10019

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2013/0811**
Property	:	**Flat 92, Sherard Court, 3 Manor Gardens, London N7 6FB**
Applicant	:	**Ms Elena Addison**
Representative	:	**In person**
Respondent	:	**Statham and Sherard Court Management Company Limited**
Representative	:	**Mr Paul Fisher Counsel Also in attendance on the Respondent's behalf: Mr K Perry Managing agent and surveyor, Mr Ivor Davies managing director**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Ms M W Daley LLB (hons)** **Mr H Geddes RIBA MRTPI** **Ms S Wilby BA**
Date and venue of Hearing	:	***4 April 2014 at 10 Alfred Place, London WC1E 7LR***
Date of Decision	:	**3 June 2014**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 [so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge].

The application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant.

2. An oral case management hearing took place on 7 January 2014, when the following issues were identified to be determined by the Tribunal-: *"(a) for the service charge year 2009 the reasonableness and payability of the charges for supervision of decorating contract (£400.00 in total) and the cleaning contract charges in the total sum of £39,915.00;(b) for the service charge year 2010 the reasonableness and payability of the charges for minute taking (£300) and the cleaning contract charges totalling £36,638.00;(c) for the service charge year 2011 the reasonableness and payability of the managing agents fees of £35,537.00 cleaning costs of £38,011.00, electrical works costing £13,223.00, electrical repairs totalling £16,225.00 and the payment of the caretaker's bonus of £787.62 plus VAT;(d) for the service charge year 2012 the reasonableness and payability of management fees totalling £36,083.00, cleaning contract costs totalling £36,752.00, electrical fittings totalling £8,866.81, electrical repairs totalling £8901.00; (e) for the service charge year 2013 the reasonableness and payability of management fees totalling £37,117.00 cleaning contract costs totalling £28,120.62, electrical repairs charges of £14,055.00 and £4,545.00, charges for the replacement of the carpet and administration charges relating to legal costs and accountant's costs; (f) for the service charge year 2014 a determination of the reasonableness and payability of the estimated charges in relation to the management fees and cleaning cost if these are available; (g) whether the landlord should have complied with the consultation requirements under section 20 of the 1985 Act in connection with the electrical works and replacement of the carpets; (h)whether an order under section 20C of the 1985 Act should be made; (i) whether an order for the reimbursement of application/ hearing fees should be made."*

The background

3. The Property which is the subject of this application is a purpose built flat situated in a four storey block known as Sherard Court dwellings comprising 94 flats. Sherard Court dwellings, together with Statham court (56 flats) and Freeman Court form part of an estate known as Regent's Quarter.

4. The Applicant holds a long lease of the property pursuant to a lease dated 4 August 1999. The lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

5. The Respondent Statham and Sherard Court Management Company Limited are a management company who under the terms of clause 4 of the lease are incorporated for the purpose of carrying out services under the terms of the lease. In paragraph 2 of the Respondent's statement of case the Respondent stated that-: *"... Pursuant to an agreement dated 25 March 2007, the Board of Directors of SSCMC has contracted out this management function to Keith Perry ("KPCS")".*

6. In his Witness Statement Mr Perry set out information concerning the management company, Mr Perry stated-: That the premises were situated in Regents Quarter which was *"... a substantial residential development built in 1998-2000 by Bellway Homes comprising 150 purpose built two and three bedroomed apartments and 27 houses. The freehold investment company has no responsibility under the lease or house title deeds to undertake estate management. This falls to the respondent company Statham and Sherard Court Management Company Limited which was formed at the outset by the developers. All flat and house owners are shareholders in the management company and any are entitled to become directors. Since the inception the number of directors has varied; at present there are 11..."*

7. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

8. At the hearing the Applicant Ms Addison represented herself. The Respondent was represented by Counsel Mr Fisher who was assisted by Mr Perry the Managing Agent. Also in attendance was Mr Ivor Davies the respondent company's managing director and Mr Stephen Jones from Zurich insurance who observed part of the hearing.

9. At the start of the hearing, Ms Addison made an application for an adjournment on the grounds that she was still awaiting information about the cost of the decoration, and that without this information, it would prejudice her ability to conduct her case.

10. The Respondent opposed the application. The Tribunal were referred to the witness statement of Mr Perry. The Applicant would have received this on 10.3.2014 and had sufficient time to deal with the issues. The Respondent was present and was represented and was ready to proceed.

