FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**BIR/00FN/LIS/2019/0014-15** **BIR/00FN/LLC/2019/0007-8** **BIR/00FN/LLD/2019/0008-9**
Court Reference	**:**	**F06YX665 and F10YX965** **(County Court at Clerkenwell & Shoreditch)**
Property	**:**	**6 & 9 St Nicholas Apartments, 140B Fosse Road North, Leicester LE3 5ER**
Applicants	**:**	**(1) Adriatic Land 1 (GR3) Ltd** **(2) St Nicholas Apartments Management Ltd**
Representative	**:**	**Miss Rebecca Ackerley of Counsel instructed by JB Leitch Ltd**
Respondent	**:**	**Mr Kumarasamy & Mrs Baladas**
Representative	**:**	**Mr Timothy Deal of Counsel under Direct Access scheme**
Type of Application	**:**	**(a) An application upon the liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985** **(b) An application for the limitation of the Respondents' costs in this application under Section 20C of the Landlord and Tenant Act 1985**
Tribunal Judge	**:**	**Dr Anthony Verduyn**
Tribunal Valuer	**:**	**Mr Colin Gell FRICS**
Date of Site Inspection	**:**	**27th November 2019**
Hearing	**:**	**28th November 2019**
Date of Decision	**:**	**6th February 2020**

DECISION

BACKGROUND

1. The Applicants issued two County Court claims for service charge arrears for the period 2016 to 2018 in January 2019. The claims amounted to £2,020 in respect of No.6 St Nicholas Apartments ("No.6"), comprising £1,900 in service charges and £120 debt collection charges, and £1,092.11 in respect of No.9 St Nicholas Apartments ("No.9") comprising £824 in service charges, £120 debt collection charges, £144 in Administrative Charges and £0.11 relating to insurance.

2. The claims were transferred to this Tribunal by Order of District Judge Bell sitting at the County Court at Clerkenwell and Shoreditch on 1st April 2019 because the reasonableness of the charges was challenged. Directions were given by the Regional Judge on 24th April 2019 and these recited that service charge matters would proceed to be decided by a Tribunal Judge sitting as a Judge of the County Court exercising the jurisdiction of a District Judge (under Section 5(2)(t) and (u) of the County Court Act 1984 as amended by Schedule 9 to the Crime and Courts Act 2013) sitting with a Valuer Member of the Tribunal as Assessor in accordance with the Civil Justice Council pilot scheme set up by the working group on flexible deployment. Issues of costs and interests were directed to be determined by the Tribunal Judge sitting as a Judge of the County Court alone.

3. In those directions dated 24th April 2019 the claims were consolidated and to be heard together, and directions were given for Statements of Case, disclosure of documents and exchange of witness statements. Allocation was to the Small Claims track. Further directions were given on 26th July 2019.

4. In the meantime, on 7th May 2019, the Respondents made applications to the Tribunal for limitation of service charges in respect of costs of proceedings under Section 20C of the Landlord and Tenant Act 1985 ("Section 20C"), and limitation of administrative charges likewise under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("Paragraph 5A"). These are matters to be decided by the Tribunal comprising Tribunal Judge and Tribunal Member.

5. At the hearing, Counsel for the Applicant presented separate Skeleton Arguments for tribunal matters (essentially the reasonableness of the service charges claimed, liability for administrative charges and Section 20C) and Court matters (Judgment sum to be ordered (if any), interest and contractual costs). The Order for transfer to the First-tier Tribunal was laconic, but the recital to the directions appears inapt in respect of the reasonableness of service charges because Section 27A of the Landlord and Tenant Act 1985 is a matter for "the appropriate Tribunal" in contrast to other sections that refer also to the Court (including Section 20C). In the circumstances, it is decided that the procedure to be adopted will be that of the Applicants' Counsel, and treat reasonableness of service charges and administrative charges, and the Section 20C application to the Tribunal, as Tribunal matters with the Tribunal composed of Tribunal Judge and Tribunal Member, and all other matters will be decided by the Tribunal Judge sitting as a District Judge alone. For the avoidance of doubt this procedure is adopted both by the Tribunal and the Tribunal Judge sitting as a District Judge, but to ensure that there can be no prejudice, the assessment that

the Tribunal Member would have offered as an assessor is identified in this decision in any event. Matters already identified as the exclusive province of the County Court (the judgment sum, interest and costs) are dealt with by the Tribunal Judge sitting as a District Judge of the County Court alone.

