £940.44
j. 2013/14 £940.44
k. 2014/15 £999.92 Administration Charge £0.08
l. 2015/16 £1076.62 Administration Charge £96

The Tribunal has no jurisdiction to determine the service charge years 1 July 2016 to 30 June 2017 as they have been subject to County Court proceedings.

INTRODUCTION

1. On 24 September 2017 the Applicant applied to the Tribunal for a determination as to his liability to pay and the reasonableness of both service charges and administration charges for the service charge years 2004 - 2019 under s27A Landlord and Tenant Act 1985 and Schedule 11 paragraph 5 of the Commonhold and Leasehold Reform Act 2002 respectively. The Applicant also sought an order pursuant to s20C of the Landlord and Tenant Act.1985.

2. The application which related to 9 Mansfield Apartments, Priestley Park Warrington ("the Property") was incorrectly made against Premier Estates Limited, who are managing agents but not a party to the lease. With the agreement of the Respondent, they were substituted in place of Premier Estates Limited.

THE PROCEEDINGS

3. Directions were made by a Procedural Judge on 13 November 2017 as follows:

    1. The provision (by 27 November 2017) of financial documentation by the Respondent (service charge accounts and budgets, notices and demands for payment) and a statement for each period showing the total service charges and administration charges payable for each year in dispute, explaining the basis of application, calculation and apportionment.
    2. Within 21 days of receipt of the financial information, the Applicant was directed to send a statement of case setting out the grounds for his application, identifying in respect of each year, the service charge costs or items and the administration charges in dispute, by a schedule or spreadsheet, to show:

        1. each disputed item
        2. reason for dispute
        3. the amount if any the Applicant was willing to pay
        4. a space for the Respondent's comments on each item.

3. The Respondent was given permission to send a short statement in reply within seven days of the above.

4. Additional directions were given by letter from the Tribunal:

    1. The queries/concerns raised over service of documents will be dealt with at the hearing
    2. The Applicant shall be allowed of visit the Respondent's agent's office to review all the invoices and facilities shall be provided for the Respondent to take copies of all disputed invoices.

5. A Tribunal was appointed and an inspection of the Property and the Estate where it is located on the morning of 23 April 2018 at 11.00am.

6. The Applicant attended the inspection in person. The Respondent was represented by managing agent Mr. Brocklehurst of Premier Estates. Ms Ackerley of Counsel also attended the inspection on behalf of the Respondent.

THE INSPECTION

7. The Property is a flat in a Development of 34 apartments within three separate apartment blocks, built in or around 2002, as part of a larger residential estate of houses and apartments. The buildings are up to four stories in height. There are border gardens, mostly laid to shrubs around the blocks, together with some small lawn areas. There are three bin stores and car parks for residents and visitors. In the immediate vicinity is a large open space, and a children's play area as an amenity for the wider estate on which the development is located.

8. The Development was seen to be in a neat and tidy condition. The car park was tidy, and garden areas showed signs of recent work. Internally carpets and decoration in the stair and hallways were clean and in good condition.

THE LEASE

9. The Property was let to the Applicant originally by Taylor Woodrow Developments by a lease dated 1 January 2003 for a term of 999 years at a yearly rent of £150 per annum (increasing).

10. The Respondent Management Company, the Priestley Park Management Company Limited is named as a third party to the lease. Pursuant to the lease the Respondent is or would become a member of the Management Company. The Management Company has four lessees as Directors, two of whom are understood to be living at the Development.

11. The Respondent's covenanted in Clause 3.3 and the Seventh Schedule Part 2 paragraph 6 of the lease to pay to the Management Company the Lessee's Proportion and also to pay any value added tax which may from time to time be payable on the Lessee's proportion".

12. The Lessee's Proportion is defined at Clause 1.19 of the Lease, as "the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Sixth Schedule", and the Maintenance Expenses are defined in

Clause 1.22 as "the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company at all times during the Term in carrying out the obligations specified in the Fifth Schedule".

THE LEGISLATION

13. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 which read as follows:

s27A 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.

Commonhold and Leasehold Reform Act 2002 Schedule 11 paragraph 5:

An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

PRELIMINARY ISSUES

14. There were a number of procedural points made by both parties that the Tribunal needed to consider prior to hearing submissions and evidence, to narrow down the issue before it.

BREADTH OF APPLICATION

15. The Respondent asserted that the Applicant's statement of case exceeded his application to the Tribunal, which in their view related solely to a challenge of the management fees charged by Premier Estates.