11. At the hearing the Tribunal determined that the Application for an adjournment ought to be refused on the grounds that such an adjournment would result in additional cost to both the parties and the public purse. The Tribunal also considered that granting an adjournment, to enable the Applicant to find out whether there was extra material (which might assist her in dealing with the cost of the decoration,) was not proportionate, given the number of issues in this case. The Tribunal was able on the information before it to deal with the issue concerning the decoration. The Tribunal further stated that should the Applicant during the course of the hearing consider that there was a real prejudice in dealing with the issue then the Applicant was at liberty to renew her application.

12. The Tribunal decided that where there were issues which occurred across more than one year the Tribunal would consider the issues and all of the years together. The first of these issues was the cleaning.

Service charge item & amount claimed

The Cost of the cleaning from 2009-12 and 2013: £39,915 (2009), £36, 638 (2010,) £38,011 (2011), £36,752 (2012) and £28,120.62, (2013)

13. The Tribunal were informed by the Applicant that the cost of the cleaning was for cleaning the internal common parts of 18 stairwells at the estate. Each block had four stair wells and an internal common entrance. There was a single cleaning contract in respect of the Estate. Between 2009 and 2012 the cleaning was carried out by Ms Branigan, under a contract with MPP Limited. After 2012 the work was undertaken by MS Facilities, who were subsidiaries of MPP Limited. In spring 2013 the contract was awarded to a sole trader, Mr Allal who carried out the cleaning at the premises. The Respondent had become aware of Mr Allal, as he had been engaged to provide cover/ cleaning services whilst Ms Branigan had been on leave.

14. The Applicant contended that the cleaning contract had not been subjected to market testing, and there was no tendering for the contract. This had in her opinion, led to substantial increases in the cleaning cost over the years. Ms Addison stated that she had seen job advertisements for cleaners and had included some of the adverts in the bundle. The average cost of a cleaner was £17,500.00 per year.

15. The Tribunal asked the Applicant whether she acknowledged that there was a significant difference between the sum paid to the cleaner for carrying out the cleaning and the sums paid to contractors, who were responsible for all of the associated on-cost of engaging an employee.

16. Ms Addison stated that she was aware of the difference between the two figures; however there were certain expenses which she did not consider ought to be paid by the leaseholders, as a result of having the cleaning undertaken under a contract. By way of example, the Applicant referred to overtime and the cost of providing a mobile phone.

17. Ms Addison stated that she was also concerned that the cleaning had not been carried out to an appropriate standard for at least a five month period in 2012. She cited issues with the snow being left in the external areas and litter in the common parts (the tribunal were referred to photographs) as proof of the poor standard of cleaning. There were also issues in which she alleged that the cleaner/caretaker had acted inappropriately towards both Ms Addison and another tenant.

18. On behalf of the respondent, Counsel Mr Fisher, referred the Tribunal to the minutes of the Annual General Meeting held on 27th January 2010.Mr Fisher informed the Tribunal that there had been a resolution for the consideration of the AGM. The resolution was that-: "*...the current cleaning/caretaking costs are reduced to market rates which we understand to be no more than £25,000 inclusive of National Insurance.*" Mr Fisher informed the Tribunal that this resolution had not been adopted; this was in part, because of recognition that the premises lacked proper facilities for the cleaner such as storage and conveniences. Mr Fisher considered that there was also a recognition that the service was being provided to an acceptable standard.

19. Mr Perry stated that prior to his appointment as manager for the premises; MPP Contractors were already providing cleaning on behalf of the Respondent landlord. The Tribunal were referred to the description of services.

20. MPP engaged the cleaner/caretaker who carried out the cleaning at the premises. The cleaner Ms Branigan provided cleaning services. Her hours of work were 8 am to 4pm five days a week. Ms Branigan was paid double time for working one hour on Saturday and Sunday. When Ms Branigan was sick or on holiday the services were undertaken by Mr

Allal who was a direct contractor of the Respondent rather than engaged through a company. MPP had set out all of the benefits that they considered resulted from using a company rather than a direct contractor/cleaner.

21. Ms Addison stated that the leaseholders would not expect, if the services were provided by a company, to pay overtime, or contribute to the cost of the cleaner's mobile phone. Part of the reason for using a contractor was to avoid such costs. The Applicant also wished for a determination on whether the sum of £787.62 paid to the caretaker/cleaner as a Christmas bonus was reasonable and payable.