THE LAW ON SERVICE CHARGES

6. The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985 (" the Act").

7. Under Section 27A(1) of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

   a) The person by whom it is or would be payable,
   b) The person to whom it is or would be payable,
   c) The amount, which is or would be payable,
   d) The date at or by which it is or would be payable, and
   e) The manner in which it is or would be payable.

8. Section 18 defines "service charge" and "relevant costs" and provides as follows:

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

   (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent—

   (a) which is payable, directly or indirectly, for services, repairs, maintenance [, improvements] or insurance or the landlord's costs of management, and

   (b) the whole or part of which varies or may vary according to the relevant costs.

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

   (3) For this purpose—

   (a) "costs" includes overheads, and

   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

9. Section 19(1) of the Act provides that:

   "Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

10. A service charge is only payable if the terms of the lease permit the lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41).

11. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2EGLR100).

12. In relation to the test of establishing whether a cost was reasonably incurred, in Forcelux v Sweetman [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

    "39. …The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

    40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence…"

13. In Veena v Cheong [2003] 1 EGLR 175, the Lands Tribunal (Mr P H Clarke FRICS) said:

    "103. …The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

14. And further clarification of the meaning of "reasonably incurred" has been provided by the Upper Tribunal in London Borough of Lewisham v Luis Rey-Ordieres and others [2013] UKUT 014 which said (at para 43):

    "…there are two criteria that must be satisfied before the relevant costs can be said to have been reasonably incurred: the works to which the costs relate must have been reasonably necessary; and the costs incurred in carrying out the works must have been reasonable in amount."

INSPECTION BY THE TRIBUNAL ON 27TH NOVEMBER 2019

15. St Nicholas Apartments are comprised in a large former church or chapel and ancillary school. The façade is brick with stone architectural features. A substantial staircase leads to one entry from the main road, and another is through doors located between the principle buildings. The façade is set back from the road behind railings and there is a vehicular side entry serving the rear,

which was laid to tarmac and also has a pedestrian entry. In many areas of the frontage there are signs of modest disrepair and the area for post boxes within a passage between the principle buildings was very dilapidated and many of the boxes were unusable or insecure. Recent works to improve security to entries was evident and commissioning appeared imminent. The common areas inside also had work in progress for improving services, but the staircase structure and general appearance was utilitarian. Works to repair the roof was required, but scaffolding showed this was also progressing. Individual flats were modest in size and there was some evidence to support complaints of ingress of water. Overall, the impression was of a building now receiving necessary repair and improvement.

THE LEASES AND THE PROCEEDINGS

16. The Applicants' Statement of Case sets out that the First Applicant, Adriatic Land 1 (GR3) Ltd, is the landlord and freeholder of St Nicholas Apartments and the Second Applicant, St Nicholas Apartments Management Ltd, the management company. The latter has appointed Town & City Management Ltd ("TCML") as its agent from April 2018, and the Tribunal received evidence from Mr Matthew Harris of TCML.

