12097

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00MR/LSC/2016/0037
Property	:	Flat 5 32-34 Kingston Road, Portsmouth PO1 5RZ
Applicant	:	Glyn Buxton
Representative	:	Mills & Reeve Solicitors
Respondent	:	CCJ Management
Representative	:	Simon Slater
Type of Application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Member(s)	:	Judge Tildesley OBE Mr P Turner-Powell FRICS
Date and Venue of Hearing	:	Chichester Magistrates' Court and Tribunals Centre 18 October 2016
Date of Decision	:	2 December 2016

DECISION

Decisions of the Tribunal

1. The Tribunal makes the determinations as set out under the various headings in this Decision.

The Application

2. Mr Buxton sought a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicant in respect of the service charge years, 2007, 2011-2015, and estimated service charge for 2016 onwards.

3. A case management hearing was held on 20 May 2016, at which Mr Buxton agreed to limit his application to the following matters:

   - 2011, 2012 and 2013: management fees
   - 2014: electricity charge, gardening & grounds maintenance and window cleaning
   - 2015: gardening & grounds maintenance, window cleaning, cleaning, legal fees and management fees.
   - Estimated service charge for 2016

The Hearing

4. Mr Buxton appeared in person and was represented by Miss Julia Petrenko, counsel, at the hearing. Mr and Mrs Slater appeared for the Respondent.

5. The Applicant prepared the jointly agreed bundle for the hearing. References to documents in the bundle in the decision are in [ ]. Immediately prior to the hearing the parties handed in further documents which were added to the hearing bundle.

6. The Respondent produced a copy of the service charge accounts for the year ended 31 December 2015 which were included in the bundle at [345-349]. The Respondent indicated that the accounting year for the service charge would run in the future from 1 January to 31 December each year.

7. Prior to the hearing the Tribunal inspected the property in the presence of the parties.

The Background

8. The leasehold at Flat 5 is registered under title number PM10159. Mr Buxton holds the absolute title which was transferred to him alone on 8 December 2008 [46 & 47].

9. Mr Buxton holds Flat 5 under a lease dated 23 December 2003 for a term of 125 years from 1 November 2003 and made between Stylefront UK Limited (1), CCJ Management Company Limited (2) and Dean Stuart Buxton and Glyn Philip John Buxton (3).

10. On 11 November 2007 the freehold of the building was transferred form Stylefront Limited to Mr Simon Slater. Mr Slater was a director of CCJ Limited. Mr Slater also owns the leasehold interests of three of the six flats in the building.

11. The management company under the lease, CCJ Management Limited, was dissolved on 9 December 2008. Following which Mr Slater and Mrs Slater took over the management of the property under the trading name of CCJ management.

12. The building is a purpose built block of six flats which was built in 2003 on the site of two shops. The block was constructed of brick and tile roof with an intervening flat felt roof at the rear.

13. The block comprised three floors with one bedroom flats on the ground floor, two bedroom flats on the first floor and three bedroom flats on the second floor. Flat 5 was one of the three bedroom flats.

14. The building was accessed from Kingston Road through a controlled entry door system which opened into a communal hall way and stairs with landings on each floor leading to the flats. The hall way and stairs were carpeted with white emulsion on the walls. The lighting in the communal areas was controlled by sensor switches. An integrated fire alarm system was installed in the building.

15. The rear door to the building gave access to a small patio area which contained a brick built bin store, and a pathway leading to an alley with New Road. A new wooden fence had been erected either side of the pathway.

16. Under clause 6 of the lease Mr Buxton covenants with the landlord and as a separate covenant with the management company to pay the building service charge in the manner set out in the Fifth schedule. Clause 2.11 defines the building service charge as the building service charge proportion which is specified by clause 1.9 as one sixth.

17. The costs that can be recovered by the landlord under the building service charge include the costs and expenses incurred in the provision of building services, the repairing rebuilding or renewing the service installations, ways, pavements party walls or other fences,

the expenditure on an entry door system, the creation of reserves, and all fees, charges and expenses payable to a surveyor, accountant solicitor or other professional or competent adviser in connection with the management and or maintenance of the building. Part 11 of the Fifth schedule sets out the full list of costs covered by the building service charge.

18. Part 111 of the Fifth schedule describes the mechanism for collecting the building service charge. Essentially the management company prepares an estimate of the building costs for each calendar year. The tenant shall pay to the management company a provisional sum on account of such estimate on 1 January in each year. At the end of each year the management company shall prepare an account of the actual building costs for that year and serve it on the tenants. The tenant shall either pay a balancing payment or be entitled to a credit on the estimate for the subsequent year.