22. Mr Perry stated that this had been voted on by the board, and the sum had been calculated to allow Ms Branigan to have an after tax bonus of £500.00.

23. It was accepted by both parties that the Applicant had had disagreements with Ms Branigan (which were outside the scope of these proceedings) which may have led to the cleaner not undertaking cleaning services near the Applicant's flat. In any event Ms Branigan's employment came to an end when the contract with MS Facilities was brought to an end and Mr Allal undertook to provide cleaning services as a self-employed contractor. Mr Allal provided cleaning services for 50 hours a week, directly and by engaging extra help for cover. It was also accepted by Ms Addison that she did not raise any issues with the manner in which the current cleaning contract was being performed.

24. The Tribunal asked about the rate for the services during the periods in issue and how increases were negotiated. Mr Perry did not have this information, however he stated that one of the reasons for engaging Mr Allal was because he was not a VAT registered company and this had decreased the costs. In reply to the issues concerning the standard of cleaning, Mr Perry stated that the standard of cleaning had been satisfactory. He stated that he inspected the premises on a regular basis and if there was anything untoward he would make a note in his records. If he was not satisfied he would ask Ms Branigan to *"do it again"*. He accepted that there were times when he felt that the cleaning could have been improved, and he pressed the contractors to make improvements.

The tribunal's decision and Reason for the decision

25. The Tribunal noted that part of the reason that Mr Perry stated for having cleaning services provided by a company was to avoid many of the issues which occur when engaging an employee, but despite this the management company appear to have treated Ms Branigan as if she were an employee and as such become responsible for the day to day management of her and for the provision of matters such as cover,

additional payments and a Christmas bonus. These expenses were not unanimously agreed by all of the leaseholders.

26. The Tribunal noted that where these expenses are paid, they are normally an employer cost, and are taken from the sums paid to the contractor who in providing the services has allowed for these sums as on cost. Despite this the Respondent was in addition to having these services provided at a higher rate, also voluntarily agreeing additional payments such as a Christmas bonus. The Tribunal consider that such payments are not provided for by the terms of the lease, accordingly this bonus payment is not reasonable or payable. Where the management board wish to make such a payment, there is nothing to prevent them having a voluntary collection.

27. The Tribunal noted that the Applicant was unhappy with the cleaning, which in her view was not (throughout the whole of the period) provided to an acceptable standard. The Tribunal accepted her evidence on this point, as it considered that Mr Perry's evidence on the standard was equivocal. He accepted that he had had to ask for things to be redone on some occasions when he inspected the premises on a weekly basis. He was also aware that the relationship between Ms Branigan and some leaseholders had broken down to such an extent that it compromised her ability to provide the services at the required standard and that this situation was ongoing for at least 5 months, with no reduction in the cost of cleaning.

28. The Tribunal accepted on the evidence of Mr Perry that there had been an improvement in the cleaning after Mr Allal took over. This is evidenced by the lack of complaints from the Applicant about this period, and her acknowledgement that the cleaning had improved since Mr Allal had taken over the responsibility.

29. Although the Applicant relied upon the market rate for employing a cleaner as evidence that the cost of cleaning was too high, this was of limited evidential value, as she was not comparing like with like. However there was evidence from the employment of Mr Allal that it was possible to have the cleaning undertaken at a cheaper rate without compromising the standard, and with none of the issues that Ms Branigan's employment raised. Mr Allal worked longer hours for a lower cost. His annual fee was in the range of £28,000. The Tribunal noted that once Mr Allal had been engaged the services improved.

30. The Tribunal considers that this in part demonstrates that the cost for the periods prior to his engagement, when considering all of the issues, was not reasonable. It was possible to obtain the cleaning at a reduced rate. Accordingly the cost of the cleaning is capped at £28,000 for all of the years in issue, save for 2013 when the cost of the cleaning in the sum of £28,120.62 is reasonable and payable.

Payments for Minute taking

31. Ms Addison objected to this payment on the grounds that these expenses were not covered by the terms of the lease and as a result this was not a service charge item for which she was liable under the terms of the lease.

32. The Tribunal asked for further information. Mr Perry had been aware of David Whitter who had provided minute taking services for another block managed by him. The cost of this service had been £100.00 per meeting. The meeting normally lasted from 7.30 pm until 9.30-10pm. Mr Perry considered that the cost of this service was reasonable.