16. The Tribunal determined that it was sufficiently clear from his application that the Applicant wished to challenge all service charges, and as a litigant in person felt it appropriate that the determination should cover all service charges, and not just management charges.

COMPLIANCE WITH DIRECTIONS

17. The Applicant had made representations that the Respondent had delivered it's statement and documentation out of time, as he received it on the 4 December 2017, not the 27 November as directed. The Tribunal had received the Respondent's statement and documentation on the 27 November 2017 under cover of a letter from JB Leitch Solicitors. That letter confirmed that a copy had been sent to the Applicant, confirmed in the Respondent's statement of case. The Tribunal believed that on the balance of probabilities that it was sent on the same day; the Respondent would have suffered no prejudice in any event, which he accepted.

18. The Applicant stated, repeatedly, that the Respondent had not produced documentation in accordance with the directions. The Applicant was reminded, repeatedly, that the Respondent had produced all the documentation referred to in the directions.

SERVICE CHARGES PREVIOUSLY DETERMINED

19. The Respondent produced a judgement dated 10 October 2017 in claim number D2YX648 in the County Court at St. Helens that the service charges for the service charge years 2016 and 2017 had been determined by the County Court.

20. s27(4) (c) provides that no application can be made pursuant to s27 Landlord and Tenant Act 1985 that has been the subject of determination by a court. The Applicant stated that he had appealed the decision. He did not tell the Court that his application for permission to appeal had been refused. He admitted that this was the case, but said he had made an application for an oral hearing.

21. The Tribunal confirmed it would have no jurisdiction to determine service charges that had been the subject of determination in a separate court. The Respondent agreed to provide the Tribunal with a copy of the claim form (that the Respondent was aware of having defended the action). The claim related to service charges for the period 1 July 2015 to 30 June 2017, as well as administration charges for those years, and an end of year blanking for June 2015, said to cover the period from 1 July 2015 to 30 June 2016. The Tribunal determined that it is precluded from reviewing the service charges for the years 2015 and 2016. Only half of the fees for the maintenance year 2017 have been subject to proceedings, but the parties agreed that the 2017 service charges were not complete.

LIMITATION ACT 1980

22. The Respondent sought to argue that the provisions of the Limitation Act 1980 operated so as to limit the Applicant to requesting a review going back six years in total, or in the alternative, he should be estopped from going back over a longer period as it would be inequitable to bring a challenge so long after costs had been incurred. The Tribunal was not persuaded that the Limitation Act applied when considering whether the charges were reasonable, and that the Tribunal would need to hear evidence to consider whether the Respondent should be estopped from bringing a challenge.

BUNDLE OF EVIDENCE

23. The Applicant asserted that the Respondent had not consulted with him to agree a bundle. He said it had been unilaterally prepared, and that there had been no attempt to agree it with him, in blatant non compliance with the Tribunal's directions. The Solicitors for the Respondent JB Leitch had provided five ring binders worth of documents the week before the hearing, and he had not had time to consider the documents contained therein. He said he had not seen the invoices before.

24. He said he had produced his own bundle index (although no bundle to accompany it). He referred to a letter that was missing from the Respondent's bundle, which set out his account of his visit on the 1 March 2017 to the managing agents offices to inspect invoices; the Tribunal had a copy of this letter.

25. Ms. Ackerly referred to the emails on page 49 of the bundle, that demonstrated that the Respondent's solicitors had indeed endeavoured to reach agreement

with the Applicant. They provided a letter dated 19 April 2018 that went into some detail about having produced a bundle previously, having to produce a second bundle in a tight timescale to have it ready for the extended date of 16 April. They were still unaware as to what invoices the Applicant was disputing; he said none had been available for his inspection. Mr. Brocklehurst had asked the Applicant to identify documents he wanted to have inserted in the bundle. He sent a further email on the 6 April. The Applicant did not respond to these emails, so the Respondent, in lieu of the time pressure, prepared the bundle.

26. The Applicant wrote to the Respondent's Managing Agents Premier Estates on the 14 and 17 April in strong terms to say that the bundle had been served late (saying repeatedly that the Respondent had "blatantly abused" the Tribunal directions). He said that the first attempt at a bundle was on 10 April. He failed to refer to the emails from JB Leitch of the 5th and 6th April in his correspondence, inferring that the Respondent had failed to engage with him. Evidence provided by the Respondent showed it had been sent under cover of a letter dated 13 April 2018 to the Applicant marked for delivery (by courier) on the 16 April 2018.