The Law

19. The Tribunal has power under Section 27A of the 1985 Act to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. However, no application can be made in respect of a matter which has been admitted or agreed by a tenant or determined by a Court.

20. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and 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.

21. When determining whether a service charge has been reasonably incurred, the Tribunal must be satisfied that the decision to incur cost is reasonable and that the actual cost is reasonable.

22. The question of whether works or services have been done to a reasonable standard is a matter of evidence. If the Tribunal determines that the standard has fallen short the appropriate order is to make a deduction in the amount charged rather than excluding the costs in their entirety.

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

Consideration

24. Mr Buxton stated that he had been living abroad for eight years and had been unaware of the day-to-day management of the property. Mr Buxton said that about two years ago Mr Cassidy of Flat 3 informed

him about alleged mismanagement of the building. As a result of this information Mr Buxton made enquiries of Mr Slater, and according to Mr Buxton was met with resistance and a lack of transparency regarding the composition of the service charges. Mr Buxton's principal concern was that Mr Slater had allegedly been using the service charge payments for his own profit.

25. Mr Slater denied the allegations put by Mr Buxton. Mr Slater said that between 2007 and 2014 the service charge had remained constant at £550. Mr Slater stated that he had carried forward any surpluses until the following year and had personally borne deficits in the belief that they would be absorbed in the following years. According to Mr Slater, Mr Buxton had paid every service charge without quibble until the demand for 2015.

26. Mr Slater explained that in October 2014 he informed the leaseholders that the charge of £550 per year was no longer sufficient and that it would be necessary to increase it to £789 per year. Mr Slater said that at the time he received no comments from the leaseholders about the proposed increase, and as a result he sent out the demand for £789 in December 2014. Mr Slater stated that he heard from Mr Buxton on 30 January 2015 when Mr Buxton said that he had no intention of paying the service charge, and had instructed Mills & Reeves solicitors to act for him. There followed a series of correspondence between the parties which eventually led to Mr Buxton making this application to the Tribunal

27. The parties completed a "Scott Schedule" [35-38] which highlighted the areas of disagreement. Mr Buxton in the "Scott Schedule" raised matters which went beyond the dispute as identified at the case management hearing. Mr Slater did not respond to these matters in the "Schedule" saying that they fell outside the directions. The Tribunal kept Mr Buxton to the terms of the agreed dispute. Miss Petrenko asked the Tribunal to consider the other matters but after the Tribunal declined her invitation Miss Petrenko did not pursue the point.

28. The Tribunal, however, permitted Miss Petrenko to make a preliminary submission on to whom the service charges were payable under the terms of the lease.

29. Miss Petrenko submitted that the lease was tri-partite between the landlord, the management company and the tenant. Miss Petrenko contended that under the terms of the lease the management company was responsible for the provision of services and for the collection of service charges. Miss Petrenko referred to the fact that the management company which was the party to the lease had been dissolved, and not replaced. According to Miss Petrenko, Mr and Mrs Slater had taken over the management of the property and traded under the name of the original management company, CCJ Management. In Miss Petrenko's view, the service charge was only

payable to a management company constituted in a similar manner to the original company and not to Mr and Mrs Slater trading under the name of CCJ management. Miss Petrenko relied on clause 8.4 of the lease which said that a landlord could only step in the place of the management company at the request of the tenant. Miss Petrenko stated that Mr Buxton had not requested Mr Slater to take over the responsibilities of the management company.

30. Mr Slater stated the previous freeholders asked the leaseholders to purchase the freehold and take over the management of the property. According to Mr Slater, at that time Labyrinth Properties were the managing agent for the property and had organised little or no maintenance. Mr Slater said that he reluctantly decided to take on the property and its management because none of the other leaseholders were interested. Mr Slater asserted that he shared his intentions with Mr Buxton and the other leaseholders.

31. Mr Buxton accepted that Mr Slater had informed him about taking on the management of the property. Mr Buxton stated that he felt convinced by Mr Slater's reassurances on managing the property.

32. Mr Slater stated that he was advised by his legal advisers not to continue with the management company in its present form because of the costs associated with a company registered at Companies House.

33. The Tribunal accepts Mr Slater's account of the events leading to him and his wife taking over the management of the property. The Tribunal observes that the lease gave no indication of the form that the management company should take. Mr Buxton argued that under its constitution each leaseholder was a member had a say in the running of the company. Mr Buxton, however, did not produce a written copy of the constitution.

34. The Tribunal is not persuaded by Miss Petrenko's argument. The Tribunal considers that Mr Slater as landlord is entitled to receive the service charge under clause 6 of the lease which imposes an obligation on the tenant to pay the service charge to the landlord with a separate obligation to the management company.