33. The Tribunal were referred to the service level agreement between Statham and Sherard Court Management Limited and Mr Perry, which placed an obligation on the managing agent to organise the AGM and circulate the minutes. It was not clear from the contract how the cost of this was to be provided for. Counsel on behalf of the Respondent referred the Tribunal to Clause 7 in part ii of the lease which stated-: " *To provide such other services for the benefit of the Lessee and any other lessees of the flats in the Building and carry out such other repairs and such improvement works and defray such other costs as the Management Company with the consent of the Lessor shall consider necessary to maintain the Building as a block of high class residential flats or otherwise desirable in the general interests of the lessees of the Building."*

The tribunal's decision and Reason for the decision

34. The Tribunal consider that the cost of £300 is not payable

35. The tribunal noted that this item of work was not in the view of the Tribunal covered by the terms of the lease. The Tribunal consider that clause 7 in the main dealt with works at the premises, and as no provision is made for the payment of this sum then it is not payable in accordance with the terms of the lease.

36. The Tribunal also noted that the terms of the management agreement which whilst not placing an obligation on the managing agent to take minutes of the meeting, there is an obligation to attend the AGM and board meeting on a quarterly basis.

37. The Tribunal noted that the freehold to the estate is owned by the Statham and Sherard Court Management Company Limited, in this capacity there should be articles of association and other provisions made for the expenses of running the company. The Tribunal considers that the wording of the lease is sufficiently wide to enable the cost of the minute taking to be paid for from the service charges. The Tribunal find that the sum of £100.00 for taking the minutes is reasonable and payable.

The Managing agent's fees

38. The Applicant's case was set out in the Respondent's statement of case at paragraph 22. In relation to the managing agent, the Tenant contends that she received *'dismal performance and appalling customer care in 2013'*. The allegations of fact supporting this argument were set out as follows-: *22.1 That the managing agent is based in Nottinghamshire and only attends the Property once a week; 22.2 The managing agent has failed to supply notes in a legible format or produce site inspection records 22.3 Site supervision of MPP Ltd was inadequate; 22.4 The managing agent removed items from the hallway outside the Tenant's flat..."*

39. At the hearing the Applicant confirmed that she was dissatisfied with the management, although the Applicant did not specifically cite all the grounds set out in paragraph 22 in support of her claim.

40. Ms Addison in her evidence stated that Mr Perry managed the estate from Hucknall in Nottinghamshire and that this was a distance of over 125 miles from the residential estate. She further stated that he claimed to attend the property once a week. There were no attendance records or property inspection reports available for the years 2010, 2011 and 2012. She also wanted to know about the basis of Mr Perry's firm's appointment.

41. Ms Addison stated that she did not believe that he attended the site as he stated as there was no records to say that he attended each block; she also noted that some of the notes said 'on site' but were written on dates that corresponded with the weekend.

42. Ms Addison was asked whether she had looked at the scale of the charges suggested by other managing agents. She accepted that she had not; she did not have experience of how other managing agents worked and said she would place reliance upon the Tribunal's own knowledge and experience.

43. Mr Perry provided verbal confirmation of the range of responsibilities carried out by the managing agents. Mr Perry set out that he was responsible for handling all practical and financial matters that arose in relation to the estate. He instructed contractors in respect of repairs, liaising and responding to leaseholders' requests, dealing with invoices, service charge demands and service charge accounts. The managing agent also had responsibilities in relation to attending board meetings. Mr Perry informed the Tribunal that he was a chartered surveyor and as such was a qualified property professional.

44. Mr Perry stated that the contracts at the property involved ensuring that the water pumps, lighting, door entry and lifts were maintained, as well as managing the gardening contractors. Mr Perry stated that annually the Management Board would review what contracts were in place and if they were considered to represent good value for money, then the contracts would be allowed to rollover (this was the same for the contract for the management of the premises).

45. As managing agent he attended the property on a weekly basis. Mr Perry stated that he wrote notes whilst at the premises which were then taken from his note pad and filed at his office. Mr Perry confirmed that he had business in London which meant that he was in London for one or two days a week. His offices being in Nottingham was not considered by him or the board to being a barrier or detriment to his appointment.