27. The Tribunal formed the opinion that the Respondent was deliberately trying to mislead by his correspondence, and had gone to some length to frustrate/thwart the Respondent's attempts to put an agreed bundle together. In his letter to Mr. Brocklehurst Premier Estates dated 14 April 2018 he wrote "You have made no attempt to consult me on what I seek to be included or what you want to be included". That assertion appeared designed to mislead the Tribunal; it was clear that JB Leitch, instructed by Premier Estates on behalf of the Respondent, had indeed attempted to consult with him. Whilst (presumably) carefully worded to avoid being an outright lie, it came fairly close.

28. Whilst it was accepted that the bundle had been prepared by the Respondent's solicitors without agreement having been reached, it was clear to the Tribunal that attempts had been made to agree the same in accordance with the directions, and that the Applicant had frustrated the process. The Tribunal had no other bundle before it; there were no pertinent documents that the Applicant referred to that were not already before the Tribunal. There was no prejudice to the Applicant in the use of the bundle. It was unfortunate that so much time was wasted on what should have been a straightforward matter.

DISCLOSURE

29. The Applicant stated that the Respondent's disclosure had been incomplete. Following the additional directions of the 8 February 2018, the Respondent had visited Premier Estate's offices on 1 March 2017, in order to examine invoices, and to take copies of the same.

30. He said he was not shown the information, and that the information (now contained in section L of the Respondents' bundle) was not available. In his letter to Premier Estates of the 14 April 2018, he said that the result of the visit on the 1 March 2018 was accurately and contemporaneously recorded in his letter of 4 March to the Respondent. He said "there is no doubt that the Respondent failed to produce the invoices and wider substantiation required on the 1 March 2018.

31. Mr Brocklehurst for the Respondent on the other hand, said that all the invoices for the period subject to determination, were in the office and made available for inspection, set out year by year, and separated into items of expenditure.

32. There was consequently a material dispute of fact for the Tribunal to determine over the point positively asserted by the Applicant that "there is no doubt that the Respondent totally failed to produce the invoices and wider substantiation required on 1 March 2018 (and prior).

33. On questioning by the Tribunal, the Applicant said that he had been in Premier Estates offices for around three hours. He said there was a lot of documentation there, but he was not shown any of the documentation that he requested and his description of the visit in his letter dated 4 March 2018 was accurate.

34. The Tribunal having considered the evidence of both parties decided on the balance of probabilities that the Applicant had been provided with the opportunity to inspect, and copy invoices, but had failed to take copies, having spent much of his time questioning staff members rather than looking at the documents produced to him. The Respondent had been able to produce copies of invoices in the bundle for the hearing, and it seemed credible to the Tribunal that they would have been available the month before it. The Applicant has remedies available to him under s22 Landlord and Tenant Act 1985 if he felt they had not complied with their statutory duties. The Tribunal preferred the evidence of Mr. Brocklehurst that the information provided in the bundle had been available at the time of the inspection; for reasons best known to himself, the Applicant had chosen not to copy any of it.

35. The Tribunal had to determine the application on the materials before it. The Tribunal was satisfied that the Respondent had complied with the directions of the 13 November, and the supplemental directions of the 8 February.

THE LEASE

36. The Applicant had stated in his submissions that the lease had not been signed or agreed by him. He said that this did not mean some form of agreement was not in place, but he did not accept that the lease terms applied to him. He confirmed to the Tribunal that he did not wish to proceed with this point, and that it was "not relevant to today", and he did not challenge any of the terms of the lease.

SUBMISSIONS

THE APPLICANT

37. The Applicant submitted a statement of case dated 17 December 2017. He stated he was limited to respond saying that the Respondent was in breach of the 13 November Direction having not provided information until 4 December, and the information being in his view incomplete.

38. The Applicant stated he had made his application to the Tribunal due to excessive charges made over the years. He said he could not quantify the total value owing to a failure to disclose information by the Respondent, but it was

"significant". He said that the Respondent was paying monies to itself, and that there were impartial "Directors" with a link to the Respondent or it's representatives. On questioning by the Tribunal he was unable to elaborate on what this connection was.

39. He said that the Respondent had failed to keep and supply accurate records, receipts, accounts and other evidence of true payment made and costs incurred against all charges and invoices levied against leaseholders.