17. The Leases of No.6 and No.9 are in common form (save as to service charge percentage) and were registered to the Respondents on 22nd and 29th January 2007 respectively. The Applicants rely on various clauses and paragraphs:
    - Clause 3.1, which reserves ground and other rents, including insurance at 4.5% of the outlay for No.6 and 3% for No.9.
    - Clause 3.2, which reads: "To pay the Management Company a service charge contribution equal to 4.5% [for No.6 and 3% for No.9] of the costs incurred by the Management Company in performance of the obligations set out in Clause 4 and the Fourth and Fifth Schedules".
    - The Fourth Schedule sets out the mechanics of the calculation of the service charge, the "Maintenance Year" being the calendar year.
    - The Fifth Schedule sets out the elements of expenditure, including a reserve fund and, under paragraph 2.3, a "reasonable sum to remunerate the Management Company for its administrative and management expenses (including a profit element)".
    - The Fifth Schedule goes on to list the expenses.
    - Clause 3.6, which requires the Respondents as lessees to observe and perform the obligations set out in the Third Schedule. Paragraph 2.1 thereof charges interest on any sum 21 days in arrears at 4% over Barclays Bank base rate, and paragraph 2.2 thereof requires the Respondents: "To pay to the Landlord or the Management Company on a full indemnity basis all costs and expenses incurred by the Landlord or Management Company or their Solicitors in enforcing the payment by the Tenant of any Rent Interim Charge Service Charge Special Contribution or other monies payable by the Tenant under the terms of this Lease".

18. The Applicants' Statement of Case also details claims for costs.

19. The Applicants exhibited demands, budgets and accounts, along with documents of title. Further documents were exhibited to the witness statements of Mr Matthew Harris, Regional Property Manager for TCML with responsibility

for St Nicholas Apartments. His first witness statement is dated 3rd July 2019, and his second, 13th November 2019

20. The content of the Leases is not in dispute, but liability is denied. The Respondents filed a Statement of Case with their own bundle of documents, and a witness statement of the First Respondent (supported with additional documents).

21. Ultimately, the Tribunal was in receipt of 2 lever arch files of papers and a supplemental ring binder, comprising the trial bundle. The Tribunal heard from both witnesses who had provided statements.

22. Liability is comprehensively contested by the Respondents. Issue is taken in a number of ways, several of which can be dealt with fairly shortly or were not pursued at all in submissions. The charges are challenged in general, and the debt collection charge singled out. Regular payments of £100 are asserted. Invoices, it is said, were not broken down into their service elements, and demands are stated not to have been served at all. It is suggested that the collecting managing agent has changed many times. The leases are said to be unfair in their terms and one-sided. Any profit element in the service charge is challenged, and discrepancy between the accounts and those filed at Companies House observed. Fees for letting are also challenged. Overall, there is complaint at the condition of the buildings as a whole, and a survey for the Applicants conducted by Pick Everard and dated February 2019 (following inspection on 23rd January 2019) is asserted to understate the problem. The common parts are stated to be insecure and trespassed upon. The Respondents put the Applicants to proof that demands for service charges were made within 18 months of the costs being incurred (Section 20B of the Landlord and Tenant Act 1985). They also dispute that Summary Rights were served with demands and that earlier bills complied with Section 47 of the Landlord and Tenant Act 1987.

23. These points are pursued in the witness statement of the First Respondent, which denies receipt of communications, but also asserts payment in full. Significantly, it is alleged that some bills underlying the service charge are inauthentic. This allegation appears to relate to cleaning charges, and is based on hearsay, in that a friend of the First Respondent is stated to have called the purported cleaner Mr Damian Oszczeda from Smethwick, and to have been told that he ceased cleaning the building in March 2017. A mis-spelling appears on an invoice also.

24. As noted some matters can be dealt with briefly: payments made by the Respondents do seem to have been allocated to the Respondents' account; invoices disclosed and relied upon carry the landlord's details as required and so can be pursued (the provision requiring details being suspensory only); the breakdown of service charges is evident from the budgets disclosed; fees for permitting letting do not feature in the claims; and it is not suggested that the leases can be re-written.

THE HEARING

25. The attendance of Counsel for the Applicants and for the Respondents facilitated the narrowing of issues before the Tribunal. For example, there was rightly no

longer a dispute that the accounts filed at Companies House were of no assistance in this case, because these were the accounts of the Applicants' businesses, rather than the accounts relating to the Property. The outstanding issues for consideration were identified with Counsel and addressed separately to make the process manageable and coherent.