46. He stated in his written evidence that in 2006 the board had invited his firm along with three others to tender for the contract for the management of the premises, and he was specifically appointed because of his proposed service levels, and commitment to visit the premises, on a weekly basis, a commitment that he had maintained.

47. Mr Perry in his written evidence stated-: *Samples of Mr Perry's handwritten site notes have been provided to the Applicant but not in their entirety as they were never intended for anyone other than the writer and they include some sensitive and personal information. The allegation that these notes were not made at the time of each site visit is refuted and is a slur on the professional integrity of Mr Perry..."*

48. Mr Perry also stated that his charges were in his view reasonable; they were subject to the same scrutiny as other contracts and compared favourably with other managing agents' charges. He stated that there was an additional safeguard in that he was also monitored by RICS and was subject to an audit every three years.

The tribunal's decision and Reason for the decision

49. The Tribunal find the cost of management reasonable and payable

50. The Tribunal have considered the cost of the management and have weighed this with the service provided. The Tribunal noted that although the Applicant was not satisfied about the cost, the Applicant did not rely upon evidence of alternative costs; neither did the Applicant have a full appreciation of the nature and type of services undertaken.

51. The Tribunal had an opportunity to consider the management agreement together with the oral evidence from Mr Perry. The Tribunal noted that the agreement provided for weekly inspections. This was a more intensive regime than normally provided for in most management agreements. The Tribunal also noted the range of duties undertaken and that the cost per unit in: 2011 @ £35,537 incs VAT = £200/unit gross/ £167/unit net]. Based on the Tribunal's knowledge and experience the Tribunal are satisfied that the costs were reasonable and payable and that they were throughout the period in issue within the industry norm [why tempt fate?].

52. The Tribunal accept that the sum charged for management fees throughout the period is reasonable and payable.

Unnecessary electrical work/ Electrical repairs-

53. In her Application the Applicant stated that-: "... *In 2010-2011 the management company replaced all communal electrical fittings in the development without any notification or consultation with fee paying residents. The Residential Estate was only built in 1999 by Bellway Homes and I submit here that there was nothing wrong with the light fittings in place. The lights were fully working ... The electrical fitting work was carried out by SSCMC Ltd Director Alex* Zoutsos *and was not only unnecessary but also of a terrible quality. There is not any form of professional opinion ...*"

54. Ms Addison stated that Mr Zoutsos was not qualified or insured to carry out the work.

55. In reply the Respondent stated that bulbs at the premises would fail prematurely, the lights were on 24 hours a day, it was apparent that the quality of light fitting was poor. In 2005 the board of directors decided that a wholesale replacement was needed.

56. Mr Zoutsos was an engineer who said that he could obtain light fittings (170 units) sourced at a competitive price. Mr Zoutsos was paid £2.50 for each bulb, £15.00 per installation and the actual fitting itself cost £45.00 at a total cost of £13,223. This was followed by additional cost using electricians in the sum of £8,866.81 in 2012. This was followed by on-going maintenance to the electrical lighting at a cost of £8,901.95.

57. In his witness statement Mr Perry referred to work which Alex Zoutsos undertook which in the view of Mr Perry saved the development thousands of pounds. Mr Perry stated that over the years various electricians had looked at the electrics to try and establish the problems which caused the light bulbs to fail; most had concluded that the fault was not with the wiring although the quality of the fittings was considered to be variable. There had been discussions about replacing the entire system but no agreement had been reached on this course of action. .

58. In his statement Mr Perry stated that-: *"...they were burning out due to overheating and which was never entirely overcome by replacing with different type of fitting... The managing agent's report to the Board dated 17th December 2013 sets out the benefits of LED fittings and which are now being installed whenever the existing fluorescent fittings fail..."*

59. Mr Perry did not accept that Mr Zoutsos did not have the qualifications to carry out the work. He stated that Mr. Zoutsos had a qualification as an electrician and worked for Accenture (a leading consultancy on technological matters). In the Scott Schedule he stated that the electrical work undertaken following Mr Zoutsos works were part of necessary maintenance not due to any faults in the work carried out by Mr Zoutsos. He relied upon the electrical insulation report which found the condition of the electrical installation unsatisfactory at the premises, which supported the Respondent's submission that this was a whole system problem.