40. He said that budgets had not been superseded by actual costs.

41. He said that there had been excessive and unjustified increase in charges; budgets had been exceeded and charges had increased in excess of inflation. He said that there was evidence of multiple recovery.

42. Applicant set out details of total charges paid since 2005, but did not give detail (as directed to do so) as to the particular charges for particular years he objected to.

THE RESPONDENT

43. The Respondent produced a bundle which extended to 1873 pages over five lever arch files, containing the following:

    a. The Application
    b. The Directions
    c. Service Charge accounts and Estimates for the years ending June 206 to June 2016
    d. Service Charge budgets 2004 - 2018
    e. Demands and Invoices for service changes on account
    f. Statements
    g. Witness statement of Mark Gannon, solicitor for the Respondent dated 23 November 2017.
    h. Respondent's statement of case dated 10.1.18 incorporating various annexes including a witness statement for Christopher Brocklehurst, Senior Estates Manager for Premier Estates Limited (who manage the Property on behalf of the Respondent) dated 10 January 2018.
    i. Applicant's statement of case
    j. Office Copy Entries of the title
    k. Inter partes correspondence
    l. Expenditure breakdowns and underlying invoices 2004 - 2017.

44. The statement of case responded in so far as it could to the Applicant's case, but asserted that the Applicant had provided nothing to substantiate his allegations.

45. A statement was produced by the managing agent Mr. Brocklehurst providing details of the Property, referring to the communal gardens, bin stores and car parks, and the many items of plant and equipment including fresh water pumps, fully integrated fire alarm systems, communal TV systems, and intercom systems.

46. A witness statement was produced by Mark Gannon, of JB Leitch, Solicitor of the Respondent. 23 November 2017.

47. He confirmed that administration charges had been added to the account in communication with work carried out in attempting to obtain payment of overdue service charges from the Applicant.

48. He broke down the service charges and administration charges to the Applicant's account as follows:-

    a. 2004/5: £780
    b. 2005/6 £780
    c. 2006/7 £780
    d. 2007/8 £780
    e. 2008/9 £794.70
    f. 2009/10 £852.65
    g. 2010/11 £897.39
    h. 2011/12 £900.39
    i. 2012/13 £940.44
    j. 2013/14 £940.44
    k. 2014/15 £999.92 Administration Charge £0.08
    l. 2015/16 £1076.62 Administration Charge £96
    m. 2016/17 £1056.10 Administration Charge £174
    n. 2017/18 £1077.72

SPECIFIC SERVICE CHARGES: REPRESENTATIONS AND FINDINGS

49. For convenience, this judgement sets out the parties representations on specific charges followed by the Tribunal's findings in respect of each head of charge, below:

Management Fees

50. The Applicant stated that the Respondent had wilfully and/or negligently and/or fraudulently and /or incompetently overcharged all 34 property owners in respect of management fees. He said the charges were compounded by the Respondent charging VAT, presumably referring to the managing agent's fees. He referred to "Appendix 1", a spreadsheet he had prepared, and said that the figures he had worked on were estimates as the Respondent had failed to disclose actual costs. He said no substantiation had been provided that actual costs had ever been incurred.

51. He said that the Respondent had paid itself too much. He said annual fees had increased from £3000 in the original estimate, up to £7600 by 2018. He stated that this was an annual increase of 5.62% which grossly exceeded CPI or RPI increases over the period. He said that the Respondent should supply evidence to prove that there was no overcharging by duplication to other projects.

52. The Respondent stated that Premier Estate's fee was agreed each year and reflected the management service delivered. Fees were based on a unit cost per year, in accordance with best practice and guidance from professional bodies ARMA and RICS. A (non exclusive) list of the duties covered by the service was provided. The actual costs of management paid by the Respondent were set out

in the service charge accounts. The Respondent was unaware of the source of the estimate of £3,000; it did not come from their service charge budget. The fee is currently £223.53 per unit. A copy of the management agreement was produced. The Respondent pointed out that as the development has aged, the management has necessarily increased to cover maintenance, and value has been added from a health and safety department, and the development of an in house IT department at Premier.

53. The Applicant had at the outset of his application confused the Respondent with Premier Estates Management Limited. He had issued an application against the latter in error, and maintained his position that the Respondent was paying itself to manage, when it was clear from the documentation provided, that the Respondent, a party to the lease, paid an independent management agent, Premier Estates Management pursuant to the management agreement. It clear during his evidence that the Applicant understood this, but still appeared to believe there was some connection between the Respondent and Premier Estates, although he was unable to explain his belief.