THE DEMANDS

26. Counsel for the Applicants took the Tribunal to the demands in the bundle (pages 117 and following) which showed the sums demanded, the relevant details of landlords and statutory rights of lessees. The Respondents' Counsel pointed out that the address on each was "11 Bents Lane, Dronfield, Derbyshire", which was not the address of the Respondents and they denied receipt. This contrasted with ground rent demands that were received, at least in 2014, at the Respondents' PO Box address. The First Respondent stated it was only when CTML took over that he had sight of the demands, but then he did not receive breakdowns.

27. Upon analysis of the documents disclosed by the parties, this complaint was evidently groundless. "11 Bents Lane" was the address of the former managing agent, Barclays Property Management Limited ("Barclays"), as appears on letter disclosed by the Respondents. Indeed, the letter at page 315 addressed to the First Respondent and exhibited by him dated 9th December 2016 is a covering letter for the "invoice and related information in respect of the charge for 2017" and, therefore, corresponds with the invoice disclosed by the Applicants at page 180. The strong implication is that the invoice accompanied the letter received.

28. Receipt of the invoice dated 15th December 2017 at page 183 is even more plainly established, because at page 290 the First Respondent exhibits a photocopy of this invoice overlaid as to part only with his cheque for payment of half dated 1st January 2018. When questioned on this, the First Respondent conceded his receipt of this invoice.

29. Mr Harris confirmed in his evidence that he had spoken to Mr Walker, the employee of Barclays responsible for the Property, who had confirmed the regular issue of invoices in the manner appearing in the Tribunal bundle.

30. The Tribunal unhesitatingly accepts the documentary evidence from the Applicants as to proper and timely service of demands. The objection of the Respondents appears to have been no more than a misunderstanding of the manner in which the invoices were addressed, and this is adequately explained by the rather unusual form of setting out the managing agent's address in the top right hand corner of the invoice. The Respondents' own documents show timely receipt of at least one key invoice, and the denial of other receipts is simply not credible and rejected against this background. The complaint by the Respondents was an opportunistic reading of the disclosed documents and an unwarranted and unmeritorious challenge to the claim on that basis.

UNREASONABLE CLEANING CHARGES

31. This was not an issue apparent on the Respondents' Statement of Case, but occurs in the First Respondent's witness statement. Counsel for the

Respondents observes that it appears £220 per month was charged. The Respondents dispute that the work was done, or done to a reasonable standard, because the condition of common parts was shabby and the subject of complaints from their tenants. An email from PCS Birmingham ("PCS") is exhibited by the Respondents dated 15th July 2019 and stating that the last cleaning in Leicester was March 2017. It states Mr Walker of Barclays was charged £110 every two weeks. It is suggested that CTML replaced PCS with Atlas Cleaning Contractors Ltd ("Atlas"), but not until April 2018, and a year of cleaning charges were, in effect, fabricated.

32. In evidence, the First Respondent enlarged on his complaints, asserting again that there was no cleaning at all. His letting agent communicated complaints, and this was vindicated when the First Respondent personally visited. The Property was insecure and the flats consequently difficult to let or sell. He saw dirty floors and cigarette ends. He suggested that cleaners would be paid minimum wage levels and £50 per visit would be appropriate, not £110. In cross-examination he accepted he let his flats and did not visit often. He accepted that he could not say the cleaners never visited, but that he deduced they did not attend from the complaints from his tenants. He then reasserted that there was no cleaning in 2016 (notwithstanding the invoices from Mr Damian Oszczeda, apparently of PCS).

