FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00KA/LSC/2018/0082**
Property	:	**2, Hutton Close, Oakley Road, Luton LU4 9QW**
Applicant	:	**(1) Firstport Property Services Ltd (Managing Agent)** **(2) Proxima GR Properties Ltd (Freeholder and Lessor)**
Respondent	**:**	**(1) Jay Prakash Gulabdas Bhikha** **(2) Kokila Jay Prakash Bhikha**
Date of Court Order	**:**	**17th December 2019**
Type of Application	**:**	**to determine the reasonableness and payability of the Service Charges (section 27A Landlord and tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002)**
Date of Hearing	**:**	**10th April 2019**
Tribunal	**:**	**Judge J R Morris** **Mr D Barnden MRICS** **Mr C Gowman BSc MCIEH MCMI**
Date of Decision	**:**	**20th May 2019**

DECISION

Decision

1. The Tribunal determines that the Service Charge for each of the years in issue is reasonable.

2. The Tribunal determines that there is no authority in the Lease to levy the Administration Charges and Legal Review Fees of £60.00 each, totalling £240.00, therefore they are not reasonable.

The Tribunal having determined all matters that are within its jurisdiction, the case is transferred back to the County Court for a decision on any outstanding matters and costs.

Reasons

Introduction

3. On 20th June 2018 the Applicant issued a claim against the Respondents for arrears of ground rent and charges due under the Lease, namely service and administration charges, together with costs and interest.

4. On 17th December 2018 District Judge B Gill sitting at the County Court at Luton ordered that the claim number E57YX564 should be referred to the Tribunal for a determination of matters within its jurisdiction.

5. The matters within the jurisdiction of the Tribunal are to determine the reasonableness and payability of the service and administration charges claimed. The Tribunal is not able to make a decision in respect of the ground rent, the costs or interest. Following its decision, the Tribunal will return the case to the County Court to decide any outstanding matters such as the costs and interest.

6. The Tribunal issued Directions on 17th December 2018 in response to which the Applicants submitted a witness statement made by Ms Nicola Finch, Property Manager employed by Firstport Property Services Limited, the Managing Agents, dated 21st February 2019 which provided the background to the claim as follows.

7. The Respondents are the current Lessors, the Second Applicant, Proxima GR Properties Ltd is the current Freeholder and Lessor and the first Respondent, Firstport Property Services Ltd is the current Manager of a tripartite Lease of the Property. Under the Lease the Respondent covenanted to pay a service charge. The Applicant submits that the respondent has failed to do so and the Respondent submits that the service charge is unreasonable. The periods in issue are the accounting years 2014, 2015, 2016, 2017 and 2018.

8. The Respondent did not provide representations in response to the Tribunal's Directions also the Defence to the County Court claim dated 15th July 2018 merely stated that the Respondents made no admissions. Therefore, no specific issues had been identified to the Tribunal as being in issue by the Respondents. However, in her witness statement, Ms Finch stated that the

Respondents had raised a series of issues which she listed when disputing the service charge prior to the issue of the County Court Claim on 20th June 2018.

9. At the hearing, the Tribunal referred to the list and asked Mr Jay Bikha, one of the Respondents attending whether these were the issues in dispute and the basis for the Respondents' defence in respect of the County Court claim and he confirmed that they were.

10. The issues were therefore listed as:

    i. Doors in poor condition including the paint and letterbox;

    ii. Mice infestation and poor fitting garage door;

    iii. Broken drains;

    iv. Leaks from gutter;

    v. Grounds Maintenance;

    vi. Parking on the Estate;

    vii. Broken electric meter boxes;

    viii. Graffiti;

    ix. Management.

11. The Tribunal is bound by the Upper Tribunal in *Staunton v Taylor* [2010] UKUT 270 (LC) LT Case Number: LRX/87/2009 at paragraph 21 "the UT has no power to permit the pleadings to be amended and thus to widen the scope of the questions that it is required to determine under the transferred proceedings." Therefore, the Respondent is limited to the issues raised in the Defence. By the same token the Applicant is restricted in its response to those issues in the case summary lodged with the County Court.

The Law

12. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

13. Section 18 Landlord and Tenant Act 1985

    (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, improvement 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 of which the service charge is payable.