54. The Applicant had referred in his submission to an estimate of £3,000 but could not point to where this information came from; he said it may have been from sales particulars when he bought his flat. The original estimate in the 2004/5 estimate was of £5270 plus VAT of £1710. There was no evidence before the Tribunal that an estimate of management fees of £3000 had ever been given. A lot of the Applicant's case was based on increase of management fees from a base estimate that had never been provided, and which he had taken some fifteen years to challenge.

55. The Applicant repeatedly stated that the Respondent had produced zero evidence of costs incurred, when it was clear they had produced all the evidence they were directed to do in the November directions, and afforded an opportunity to inspect invoices etc.

56. Although not a year under review in these proceedings, the Applicant stated by way of example of overcharging that he had been overcharged management fees for 2016, as the lessees had been credited part way through the year for excess fees paid. Mr. Brocklehurst explained that in this particular year there had been a delay in Premier Estate's management fee being agreed by the Respondent. Mr. Brocklehurst was aware that directors were market testing, partly at the behest of the Applicant. They agreed to reduce fees for the year, but due to delays in finalising the budget they carried on billing at the existing rate and then re-credited.

57. The Applicant took this as evidence that Premier Estates were overcharging and had been for years.

58. The Tribunal determined, using it's own experience and expertise, and in the absence of any comparable evidence being provided, that the management fees charged by Premier Estates were reasonable in light of the standard of work carried out. Although fees had been negotiated downwards, to the benefit of all lessees, in 2016, this did not demonstrate fees for earlier years had been unreasonable, but was a commercial decision by Premier Estates to a competitive market testing operation, which could have been carried out at any time.

Repairs and Maintenance

59. The Applicant asserted that all costs were based on estimates and had not been evidenced. He said that the value had increased year on year without being justified or proven, that the first four years were charged at only £2800 but costs had increased significantly since then. He questioned how the costs could be identical for four years.

60. The Respondent pointed out that more maintenance was necessary as the building had aged. The Applicant provided a witness statement of Mr. Christopher Brocklehurst dated 10 January 2018 setting out details of how contractors are selected, and provided some details of maintenance charges incurred over the last few years.

61. The Applicant referred to some entries in the 2016/2017 management accounts, as he could not find all the invoices for the corresponding entries in the bundle. These were not however years under review, so the submissions did not assist the Tribunal.

62. The Applicant pointed to an invoice dated 4.1.17 from ABC Maintenance Response Limited for roof works that had been carried out including shifting soil from a roof space, at a cost of £1356. Again, this was not a year under review. In any event Mr. Brocklehurst said that a cannabis farm had been found in the roof space of a rented out flat, and substantial repair works had to be carried out. Those costs were recovered from the defaulting flat owner which would show up in the following accounts. The Tribunal pointed out that these costs were for a year not under review in this hearing, but in any event the Respondent's actions were reasonable. The costs would be payable under the service charge, and Premier Estates would be able to recover them from the defaulting lessee, as they intended to do.

63. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable.

Building and Public Liability Insurance

64. The Applicant stated that the Respondent should fully explain what was covered by the insurance, the actual amounts were excessive, and that costs had been sought on the basis of estimates only. He asked to see invoices. He asserted that increases should be based upon CPI insurance, and that owners had been overcharged £35305 over fourteen years. He said that risks had not changed since inception. He asked for a shortlist of insurance companies that the Respondent had gone to each year for competitive quotes, and demonstrate how the various quotes had been processed and the best value obtained.

65. The Respondent stated that the Landlord (freeholder) paid the insurance each year. They explained the process of how the property had been revalued previously, and how 7 insurance claims will have affected the premium. A copy of the certificate of insurance was provided.

66. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The charges were not made on the basis of estimates, but certified accounts.

Cyclical Maintenance Fund

67. The Applicant asked for a full explanation of what was intended to be included and excluded from the charge, whether the objective was justified, why the value fluctuated, and why the charge more than doubled from the original estimated, and then why charges were less than the initial high charges. He asked how funds were ring fenced and used differently to the sinking fund and other repair costs funds. He asked for invoices, and written evidence of payment, for all the relevant years.

68. The Respondent explained that the fund was collected in accordance with the Lease based on an estimate of a reasonable sum being allowed to accumulate. The funds were used for medium term maintenance, such as redecoration of and replacing the carpets in the communal areas.