35. The Tribunal also considers on the facts that the requirements of clause 8.4 were met allowing the landlord to perform the obligations of the management company under the lease.

36. The Tribunal now deals with each of the disputed years in turn.

Service Charge for the Year Ended February 2011

37. The financial statement for year ended February 2011 showed expenditure of £2,922.86 [296]. The sole issue in dispute was

management fees which were recorded at nil. Mr Buxton at the hearing withdrew his challenge to the fees.

38. **The Tribunal determines the service charge for year ended February 2011 at £2,922.86. Mr Buxton is liable to pay one sixth which equals £487. 14.**

Service Charge for the Year Ended February 2012

39. The financial statement for year ended February 2012 showed expenditure of £3,279.82 [301]. The sole issue in dispute was management fees which were recorded at £250. Mr Buxton at the hearing withdrew his challenge to the fees.

40. **The Tribunal determines the service charge for year ended February 2012 at £3,279.82. Mr Buxton is liable to pay one sixth which equals £546. 63.**

Service Charge for the Year Ended February 2013

41. The financial statement for year ended February 2013 showed expenditure of £3,386.62 [306]. The sole issue in dispute is management fees which were recorded at nil. Mr Buxton at the hearing withdrew his challenge to the fees.

42. **The Tribunal determines the service charge for year ended February 2013 at £3,386.62. Mr Buxton is liable to pay one sixth which equals £564.43.**

Service Charge for the Year Ended February 2014

43. The financial statement for year ended February 2014 showed expenditure of £4,734 [311]. The issues in dispute were management fees (nil), electricity charge [£1,333.32], gardening and grounds maintenance [£250], and window cleaning [£144].

44. Mr Buxton at the hearing withdrew his challenge to the management fees.

45. The management accounts [93 & 94] showed that the electricity charge of £1,333.32 included two invoices from JT Electricals for works on the lighting in the hallway and stairs [250 & [251]. The amount spent on electricity for the communal supplies was £192.59. Mr Buxton accepted the electricity charge when Mr Slater explained that the charge included the invoices from JT Electricals but expressed concern about the transparency of the accounts.

46. There were three invoices for garden and grounds maintenance in the year ended February 2014: Dave Spratt dated 22 May 2013 in the sum of £320 for two days for tending the rear garden [253]. Dave Spratt dated 15 August 2013 in the sum of £200 for tending to the Knotweed

and strip out the old fence [254]. Quickaway, Licensed Waste Carrier dated 26 August 2013 in the sum of £250 for removal of waste [256]. Mr Slater had allocated the expenditure to "Sundries" in the accounts rather than under a separate expenditure head of gardening and grounds maintenance.

47. Mr Buxton argued that he had seen no evidence that work to the garden area had been carried out on a consistent basis since the start of the lease. According to Mr Buxton, Mr Cassidy the owner of Flat 3 had complained about the state of garden and the garden fences for the last two years. Mr Buxton referred to photographs taken by Mr Cassidy on 14 December 2015 which showed collapsed fences with the neighbouring properties and a patio area which was unkempt and requiring attention [48-51; 53-56]. There were also photographs of the gardens of the two neighbouring properties which were in a very poor state of maintenance. Mr Buxton asserted that the photographs demonstrated that the state of disrepair of the garden area was due to the Respondent's neglect over a significant period of years.

48. Mr Slater stated there was a small garden area at the rear of property which required maintenance at least twice a year to kill weeds and shrubs. Also Mr Slater said there was a particular problem with tenants and members of the public via the alley at the back dumping rubbish at the property. Mr Slater said these services had in the past normally been absorbed by him. He had paid the invoices direct because of the lack of funds in the service charge accounts.

49. Mr Buxton in the "Scott Schedule" identified one invoice which was in the sum of £250 which he said was to repair the fence. In fact, the only invoice for £250 was the removal of rubbish by Quickaway.

50. The amounts charged for gardening in the year ended February 2014 were £520, of which £200 was to deal with the specific problem of Knotweed which was growing in the garden of the adjoining property. The remaining invoice of £320 for two days work on tending the rear garden was on the high side having regard to the size of the garden and the nature of the work involved. Mr Buxton, however, adduced no evidence of alternative quotations for the work.

51. Mr Buxton's principal complaint concerned the standard of works done and Mr Slater's apparent neglect of his responsibilities as a landlord. Mr Buxton, however, relied on what he was told by Mr Cassidy and photographs which were taken in December 2015. The photographs gave a skewed impression of the position by including photographs of the neighbouring properties' gardens which were in a terrible state.