(3) for this purpose

(a) costs include 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 period

14. Section 19 Landlord and Tenant Act 1985

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(a) only to the extent that they are reasonably incurred; and

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

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

15. Section 27A Landlord and Tenant Act 1985

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 arbitration agreement to which the tenant was a party

(c) has been the subject of a determination by a court

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

16. Schedule 11 Commonhold and Leasehold Reform Act 2002

1. Meaning of "administration charge"

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) …

(b) …

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(d) …

The Lease

17. A copy of the Lease was provided. The Lease is dated 28th November 2003 between Barratt Homes Ltd (Freeholder and Lessor) (1) Peverel OM Ltd (Manager) (2) and Brett Peter Presland (Lessee) (3). The Freehold was transferred to the Second Applicant on 14th February 2014 and a copy of the Land Registry entry number BD237345 was provided. The Lease was assigned to the Respondents on 17th June 2014 and a copy of the Land Registry entry number BD235026 was provided. The Manager is now the First Respondent. The Lease is for a term of 999 years from the 1st May 2002.

18. The Provisions of the Lease relevant to these proceedings are summarised as follows:

19. "The Estate" is defined in the First Schedule as the Saxon Gate Development comprised in Land Registry title numbers BD297238 and BVD 37253.

20. The "Maintained Property" is defined in the Second Schedule as the Accessways, garden and grounds, the entrance halls, passages landings staircases and other internal parts of the Buildings and the structural parts of the Buildings

21. The "Demised Premises" are defined in the third Schedule as the first-floor dwelling house and ground floor garage, the doors and windows thereof including the glass therein but not the external decorative surfaces thereof also the floor surface of the Garage.

22. Under Clause 4.1 of the Lease the Lessees covenant to observe and perform the obligations on the part of the lessee set out in Parts 1 and 2 of the Eighth Schedule.

23. Under Paragraph 4 of Part 1 of the Eight Schedule the Lessees are to pay all costs and expenses (including legal costs payable to a Surveyors) incurred by the Lessor in or in contemplation of any proceedings or service of any notice under section 146 and 147 of the law of Property act 1925.

24. Under Paragraph 2 of Part 1 of the Eighth Schedule the Respondent Lessees covenant to pay the Lessee's proportion of the Maintenance Expenses, which is the Service Charge.

25. The "Maintenance Expenses" are defined in Clause 1 of the Lease as being the moneys actually expended or reserved for periodical expenditure by or on behalf of the Manager or the Lessor at all times during the Term in carrying out the obligations in the Sixth Schedule.

26. The Sixth Schedule lists the Maintenance Expenses under four categories as follows:
Part A the Estate Costs including keeping the communal areas neat and tidy and tending the lawns, flower beds, shrubs and trees and keeping the Accessways in good repair and clean and tidy and insuring the same.
Part B the Block Costs including inspecting, rebuilding, repointing, repairing, cleaning, renewing, redecorating the external common parts of the Block; keeping the communal areas neat and tidy and tending the lawns, flower beds, shrubs and trees; insuring the Block
Part C the Garage Costs including insuring, inspecting, rebuilding, repointing, repairing, renewing the Garage Block.
Part D other Costs Applicable.

27. Under Paragraph 6.1 of the Seventh Schedule the Lessees are to pay the Manager the Lessee's proportion of the Maintenance Expenses in advance on 1st June and 1st December in each year. Under Paragraph 5 an account of the Maintenance Expenses shall be prepared and a copy served on the Lessees. Under Paragraph 6.2 within 21 days of service of the account the Lessee shall pay the balance by which the Lessee's Proportion already paid falls short and any overpayment shall be credited against future payments due.

28. The Respondent Lessees' Proportions are set out in the Particulars of the Lease as follows;

Part A	1.06% (Accessways costs)
Part B	100% (Block Costs)
Part C	50% (Garage Costs)

Inspection

29. The Tribunal made its inspection in the presence of the Applicant's Representatives, Ms Brooke Lyne of Counsel, Ms Samantha Wigley Firstport Paralegal, Ms Nicola Finch, Firstport Property Manager, and the Respondent, Mr Jay Bhikha.

30. The Property is a 'coach house' type building with a flat over two garages. Between the garages is a gated archway opening into a small car park. The car park provides access to the garages and car parking for several town houses. Mr Bhikah invited the Tribunal to consider the extent of the car park, the difficulty in driving in and out of his garage particularly when other vehicles were parked in the car park. He said because others used the car park it was difficult to keep it secure by closing the gates and pointed out faint traces of graffiti under the arch.