69. The Tribunal determined that these sums were reasonable; there would be no invoices for a cyclical maintenance fund.

Electricity

70. The Applicant asked why charges were so erratic. He asked for the processes and procedures used to get the best deal for owners, and asked for confirmation that the usage had been stable over the years, and asked that usage was only for communal areas. Again, he asserted that payment had been sought purely on the basis of estimated charges, and asked to see evidence.

71. The Respondent confirmed that they used a broker to review the market, and had changed suppliers over the years. They would make regular meter readings and cross refer all invoices to ensure expenditure is in line with electricity consumption. The Respondent confirmed that the certified service charge accounts were contained in the bundle.

72. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The charges were not made on the basis of estimates, but certified accounts.

Cleaning

73. The Applicant queried why charges were erratic, and asked for confirmation that the communal areas cleaned had not changed over the years. He asked how the amount had reduced so significantly since 2013, and queried whether he had been overcharged prior to 2013, and why any cost saving technique had not been deployed earlier. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment.

74. The Respondent confirmed that the cleaning service contract was tendered to multiple contractors to ensure value for money. In 2013, the cleaning frequency was halved to fortnightly visits for cost saving. The cleaners were provided with

a specification and service contracts were monitored by monthly site visits, inspection of communal areas and resident feedback. The Respondent stated that the Applicant had never raised any issues regarding the cleaning service.

75. The Respondent was conscious that other costs were increasing such as insurance, general repairs etc, and looked to reduce other costs. There would be some impact upon it, as any mess would be there for longer. But felt if it was generally something that could be reduced in some areas without too much of an impact. Guidance previously was that it should be done weekly, and most developments you do.

76. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The Respondent had provided the more frequent service, and the Applicant benefitted from it. Clearly it had to be paid for, and he took no issue with the quality of the service, which was seen to be good. The charges were not made on the basis of estimates, but certified accounts.

Window Cleaning

77. The Applicant queried why charges were erratic, and asked for confirmation that the communal areas cleaned had not changed over the years. He asked how the amount had reduced so significantly since 2013, and queried whether he had been overcharged prior to 2013, and why any cost saving technique had not been deployed earlier. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment.

78. The Applicant said it was fairly plausible to reduce costs of window cleaning, and he said that was "good, as far as it goes". But the corollary of that is that it could have been done in 2015, or years before.

79. The Respondent confirmed that the window cleaning service contract was tendered to multiple contractors to ensure value for money. In 2013, the cleaning frequency was halved to fortnightly visits for cost saving. The service is monitored by monthly site visits, inspection of communal areas and resident feedback.

80. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The Respondent had provided the more frequent service, and the Applicant benefitted from it. Clearly it had to be paid for, and he took no issue with the quality of the service, which was seen to be good. The charges were not made on the basis of estimates, but certified accounts.

Green Space Fee

81. The Applicant queried why the Respondent had charged owners £4150 for four years and why it exceeded estimates, and why the charges ceased after four years.

82. The Respondent stated that the leaseholders had to contribute to the greenspace area on the estate, and that it did not form part of the normal maintained area. The greenspace fee initially was collected on behalf of the developer, but

is now billed directly to leaseholders under Part 4 of the Seventh Schedule to the lease, and did not form part of the service charge, so was outside the jurisdiction of the Tribunal.

83. The Green Space fee is an estate charge as opposed to a service charge. The Tribunal does not have jurisdiction over this (historical) charge as it is not a service charge.

Gardening and Landscape Maintenance

84. The Applicant asked the Respondent to describe the landscape charged for, and to explain the link between this charge and the Green Space fee. He asked the Respondent to explain why this cost had remained relatively under control compared to other costs. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment.

85. The Respondent explained that the external areas of the development are separate from the greenspace area. The Respondent confirmed that the gardening service contract was tendered in 2011 to multiple contractors to ensure value for money. The service is monitored by monthly site visits, and resident feedback. The Respondent stated that the Applicant had never raised any issues regarding the cleaning service.

86. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The gardens were in good condition (during the inspection one resident had come out of his front door to praise the agents for the gardening). The Applicant raised no issues on quality. The charges were not made on the basis of estimates, but certified accounts.

Sinking Fund

87. The Applicant asked the Respondent to explain why they had unilaterally decided to introduce a new cost to the owners from 2015 to 2018 and why these costs had not been foreseen from the outset, and what the charge was intended to cover. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment.