52. The Tribunal, on balance, finds that the charges for gardening and grounds maintenance were reasonably incurred.

53. The remaining dispute related to window cleaning which Mr Buxton said was for £144. Mr Slater pointed out there was no contract for window cleaning and no separate charge for window cleaning in the service charge accounts for year ended February 2014. In those circumstances the Tribunal has no determination to make.

54. **The Tribunal determines the service charge for year ended February 2014 at £4,734. Mr Buxton is liable to pay one sixth which equals £789.**

Service Charge for the Year Ended February 2015

55. The financial statement for year ended February 2015 showed expenditure of £5,040 [317]. The issues in dispute were management fees (nil), gardening and grounds maintenance [£560], cleaning [£600], window cleaning [£nil] and legal fees [£722].

56. The charge of £560 for gardening and grounds maintenance was substantiated by two invoices from The Joiners Shop in the separate sums of £280 [258 -259]. The invoices covered the periods from Autumn 2013 to Spring 2014, and Spring 2014 to Autumn 2014. The works were described in the invoices as *"to tend to rear garden, clear paving of cigarette butts, and general litter. Clear weeding over whole area, cut back bramble growth and, laurel and weed stones"*.

57. Mr Slater runs his joinery business under the trading name of *The Joiners Shop*. Mr Slater told the Tribunal that *The Joiners Shop* had contracted for the work which was carried out by its employees.

58. Mr Buxton objected to the 2015 charge on the same basis as the 2014 gardening charge. Mr Slater produced photographs of the problems caused by outgoing tenants by depositing rubbish at the property which were taken in August 2016 [184]. The photographs also showed the work done to improve the appearance of the outside areas including the erection of new fences either side of the path [183]. This standard of maintenance had been sustained at the time of the inspection in October 2016.

59. The Tribunal restates its observation that the charges for gardening were on the high side. The Tribunal is also concerned that the work was carried out by Mr Slater's business which raised doubts about the transparency of the costs. Mr Buxton, however, did not pursue this point at the hearing and supplied no alternative quotations for the work.

60. The Tribunal notes Mr Slater's intention to appoint agents to manage the property and one of their tasks should be to review the arrangements for the gardening contract.

61. The Tribunal, on balance, finds that the charges for gardening have been reasonably incurred.

62. The charge for cleaning in the year ended February 2015 was £600. The Respondent engaged contractors by the name of Marks and Sparks to carry out the cleaning of the communal areas.

63. Marks and Sparks charged an hourly rate of £12.50 and visited the premises twice a month for two hours at a time. Marks and Sparks invoiced the Respondent monthly for £50. Copies of the invoices were in the bundle at [228-240].

64. The invoices described the works as *"to clean external windows and entrance door and wipe down exterior plastic. Sweep down and collect rubbish and debris from rear to property. Internal cleaning to communal areas: vacuumed carpeted areas, mop tiled areas. Dust and wipe down bannisters and skirting"*.

65. Mr Buxton objected to the charge for cleaning on three grounds. The first was that Mr Slater's daughter was the proprietor of Marks and Sparks. Counsel submitted the engagement of Mr Slater's daughter raised a strong presumption that Mr Slater was profiteering from the collection of service charge.

66. Second Mr Buxton said the charge was excessive saying that there had been a 300 per cent increase from 2010/11 when the charge was £200 per annum. In Mr Buxton's view, the hallway and stairs accounted for a small square footage in the building which could be cleaned in 30 minutes to 1 hour once a month or every quarter.

67. Mr Buxton's final objection was that the cleaning was not done to the required standard. In this respect Mr Buxton relied on photographs taken of the inside of the building which according to Mr Buxton showed a build-up of grime over a long period of time [59-63]. The photographs were not dated and showed the area close to the entrance door from the street. There was a photograph of somebody holding a cloth with black marks on it. Mr Buxton also said that no cleaning was done until Mr Cassidy of Flat 3 complained about the state of cleanliness.

68. Mr Slater stated the photographs produced by Mr Buxton were taken in 2013 by Mr Cassidy when he complained about the quality of the cleaning. According to Mr Slater at that time there was insufficient funds in the service charge account to pay for cleaning on a regular basis which was why in some years the annual charge was as low as £200.

69. Mr Slater pointed out that the entrance to the property fronted a very busy A3 London Road which has constant heavy traffic and footfall. Mr Slater stated that the occupants of the property were tenants of the long leaseholders who often left the front door open allowing dirt and debris to collect on the inside of the hallway. Mr Slater produced photographs which had been taken recently by the current cleaning

company showing the build-up of dirt between fortnightly cleaning [182].