33. Mr Harris gave evidence on this point. He observed that the email referred to by the Respondents was not from Mr Damian Oszczeda and, when he spoke to the contractors, there was no recollection of any conversation. Mr Oszczeda was Polish and Mr Harris spoke to a business associate of his, who confirmed cleaning in fact continued to March 2018 as per the invoices sent. In respect of the charge made, he observed that there were 24 flats spread over three floors in one part of the buildings and four floors in the other. Internal cleaning required sweeping and mopping. External areas were not extensive but required a sweep and litter pick. He would expect more than one cleaner to attend and for work to take several hours. When he took over management in April 2018, Mr Oszczeda had stopped attending for reasons he could not confirm. In any event, he selected a local service, Atlas, and stepped up cleaning to weekly to make it more effective. External and window cleaning was also provided, and fly-tipping and unauthorised access addressed. Once current security works and improvements were completed, he envisaged reducing the cleaning to fortnightly. The problems he had experienced were related to the bulk of the flats being sublet on Assured Shorthold Tenancies to people, some of whom, did not care about the Property and graffitied and littered it. In cross-examination, Mr Harris accepted his knowledge before he took over the management was limited, and he had researched new cleaners with appropriate qualifications and trade affiliations for quotations. Matters were urgent, and so competitive tendering was not sought. He met those providers who quoted on site. Cleaning was a significant task, because he accepted that there were problems with the common parts, with the need for works to roof and walls, redecoration, fire safety improvements and security. The Property was challenging and had been insecure. He was working with the local Police Community Support Officer and the Local Authority, but security had been flagged as an issue at the outset of his work and was about to be fully introduced to regulate access.

34. Mr Harris was also questioned by the Tribunal Member. He disclosed plans to carpet the common areas in due course and then retender for a reduced hours cleaning contract. When security is introduced, lighting and fire safety work would soon be completed, and redecoration take place. The former cleaners may in fact have used local staff for the building, but cleaning was inadequate when taken over. In appointing Atlas he applied his experience as a manager for 15 years and now responsible for 37 buildings.

35. The Tribunal Member was of the view that the cleaning charges for the property were reasonable at all times given the scale of the problems faced with the Property before the current works started and now.

36. The Tribunal finds that the cleaning charges were incurred and were reasonable. The email reference to March 2017 may simply be a mistake for March 2018, and the hearsay is so remote from the First Respondent as to have no value at all. Indeed, the First Respondent himself failed to give credible evidence on the receipt of invoices, and the Tribunal is simply unable to accept the assertion that cleaning ceased in March 2017 without persuasive corroboration (of which there is none). The First Respondent was in no position to comment that no cleaning had taken place, as he accepted in evidence, but seemed unable to grasp. The Tribunal considers it highly improbable that invoices were faked and that no work was done. The problem was that whilst the building was not locked, effective cleaning was impossible: litter would proliferate and there was no incentive for tenants to try to keep the common areas tidy. The problem could be managed to an extent by fortnightly cleaning, but would never be resolved until more thorough-going management was introduced by Mr Harris and improvements begun. Then weekly cleaning was warranted. There is simply no evidence that the rates charged were anything more than reasonable: the former arrangement of fortnightly visits was not expensive and must have had some mitigating effect on the problems, and the Tribunal is satisfied that Mr Harris' new regime for cleaning was appropriately costed and introduced. The Tribunal rejects the complaints of the respondents accordingly.

CHARGE FOR ACCOUNTANCY FOR MANAGEMENT COMPANY

37. These were £535 in 2015, £612 in 2016, £625 in 2017 and the same budgeted for 2018. The First Respondent stated that this should be charged at £225 to £250 in line with his own accountant's charges to him. When question by the Tribunal Member, the First Respondent suggested an hourly rate of £15 to £25 was suitable for an accountant.

38. The Tribunal Member was of the view that the level of charge was commensurate with the work he would expect to be done on accounts.

39. The Tribunal finds that the sums appearing in the Service Charge accounts are reasonable for this service. The First Respondent's personal accounts are not a useful comparator for the work required for a management company, and the preparation and submission of company financial statements. The hourly rates proposed by the First Respondent are remarkably low. When a more reasonable rate is applied (at least double that suggested), then the charges are plainly reasonable.