88. The Respondent confirmed that a sinking fund was in place in accordance with the lease, to accumulate funds towards future major works such as replacing the roofs and resurfacing car parks.

89. There can be no invoices produced for a sinking fund. The sinking fund charges were reasonable.

Audit and Accountancy

90. The Applicant queried why the charge increased by 40% after the initial estimate was supplied and why VAT was added, and why charges had increased since 2014 and stayed at this high level. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment.

91. The Applicant said that this was an increasing costs head, and a licence to print money.

92. The Respondent asserted it was entitled to employ an accountant pursuant to the Fifth Schedule Paragraph 16 of the lease. The initial estimate was £350, not £250 as the Applicant suggested.

93. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The charges were not made on the basis of estimates, but certified accounts.

Statutory Engineering Insurance

94. The Applicant queried why this charge had been introduced only in 2012, what it was for, and suggested it was included in the Respondents overcharge costs and charge out rates. He asked why it has increased in 2014 by 27.5%. He asked the Respondent to justify that it was solely for the Property. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment. He asked for evidence of the process the Respondent had gone through to obtain best value.

95. The Respondent advised the insurance was put in place to cover the three water pump sets within the development. The insurance was put in place to ensure the pumps received an independent annual engineering inspection, in line with statute, and wasn't needed until 2012 as the pumps got older.

96. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The charges were not made on the basis of estimates, but certified accounts.

Provision of Out of Hours Emergency Cover

97. The Applicant queried why this charge had been introduced only in 2009, what it was for, and how it was justified. He suggested it should be included in the Respondents overcharge costs and charge out rates. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment.

98. The Respondent stated that an out of hours service had been put in place with an external provider to provide assistance at evenings and weekends. It had been agreed with the Directors in 2009 that the service would be of benefit to the development.

99. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable; it had been requested by Directors, and was a reasonable request for the benefit of lessees, was provided, and should be paid for. The charges were not made on the basis of estimates, but certified accounts.

100. The Applicant queried why this charge had been introduced only in 2009, what it was for, and suggested it was included in the Respondents overcharge costs and charge out rates. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment. He

asked for evidence of the process the Respondent had gone through to obtain best value.

101. The Respondent confirmed that the insurance had been put in place via Premier Estates insurance broker to provide insurance for the Respondent's directors.

102. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The insurance was provided, was needed and should be paid for. The charges were not made on the basis of estimates, but certified accounts.

Health and Safety

103. The Applicant queried why this charge had been introduced only in 2009, what it was for, and suggested it should have been included in the Respondents overcharge costs and charge out rates. He asked why it has increased in 2014 by 27.5%. He asked the Respondent to justify that it was solely for the Property. s Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment. He asked for evidence of the process the Respondent had gone through to obtain best value.

104. The Respondent stated that a health and safety, and fire risk assessment was undertaken periodically by an external qualified surveyor, in line with legislation. The first assessment was required in 2009, so leaseholders were not charged for the service until it was required and delivered.

105. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The service was necessary, was carried out and was chargeable to the lessee. The charges were not made on the basis of estimates, but certified accounts.

Bank Charges

106. The Applicant queried why the Respondent would have to pay bank charges of £160 per annum. He suggested there should be no bank charges at all as the Respondent was paid in advance. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment. He asked for evidence of the process the Respondent had gone through to obtain best value.

107. The Respondent confirmed that a cost of £160 was incurred by the scheme each year for providing two bank accounts, for service charge, and sinking funds. Interest was offset against charges.

108. The Tribunal found these service charges reasonable and payable. It is usual to have to pay for commercial bank accounts that are not provided free of charge. The charges were not made on the basis of estimates, but certified accounts.

Company Secretarial Charges

109. The Applicant queried what this charge was for, and why it was introduced only in 2015. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment.

110. The Respondent confirmed that Premier Estates charge a fixed fee for the company secretarial service, having previously provided it without charge as a good will gesture. It included charges for administering the company, keeping records, arranging AGMs, looking after dormant company account and attending company meetings, and compliance with Companies House duties. They charged in accordance with RICS guidelines. It was agreed with the directors that they would complete the annual return, administer the company, and comply with statutory company duties.

111. In the absence of any further submissions, or comparable evidence, the Tribunal found these service charges reasonable. The charges were not made on the basis of estimates, but certified accounts.

Miscellaneous

112. The Applicant queried what this charge was for. The amount totalled £642 since 2005. Again he asserted the Respondent had sought payment on the basis of estimated charges. He asked for invoices and proof of payment. He asked for evidence of the process the Respondent had gone through to obtain best value.