60. Ms Addison refuted this; she referred to an invoice from DNG Electrical in which the company stated that they were called out to attend to faulty lift lobby lighting. In tracing the fault, it was found to be due to a wiring misconnection in the 2D28w light fitting on the first floor. *'...Reconnecting the fitting correctly replacing the blown fuse and checking all of the other fittings in this block for correct connections...'*

61. Ms Addison also referred to two emails, one from Ian Gayle, which included a photograph of faulty wiring. The email stated that the yellow and red cables shown should be reversed so that the emergency light fitting can operate. The email dated 7.11.2013 stated that the communal lighting was faulty: there was no means of turning off the light and the emergency light fitting on the top floor had been incorrectly wired.

62. The Applicant also relied upon an email produced at the hearing from CertSure *Electrical Safety Register*. This document concerned the need for registration of Mr Zoutsos prior to his undertaking electrical work. The email stated *"An electrician that is not registered can carry out electrical works as long as they have the relevant qualifications. They will not be able to certify the work if they are not registered..."* The Applicant submitted that the information on Mr. Zoutsos's qualifications or registration had not been provided.

The tribunal's decision and Reason for the decision

63. The Tribunal took account of evidence from the Respondents that there had been issues with the electrical installations at the property prior to Mr Zoutsos undertaking the work. However the tribunal could not be satisfied on the information before it that Mr Zoutsos had the relevant skills or qualifications to undertake the work of replacing the lamps and lights at the premises.

64. The Tribunal considers that as Mr Zoutsos was a director of the company, prior to his being engaged steps should have been taken to ensure that he was the best person for the job and that he was able to carry out the work in a manner that was effective.

65. It appeared to the Tribunal that the problems with the electrical installations were known to be widespread and given this, there is an issue as to whether it was reasonable for the cost of replacing the bulbs and the lights to have been incurred.

66. The Tribunal considers that there was sufficient information to suggest that this ought not to have been a priority given the state of the electrical installations which was found to be unsatisfactory. As a result the light bulbs continued to fail, and as a result the Applicant did not get the proper value of the work.

67. The Tribunal considers that it is not necessary to make findings on the standard of the work undertaken by Mr Zoutsos as the issue is the reasonableness of the cost of the work. The Tribunal considers that prior to the issue with the electrics being resolved it was not reasonable to change the fittings. Accordingly the Tribunal find that the cost of the work undertaken by Mr Zoutsos was in all the circumstances not

reasonable or payable. Accordingly the sum of £13,223.00 for the fittings undertaken by Mr Zoutsos is not reasonable and payable.

68. The Tribunal however noted that until proactive steps are taken to upgrade the electricals, it was necessary and will continue to be necessary to undertake ad hoc repairs. Accordingly the tribunal find the cost of repair to the electrical lighting reasonable and payable. Whilst it is not within the scope of the Determination to set out steps that need to be taken by the Respondent, the Respondent may wish to consider the scope of the work which might need to be taken to remedy the electrical faults at the premises.

Carpet Replacement

69. The Applicant asked for a determination on the basis that she considered that she had not been properly consulted under Section 20 of the Landlord and Tenant Act 1985. The cost of the carpet was not reasonable and she questioned the suitability of the carpet for the purpose.

70. In her witness statement Ms Addison stated that-: *"...the communal carpets were replaced in 2013 without any notice or consultation with the shareholders. The total figure is strategically split as under £14626 for 2013. Only six out of nineteen invoices were entered into the 2013 accounts with the average cost being £3656 per block. Based on these figures the estimated costs are £3000 per block for the further 13 blocks... The original communal carpet was industrial strength carpet has been unfortunately replaced by a domestic carpet (definitely not like for like) This carpet will clearly not last 10 years or even 3 years within high human traffic blocks..."*

71. The Respondent referred to a notice served dated 24 May 2011. This was a first stage section 20 notice, subsequently three quotations had been received and the Respondent had accepted the cheapest quotation from Murrey Castle Carpets, who were also considered to offer better value for money given that it was a deeper pile carpet and considered to be of superior quality.

72. A decision had been made to undertake a trial of one stairwell with the new carpet and then allow three months for the trial period. Subsequently all 18 stairwells had had their carpet replaced. Although the cost of the work was over the statutory limit for consultation, to date only £21,939.00 had been invoiced, although there were outstanding invoices which were due for approximately £35,000. Mr Perry had asked for the remaining invoices to be sent in and despite reminders this had not happened.