40. I note that the Respondent did not challenge administrative expenses, but management fees were challenged.

MANAGEMENT FEES

41. Again, this was not explicitly raised in the First Respondent's Statement of Case, and the Tribunal was referred to paragraph 16 , which related to the poor state of the Property when surveyed by Pick Everard in early 2019. There were undoubtedly complaints at the state of the building in 2018 (page 292 for example), and the gist of the issue is the contention that the service provider prior to Mr Harris' appointment was simply inadequate to the task. The First Respondent pointed out that £250 per flat was charged, although flats contributed to the Service Charge in varying proportions. He suggested that before Mr Harris was appointed there was no service at all, and since then the fee should be halved. He was cross-examined on the basis that works were done before April 2018, for example £2,900 in 2017 for work to the roof (receipt page 409), but the First Respondent insisted this was a fake document and the figures are not intelligible. It was suggested to him that the building could not be maintained if lessees did not pay service charges, but he stated he had paid for 12 years whilst receiving no service at all.

42. Mr Harris defended the fees charged as an agent for the work he was now undertaking, including proper financial management and a programme of works and improvements. In July 2019, for example, he had arranged works to two elevations at a cost of £2,952. He explained that at hand-over in April 2018 arrears on the service charge account totalled £29,756.42 and this presented acute cashflow difficulties for works. Arrears were currently £19,352.20, which was still a considerable sum. He had to address arrears to fund works, which were urgent, and had promoted discussion of issues with lessees. Current charges were £150 per flat per year plus VAT. He considered this was competitive, but could only estimate what others charged and suggested £180 to £200.

43. Mr Harris was disadvantaged in that he could not comment on what previous managers did. He was hampered by the arrears, but major works could have been pursued using the notice and consultation regime in the Landlord and Tenant Act 1985. Invoices showed that some works were done, but there was no disputing the content of the condition report of Pick Everard.

44. Management issues were also addressed by Counsel in closing. For the Respondents it was forcefully observed that historic management was poor and the Property had deteriorated, delay before the appointment of CTML and Mr Harris was essentially unexplained: the roof leaked, security was poor and cleaners struggled. Management fees were higher then than now.

45. In reply, reliance was placed by the Applicants on the extent of the arrears. The obligation under the leases to provide services subject to lessees paying the service charges (Clause 4.1.1 of the Lease). Attention was also drawn to the case of Bluestorm Ltd v Portvale Holdings Ltd [2004] EWCA Civ 289, where the Court of Appeal dismissed an appeal finding that the appellant remained liable for service charges since they could not be set off against any loss that may have been suffered through the respondent's failure to repair, because it was the

appellant's failure to pay the charges that had caused the inability to meet the repairing covenant.

46. The Tribunal Member was of the view that management fees prior to April 2018 were too high for the quality of service provided and a fee equal to £3,240 was appropriate (i.e. 75% of the current fee of £4,320 inclusive of VAT).

47. The Tribunal finds that the management fees charged by CTML are reasonable, particularly having regard to the demands on management time of the property in its current state and subject to a proper programme of financial management and restoration. From the documents provided and the evidence already considered above, it is evident that management fees were properly incurred before April 2018 and the property was under management, contrary to the contentions of the Respondents. The fees charged, however, were unreasonable notwithstanding the problems created by arrears. There was and is a degree of circularity in the arrears position as it developed: the state of the Property discouraged payment of service charges, and the failure to pay service charges made management increasingly difficult. A programme of major works was also not encouraged by these problems, and Mr Harris is to be commended for the progress he has made since April 2018 and for the intended future programme of works. The Tribunal considers and finds that the former managing agent cannot charge more than Mr Harris, given the level of performance of the management functions, and it is appropriate to apply a discount to reflect the standard of management provided. This discount will be 25% from the rate charged by CTML and is to be applied for the relevant years 2016 and 2017. The first four months of 2018 will not be discounted because it seems to the Tribunal that the overall charge for the year is reasonable, given the extra management requirement for initial service charge arrears collection. To some extent the Respondents are fortunate that all of 2016 was in issue in respect of Apartment 6, when their periodic payments had reduced the liability to a mere £184. The Tribunal considers, though, that a somewhat broad brush approach is warranted in these circumstances to arrive at the reasonable outcome and that is achieved by applying the discount to No.6 in 2016, but not applying it to the first four months of 2018.