31. Mr Bhikah also pointed out to the Tribunal the base of his garage door. He said that the gap between the car park/garage floor was too large and that as a

result, mice were able to enter the garage and had caused damage. It was noted that the level of the garage floor, which is part of the demise was about an inch (2.5 cm) below the car park tarmacadam which abutted the garage floor. The Tribunal found that the threshold of the door way and the garage door when closed were not an undue distance apart and that a gap was needed to provide clearance.

32. Mr Bhikah took the Tribunal to the front of the building and pointed out that the verge between the pavement and the fence which ran down towards the road had recently been cut but previously been very long. He pointed out the small area of land in front of his house which he said should be maintained by the Applicants but his wife and he had planted a shrub because nothing had been done to maintain the area.

33. The Tribunal then went to view the Estate. Mr Bhikah was not able to join the Tribunal as the walk was too much for him for health reasons. The Estate comprises town houses and flats. There are a number of car parks which are adjacent the town houses and blocks of flats which they serve. There is an adopted road which crosses the Estate. The town houses have their own gardens. In addition, there are communal grounds around the whole Estate. These comprise two large lawns and a series of grassed 'patches' and verges and beds of shrubs and bushes which are interspersed between the buildings and car parks. These appeared to be in fair condition with the grass having been cut and the shrubs and bushes trimmed. However, on examination the quality of the lawns was poor in that they appeared to be more weeds then grass. The buildings all appeared to be in fair to good condition.

Hearing

Attendance at the Hearing

34. Those present at the hearing were the Applicant's Representatives, Ms Brooke Lyne of Counsel, Ms Samantha Wigley Firstport Paralegal, Ms Nicola Finch, Firstport Property Manager, and the Respondent, Mr Jay Bhikha.

Discussion of Issues relating to Service Charge

35. The Applicants' written statement of case was prepared for the County Court and therefore referred to the ground rent, costs interest as well as the service and administration charges. Only the service and administration charges are relevant o these proceedings.

36. The Applicants provided copies of the documentation for the Court Proceedings, a copy of the Lease and Land Registry Entries, Ground Rent, Service and Administration Demands and records of the Respondents' Accounts. Of particular relevance to the Tribunal were copies of the Service Charge Accounts for the years in issue together with copies of the supporting documents which comprised predominantly of invoices. As the Applicants were not sure what items of the service charge were likely to be put in dispute in the Respondents' defence when preparing the case, the Applicants appeared

to include nearly all the supporting documentation. Included in the Bundle was correspondence between the parties on the matters in issue.

37. The Respondent provided a bundle of documents which were predominantly copies of the correspondence between the parties.

38. Each item in dispute was considered in turn with reference being made to the accounts and supporting documents.

Doors in poor condition including the paint and letterbox

39. Mr Bhikah said that the doors and letterbox were in a poor condition. He said that because the doors were colour coded he was not permitted to alter the door. The Tribunal noted that the doors were part of demise but the decorative finish was not. Ms Finch said that the doors were upvc and only required cleaning and were not to be painted. Mr Bhikah said that there were insufficient keys because these were also coded.

Mice Infestation and Poor Fitting Garage Door

40. Mr Bhikah referred to the inspection saying that the garage door did not fit sufficiently tightly to the ground to prevent mice and vermin from entering the garage. He said he had been promised some action but none had been taken.

41. Ms Finch said that there was an ongoing programme of pest control across the whole development. She said that the responsibility for making the garage secure was that of the Lessee.

42. The Tribunal explained that it could only deal with the reasonableness or otherwise of costs expended and not order work to be done that allegedly should have been carried out.

Broken Drains

43. Mr Bhikah conceded that the drains had been repaired. It was noted that this had been an item in the Newsletter of August 2018 which recorded that a contractor had been instructed to clear the drains.

Leaks from Gutters

44. Mr Bhikah conceded that the drains had been repaired.

Grounds Maintenance

45. Mr Bhikha referred the Tribunal to what had been seen at the inspection. He said that the area in front of the Property was part of the communal grounds. His wife and he had cultivated it because it was bare and untended. He said if he had not put a plant there it would be as overgrown as other parts of the site. He said that this neighbour ran the lawnmower over the verges and planted bushes and shrubs which he tended otherwise it would be overgrown.

46. He said the verge between the fence and the pavement next to the Property had not been cut for a long time and had only been mown the day before. He referred to some photographs that he had provided which showed the grass to be long with what appeared to be a large weed half way along the area.