73. Mr Perry refuted the suggestion that the quality of the carpet was unsuitable. Mr Perry stated that there had in addition been no response from any of the leaseholders to the first stage notice. The board had discussed the issue at the AGM and decided that the cost of the carpet could be met from the reserve funds.

The tribunal's decision and Reason for the decision

74. The Tribunal have not seen the carpet and are not able to comment on the suitability of the replacement carpet compared to the original carpet and therefore make no finding on that issue.

75. In respect of the consultation, the Tribunal noted that there had been a first stage Section 20 notice served on 24 May 2011, this had not been followed up with full compliance with the section 20 consultation procedure neither had there been an application for dispensation under Section 20ZA.

76. The Respondent stated that not all the sums due had been invoiced, and therefore the implication appeared to be that as the sum paid by the Applicant was under the £250.00 threshold for consultation, that this somehow affected the obligation to consult. The Tribunal also noted that the work was spread over more than one service charge period and that some of the cost was paid from the reserve; nevertheless the carpet replacement was one scheme of work.

77. The Tribunal finds, notwithstanding the matters raised by the Respondent, that whether the sums paid for the carpet were from the reserve or due to be demanded from the leaseholders that there was an obligation to consult in accordance with section 20 of the Landlord and Tenant Act 1985, and that although the sum invoiced is less than the sum contracted, there remains an issue concerning the cost of the carpet.

78. The Tribunal have therefore determined that the sum due from the Applicant shall be capped at £250.00.

79. The Tribunal determine that the sum payable shall be limited to £250.00

Payments to Eugene Dunbar in the sum of £400.00

80. The Applicant stated that Mr Dunbar was a leaseholder and director of the board who had been paid £400.00 for supervision of the redecoration contract. Ms Addison considered that this sum was not

reasonable or payable as Mr Perry was responsible for the supervision of contracts, and also as a director there was a conflict of interest in his carrying out this work.

81. The Tribunal asked whether the Applicant had any issues with the way in which the redecoration had been carried out; she confirmed that she was satisfied in the manner in which this contract had been performed.

82. Mr Perry stated that supervision of major work was specifically not included in his contract and was an extra payable at 8% of the contract sum. He stated that Mr Dunbar was an experienced landlord who lived on site and was very experienced in dealing with builders; as such he was able to properly supervise the work and sign off on the contract. The contract had taken 3 months and Mr Dunbar had constantly been on site ensuring that the work was carried out to a reasonable standard. There had been no complaints about the redecoration work, and had the Respondent used a surveyor or indeed had Mr Perry undertaken the work it would have cost more. Mr Perry stated that the least it would have been was about 8% of the contract sum.

83. The Tribunal were given a copy of an email date 3 April 2014 from Mr Dunbar, confirming his experience, and a copy of the minutes of the board meeting, dated 21 February 2008, in which the directors had agreed to appoint Mr Dunbar to supervise the contract.

The tribunal's decision and Reason for the decision

84. The Tribunal find the sum of £400.00 payable

85. The Tribunal consider that this cost is reasonable and payable. In reaching its decision, the Tribunal have considered that the major works contract was £8026.00, and that no issues had been raised by anyone including the Applicant on the quality of the work. Had the Respondent used a surveyor to supervise the work this would have been at a cost of at least 8% of the contract cost and as Mr Dunbar was on site he was able to supervise the work more consistently, at a lower cost.

86. The actual cost to each of the leaseholders was £47.21 which in the Tribunal's opinion is a reasonable sum.

87. The Tribunal noted the Applicant's understandable concern about using one of the directors/ leaseholder to undertake this work and as such accept that where this occurs the managing agent should in future consider tendering for the work, to ensure that where leaseholders/directors are used that they are offering demonstrably good value and have the relevant skills to undertake the work.

Application under s.20C and refund of fees

88. At the hearing, the Applicant made oral submissions in support of her application under section 20C. The Applicant stated that she had no choice but to bring these proceedings as the Respondent had been unwilling to enter into a dialogue with her. This was denied by the Respondent.

89. Counsel for the Respondent was content that the cost should follow the findings of the Tribunal.

90. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, accordingly the Tribunal makes an order under section 20C

Ms MW Daley (Chair)

03 June 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

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

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

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

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

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19

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

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

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to 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-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

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

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(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) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(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, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation 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.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.