SECTION 20C AND PARAGRAPH 5A

48. Application was made under these provisions to prevent legal costs and administrative charges being added to demands by the Applicants. This is essentially unnecessary, because the Applicants are pursuing their costs against the Respondents directly under the terms of the Leases. It would, however, have been unwarranted in any event. The Applicants have been overwhelmingly successful in these proceedings. Furthermore, especially in relation to receipt of invoices, the complaints of the Respondents were demonstrably unwarranted from their own disclosure. There is no basis for protecting them in costs and no order will be made.

COUNTY COURT MATTERS: JUDGMENT, INTEREST AND CONTRACTUAL COSTS

49. In respect of Flat 6, £2,020 is claimed, but a deduction is to be made for management fees in 2016 and 2017. In these years £6,000 and £6,240 were charged respectively, when the Tribunal finds (and I therefore apply) that

£3,240 was appropriate. Applying this to the percentage charge for Flat 6, in 2016 £270 was charged to it for Management Fees when £145.80 was due, and in 2017 £280.80 was charged when £145.80 was due. A credit of £259.20 arises and judgment is therefore to be in the sum of £1,760.80 plus interest and costs, discussed below.

50. In respect of Flat 9, £944 is the core of the claim in service charges. It is only 2017 that is relevant, £187.20 was charged and £97.20 was reasonable, so a credit of £90 arises. I note that Mr G Harris claims insurance of 11 pence and an administrative charge of £148, which appears in the Claim Form, but is not detailed in the Applicants' Statement of Case (albeit that this is expressly addressed to be part of the applications only). It was for the Respondents to establish the unreasonableness of the sums in issue, the principle of liability having been established, and I will award the sum in full less the deduction of £90, hence £1,002.11.

51. Interest is reserved in the leases at 4% over Barclays base rate in paragraph 2.1 of the Third Schedule to the Leases. As discussed at the hearing with Counsel, the Applicants shall file their interest calculation within 7 days of receipt of this decision and the Respondents may comment within 14 days thereafter, before an Order is then made.

52. The Applicants seek contractual indemnity costs pursuant to paragraph 2.2 of the Third Schedule to the leases. As already observed, the Applicants are substantially the victor in their claims and there is nothing to displace the approach enunciated in Chaplair Ltd v Kumari [2015] EWCA Civ 798 that such costs are awarded notwithstanding allocation to the Small Claims Track. I consider it correct that these are awarded on an indemnity basis, because that is the wording of the lease provisions (although I do not consider that these proceedings can be likened to forfeiture proceedings which almost invariably give rise to costs payable on an indemnity basis and, had the lease not specified an indemnity, then the standard basis may have been appropriate). I also have regard in applying an indemnity that the denial of liability was wholesale and extended to taking points which the Respondents knew had no merit (like the reliance on the apparently misleading address on invoices that they had in fact received). A single schedule was provided as directed and in an appropriate form. It totals £12,269.32, inclusive of VAT. Given the sheer volume of materials, precipitated by the breadth of issues raised by the Respondents, I would not have considered the total claimed in costs as disproportionate in any event. I also consider that Counsel's fee of £3,000 plus VAT for the site view in Leicester, extensive Skeleton Arguments and attendance in London for the hearings was appropriate. I award the sum as claimed.

53. I invite the Applicants to file a draft Order, including the interest as calculated, within 7 days. The Respondents then have 14 days from receipt to comment upon the draft Order and the interest calculation before I finalise it.

Tribunal Judge Dr Anthony Verduyn, sitting as District Judge of the County Court

Dated 31st January 2020