47. Mr Bhikah added that litter was as much a problem as the failure to cut the grass. He said that this was the same across the site and that the grounds maintenance was poor overall. He said that he had made several complaints and that Ms Finch was well aware of the problem.

48. Ms Finch gave evidence that the grounds maintenance had not been up to standard and that the present landscaping company had been given notice in August 2018. She referred to the newsletter for August which had been provided by Mr Bhikah. It was reported that during a recent site inspection it was noted that landscaping was not being done to the standard expected therefore three contractors had been asked to provide tenders to take over the contract and quotes were awaited.

49. Mr Bhikah said that it had taken 5 years for this action to be taken as the ground maintenance had been poor for at least the last three years.

50. Ms Lyne referred the Tribunal to the Gardening Specification and Tender Form provided. This stated that, amongst other things:
    - The Lawns, including the edges, were to be cut each visit from March to September with cuttings collected and removed. Additional cutting may be required between October and March each year dependant on the weather.
    - Drives and car parks were to be swept each visit.
    - Drain gully covers were to be lifted and debris removed twice a year.
    - Fallen leaves and litter to be collected and removed from all areas each visit.
    - Shrubs and beds to be cultivated and weed free with pruning, cutting and shaping as required on every visit.
    - All plant growth overhanging paths, drives, accessways, and car parks to be trimmed back every visit.
    - Lawns to be sprayed with weed and feed.
    - Hard surfaces to sprayed with moss and weed treatment in Spring & Autumn.

51. Ms Finch said in answer to the Tribunal's questions that the contractor was required to attend every 2 weeks in the growing season (March to September) and once a month October to April. She said that following an undertaking by the current landscapers to improve it was decided not to change to another gardener. She said that she had taken a picture of the grounds at every visit and had not found that they were overgrown.

52. The Tribunal noted the cost of grounds maintenance under Part A of the Lease to which the Respondents' contribution was 1.06% being £52.96 in 2014;

Parking on the Estate

53. Mr Bhikah said that parking was a problem on the Estate. He said that he could not drive into his garage because there was insufficient room in the car park area especially when other users had parked their cars there as they were entitled to do. He said that both his wife and he were disabled and should have a parking space near the Property.

54. Ms Finch said that the roads were adopted by the local authority. Therefore, if a disabled space was to be provided in the road that was a matter for the local authority. Other than that parking spaces are demised in the car parks of the Blocks/Buildings and these are numbered. Mr Bhikah has a garage in which to park his vehicle. Ms Finch could not comment on the accessibility issue.

55. The Tribunal explained that it could only deal with the reasonableness or otherwise of costs expended and not make any order with regard to the accessibility of parking places although the enforcement of parking in the Estate car parks may be a reflection upon the standard of management and impact on the management fees if not carried out effectively.

Broken Electric Meter Boxes

56. Mr Bhikah said that the electric meter boxes across the Estate were in a poor condition and many were damaged creating a poor impression of the estate.

57. The Tribunal explained that want of repair may be a management issue but it could not make an order requiring repairs to be carried out.

58. Ms Finch said that in any event the meter boxes were demised and their repair or replacement was a matter for individual Lessees.

Graffiti

59. Mr Bhikah referred to the inspection and the marks of the graffiti which had been on his neighbour's garage in the archway under the flat.

60. Ms Finch said that it had been pressure washed and further treatment would be carried out if necessary.

Management

61. Mr Bhikah submitted that standard of management was poor. He said that he had asked for details of the insurance policy in order that he could claim for a window where the seal on the double glazing had failed but he had not received the relevant information.

62. It was noted that as the windows were demised Mr Bhikah could not have claimed on the insurance.

63. Ms Lyne said that the employees of the first applicant had made every effort to respond to Mr Bhikah's complaints and referred to correspondence between

the parties where each issue raised by Mr Bhikah had been answered. These issues raised in correspondence were the same issues that were raised in the course of these proceedings.

Closing Remarks

64. Ms Lyne said that the Respondents had paid nothing towards the service charge since they had leased the Property. She said that the letterbox, garage door, and broken electric meter boxes were all part of the demise and therefore not a matter that could come within the service charge. The matters that were a cost within the service charge of pest control, broken drains, leaking gutters and graffiti had been dealt with.

65. In addition, the parking on the Estate was managed so far as the Manager could do so and in any event was not a cost within the service charge.