113. The Respondent could not answer this question over and above confirming the expenditure was evidence in the service charge accounts each year.

114. This charge, totalling £642 from 2005 to date and charged across 34 lessees was considered too de-minimis for the Tribunal to interfere with after so many years left unchallenged.

THE DETERMINATION

115. The Applicant issued an application challenging service charges from 2004 to 2016, a total of 16 service charge years, and provided little detail to the challenge he made, having issued no previous application.

116. The burden of proof to show unreasonableness is upon the Applicant. He put the Respondent to great expense to respond to an all encompassing action, having to make available documentation going back many years.

117. He put forward propositions that were simply inaccurate, such as that costs were based on estimates, when in fact demands based on budgets were in the usual way reconciled at the year end with certified service charge accounts.

118. He accepted that the services were of good quality. When asked if he had evidential comparables, he said for management costs, his evidence was his oral evidence that he had found a managing agent prepared to carry out the management for less (resulting in Premier Estates reducing their charges in 2016), but he had produced no documentary evidence in writing as to what that cost was, let alone a detailed specification of what service would be delivered to

be a true comparable. He was strongly of the view that his oral evidence was that sufficient to show the service could be delivered for less cost.

119. There was simply no evidence before the Tribunal that any of the costs over this extensive period were unreasonable, and the entire application was in the nature of a fishing expedition on the part of the Applicant, putting the Respondent and the Tribunal to considerable unnecessary expense.

120. He sought to argue at length prior to the hearing that the Respondent had failed to comply with directions, resulting in additional work for the Tribunal and the Respondent, when it was quite clear to the Tribunal that the directions had been complied with by the Respondent. It was the Applicant who had failed to set out in detail his objections to service charges year by year, simply making general assertions that he felt he was paying too much, by reference to CPI, or RPI, based in some cases on initial estimates that were flawed.

121. The Respondent produced all the documentation required by the directions of 13 November 2017, to demonstrate that, prima facie service charges were payable under the lease, and reasonable. The accounts, (which are certified not audited) demonstrate that the accountants are satisfied in the first instance that they correspond with invoices. Inevitably some underlying invoices may not be available (particularly after so many years), but this is not fatal to the proposition that they are payable. It was quite clear that this development is well managed and well maintained, despite being some fifteen years old.

122. The Tribunal found the Applicant to be an unreliable witness, who put his case by repeating at length his opinions, presenting them in language as if fact, even when they were inaccurate. As an example he repeatedly insisted that the Respondent had not complied with directions of 13 November 2017, even when repeatedly told by the Tribunal that they had.

123. The Applicant was confrontational and bordering on vexatious/contemptuous. He was disrespectful to the Tribunal members, accusing, without clarification or justification of one member of "looking biased", and had to be warned as to his conduct.

124. The Tribunal determined that the application made by the Applicant was ill founded, disproportionate and misconceived. Having been a lessee at the Development since it's inception, he waited for over fifteen years before submitting an application, making generic claims that costs were too high, without substantiating any of his objections. Whilst acknowledging that the Applicant acted in person and the Respondent was represented by a professional managing agent and Counsel, the Applicant had the burden of setting out and proving his case, and put substantial effort into attempting to score procedural points, and repeatedly presenting opinions as fact, rather than setting out his detailed objections to costs and backing that up with evidence.

125. One of his submissions, that he had not signed the lease and was consequently bound by it's terms, was an example of his being deliberately obtuse to thwart proceedings (as well as being likely contrary to his interests). He dropped this position at the hearing, presumably it having not assisted him in the County Court proceedings.

126. The question for the Tribunal, in accordance with the ruling in Forcelux Limited v Sweetman (2001) is "not whether the expenditure for any particular service charge items was necessarily the cheapest available, but whether the charge that was made was reasonably incurred".

127. The Tribunal had to make the decision on the basis of the evidence before it, which it has endeavoured to do.

128. Using the Tribunal's experience expertise and judgement, having viewed a property in good condition and good order, where there was no dispute over the quality of the service, and with no particular challenge or comparable provided by the Applicant, the costs appeared in line with what might be expected, were reasonable, and should be allowed in their entirety for the periods under review.

s20 C

129. Having made the findings and determination above, the Tribunal makes no Order under s20C Landlord and Tenant Act 1985.

Tribunal Judge John Murray
23 May 2018