66. She submitted that the costs of grounds maintenance were reasonable as were the costs of management.

67. Mr Bhikah said that he was aggrieved because he felt that there were matters outstanding that were never addressed. He said that he complained to the management but nothing was done and so withheld his service charge.

Discussion of Issues relating to Administration Charge

68. The Applicant had made an Administration Charge of £60.00 on 23rd November 2015, a Legal Review Fee of £60.00 on 24th December 2015 an Administration Charge of £60.00 on 30th November 2016 and a Legal review Fee of £60.00 on 12th December 2016. Ms Lyne said that these were charged due to the additional costs incurred by the Manager due to the Respondent being in default of paying the service charge.

69. Ms Lyne submitted that the Lease permitted the charges to be made and referred the Tribunal to paragraph 4 of Part 1 of the Eighth Schedule which states that a Lessee is to pay all costs and expenses (including legal costs payable to a Surveyors) incurred by the Lessor in or in contemplation of any proceedings or service of any notice under section 146 and 147 of the law of Property act 1925. These fees all come within the definition of Administration Charges under Schedule 11 of the Commonhold & Leasehold Reform Act 2002.

70. Mr Bhikah said his wife and he had withheld the service charge because they considered that the services were very poor.

Determination

Service Charge

71. The Tribunal expressed surprise as the standard of grounds maintenance appeared from its inspection to be generally no more than fair.

72. At the Hearing the Tribunal identified the main issues to assist the parties in presenting their case and are dealt with in turn below.

Determination as to reasonableness and payability of the Service Charge

73. The Tribunal considered each of the items in issue.

Doors in poor condition including the paint and letterbox

74. It found that the door including the letter box was part of the demise although the decorative finish to the door was part of the Block costs. There had been no expenditure on any aspect of the door in the service charge and therefore no determination could be made.

Mice Infestation and Poor Fitting Garage Door

75. The Tribunal found that the garage door was also a part of the demise and therefore no expenditure had been or could be incurred in respect of it in the service charge. Therefore, no determination could be made.

76. The Tribunal found that pest control was undertaken on the Estate. Mr Bhikah provided no evidence to indicate the cost was unreasonable therefore in the absence of evidence to the contrary the Tribunal determined the cost to be reasonable.

Broken Drains and Leaks form Gutters

77. Mr Bhikah agreed the repairs to the drains and gutters had been carried out and adduced no evidence to indicate the cost was unreasonable or that the work was not carried out to a reasonable standard therefore in the absence of evidence to the contrary the Tribunal determined the cost to be reasonable.

Grounds Maintenance

78. Mr Bhikah submitted that the standard of the grounds maintenance was poor. At its inspection the Tribunal found that the soft landscaping was difficult to maintain. There was a series of small areas of grass making mowing difficult. Some areas of lawn were more weeds than grass. The shrubs had been kept trimmed. Notwithstanding the quality of the planting, the soft landscaped areas were kept tidy. The Tribunal found that the hard landscaping and car parks were kept tidy and swept. Overall the standard of grounds maintenance was commensurate with there being a visit per fortnight and did not indicate that there was a long-term lack of maintenance.

79. Mr Bihikah adduced no evidence to show that the cost was unreasonable by reference to alternative quotations. Therefore, in the absence of evidence to the contrary the Tribunal determined that the cost of the grounds maintenance was reasonable.

Parking on the Estate

80. The issue of parking, in this instance, could only be relevant to the Service Charge if the standard of parking enforcement justified a reduction in the management fee. The Tribunal found that the roads of the Estate were adopted by the local authority therefore any issue with regard to obtaining a specified area for parking due to Mr or Mrs Bhikah's disability was a matter for the local authority, as was the enforcement of any unlawful parking on the street. It was apparent from the newsletter provided that street parking was a problem on the Estate and that the management had threatened enforcement measures to encourage drivers to be more considerate. However, it appeared to the Tribunal that the management only had authority with regard to the private car parks.

81. The area where Mr and Mrs Bhikah's garage was situated was behind gates and therefore could be controlled by them. Mr Bhikah's main objection in respect of parking was that he could not park outside his garage as that would obstruct other legitimate users of the car park. Therefore, he had to park in his garage which was difficult to access. This was not a matter that related to the service charge.

Broken Electric Meter Boxes

82. The Tribunal found that the electric meter boxes were part of the demise and therefore no expenditure had been or could be incurred in respect of them in the service charge. Therefore, no determination could be made.

Graffiti

83. The Tribunal found that the graffiti had been removed although there were still some very faint signs of it on the wall. The Tribunal found that the work had been carried out to a reusable standard and in the absence of evidence to the contrary that the cost was reasonable.

Management

84. The correspondence between Mr Bhikah and the Manager showed that the issues raised by Mr Bhikah had been addressed, in particular the letter of 3rd May 2017 which was included in the Bundle (page 769). The Tribunal found that so far as the issues that he had raised, the management was to a reasonable standard. Mr Bhikah had not adduced evidence to show that the cost was unreasonable and in the absence of such evidence the Tribunal determined that it was reasonable.

Summary

85. The Tribunal therefore determined the service charge demanded by the Applicants from the Respondents to be reasonable. The figures below show the half yearly estimated charge adjusted by the balancing payment to give the annual service charge to be paid as follows:
Year ending 31st May 2014 £233.33

Year ending 31st May 2015 £393.80 + £393.78 - £86.32 = £701.26
Year ending 31st May 2016 £393.78 + £404.36 - £53.99 = £744.15
Year ending 31st May 2017 £404.36 + £414.47 + £490.52 = £1,309.35
Year ending 31st May 2018 £414.47 + £405.54 + £84.30 = £904.31
On account for Year ending 31st May 2019 £405.54
Total £4,297.94

Determination as to payability of the Service Charge

86. Copies of the demands issued were provided which complied with the legislation therefore the Tribunal determined that the service charge (referred to in the Lease as the Maintenance Charge) was payable for all the years in issue.

Determination as to reasonableness and payability of the Administrative Charges

87. The Applicant had made Administration Charge of £60.00 on 23rd November 2015, a Legal Review Fee of £60 on 24th December 2015 and Administration Charge of £60.00 on 30th November 2016 and a Legal review Fee of £60.00 on 12th December 2016. These fees (£240.00) all come within the definition of Administration Charges under Schedule 11 of the Commonhold & Leasehold Reform Act 2002.

88. In determining whether these charges are reasonable the Tribunal must first consider whether the Lease allows them to be levied. Leases make provision for two types of cost to be charged where a Lessee is in breach of the Lease.

89. One type of charge is what might be termed a 'collective charge' where the provision allows legal and other costs to be incurred to enforce a breach or default and charge it to the service charge payable by all the Lessees. The other type of charge might be termed an 'individual charge' where the provision allows legal and other costs including interest to be incurred to enforce a breach or default and charged directly to the Lessee. Sometimes the later provision also allows the costs to be recharged to the service charge if they cannot be recouped from the individual Lessee.

90. In the present case the 'individual charge' is in issue. The tribunal found two provision which permit individual charges to be levied.

91. First, the Tribunal noted that the witness statement of Ms Finch at paragraph 14 referred to Paragraph 3 of Part 1 of the Eighth Schedule in which the Lessee covenants to pay interest at the rate of 4% above the base rate of Barclays Bank on all sums (including service charges) which may be in arrears 14 days from the date after such payment shall be due until the date of actual payment. The Tribunal noted that the Statement of Account for the Respondents records interest on arrears as at 9th December 2016 under this provision. The Tribunal finds that this charge is in accordance with the Lease.

92. Second, the Tribunal noted that Ms Lyne had stated in her submissions, and the witness statement of Ms Finch at paragraph 15 had also referred, at

Paragraph 4 of Part 1 of the Eighth Schedule a Lessee is to pay all costs and expenses (including legal costs payable to a Surveyors) incurred by the Lessor in or in contemplation of any proceedings or service of any notice under section 146 and 147 of the law of Property act 1925. It is under this provision that the Applicants seek to charge the Administration Charge and Legal Review Fee of £60.00 each.

93. The Tribunal finds that, as at the time it was charged the Lessor or Manager were not contemplating any proceedings or service of any notice under section 146 and 147 of the law of Property act 1925. Therefore, notwithstanding that additional costs may be incurred by the Applicants in collecting the arrears these costs cannot in this instance be charged to the individual lessees (i.e. the Respondents). The Tribunal was of the opinion that these costs would be part of the Management Fee. Subsequent costs linked to the enforcement proceedings in the County Court may well come within Paragraph 4 of Part 1 of the Eighth Schedule. However, these costs are a matter for the County Court to determine.

94. Therefore, the Tribunal determines that the Administration Charges and Legal Review Fees of £60.00 each, totalling £240.00 are not reasonable.

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

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

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

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

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