70. Mr Slater accepted that his daughter was the proprietor of Marks and Sparks. Mr Slater asserted that at the time he was unable to get other firms to clean the property. Further Mr Slater stated that the rate charged by his daughter's firm was competitive. Recently the Respondents have engaged another cleaning firm which charged £64.80 a month on a reduced specification which did not include the sweeping of the rear garden area.

71. The Tribunal finds that the hallway and stairs were relatively large and that the cleanliness of the property was affected by the entrance door opening immediately onto a busy thoroughfare. The Tribunal is also satisfied that it would be reasonable to clean the common areas every fortnight having regard to the size of the common areas, the location of the property and the number of tenants entering and leaving it.

72. The Tribunal finds there was no evidence that Mr Slater was profiteering from the arrangements with his daughter. She was running her own cleaning business. The Respondent's arrangements with Marks and Sparks were transparent with the submission of detailed invoices at regular intervals. The Tribunal is also satisfied that the rate of £12.50 per hour was reasonable and competitive. Mr Buxton produced no evidence of alternative quotations. Mr Slater relied on the evidence of the charges of the current cleaners which were higher than those of Marks and Sparks.

73. The Tribunal is not persuaded by Mr Buxton's evidence on the poor standard of cleaning. The photographs related to 2013 when it was accepted by Mr Slater that the cleaning was not up to standard because of the lack of funds in the service charge account. Also the photographs were of the immediate area close to the entrance door which in the Tribunal's view would get dirty very quickly.

74. The Tribunal, therefore, determines that the charge of £600 per annum for cleaning had been reasonably incurred and the works were to the required standard.

75. The disputed costs for window cleaning were incurred in the period March 2015 to December 2015 and will be considered under the next heading.

76. The final area of dispute concerned costs of £724 which had been recorded under the budget heading of HM Courts and Tribunals.

77. Mr Slater explained that the Respondent was ordered to pay £724 costs by the County Court in relation to proceedings brought by Mr Cassidy of Flat 3 for breach of landlord's repairing covenant.

78. Mr Slater argued that the costs were recoverable under paragraph 9 part II of the Fifth schedule to the lease which reads as follows:

> "All fees charges and expenses payable to any surveyor accountant solicitor architect or other professional or competent advisor or any agent or contractor in connection with the management and or maintenance of the building, and in or in connection with the preparation or auditing of Building Costs, accounts and the collection of the Building Services Charge and enforcing the performance and observance by the Tenant and the other tenants of the Flats of their obligations and liabilities".

79. Mr Buxton argued that the recovery of the court award through the service charge was an abuse.

80. The Tribunal finds that the correct classification of the £724 was costs ordered by the Court against the Respondent in proceedings brought by another leaseholder. These costs were not fees paid by the Respondent to a professional of whatever description in connection with the management or maintenance of a building. The Tribunal is satisfied that the costs of £724 did not fall within the recoverable costs as authorised by paragraph 9 part 11 of the Fifth schedule

81. The Tribunal also does not consider that the amount of £724 was recoverable under paragraph 8 of part 11 to the Fifth schedule which states:

> "All other expenses (if any) incurred by the Management Company or its agents in or about the maintenance and proper and convenient management and running of the building".

82. The Tribunal interprets paragraph 8 as a sweeping up clause which concerned costs incurred by the Respondent in the proper performance of its management and maintenance responsibilities under the lease. In the Tribunal's view the court award of £724 arose from the Respondent's failure to carry out its responsibilities, and, therefore, not covered by the wording of paragraph 8.

83. The Tribunal disallows the costs of £724 from the service charge for the year ended February 2015.

84. **The Tribunal determines the service charge for year ended February 2015 at £4,316 (£5,040-£724). Mr Buxton is liable to pay one sixth which equals £719.34.**

Service Charge for the Year Ended 31 December 2015

85. The financial statement for year ended February 2015 showed expenditure of £3,802 [348]. The issues in dispute were management fees (nil), gardening and grounds maintenance [£660], cleaning [£620] including window cleaning [£144] and legal fees [£522].

86. This financial statement was not included in the original hearing bundle and added to the bundle at the commencement of the hearing. The Respondent sent a copy of this financial statement to Mr Buxton on 17 June 2016. The accompanying letter explained that these costs would also need to be considered at the Tribunal hearing [345]. The letter also informed Mr Buxton that all future year's accounts would run from 1 January to 31 December each year.

87. Mr Slater adduced no invoices to substantiate the expenditure on gardening and grounds maintenance. The Tribunal, however, on balance, accepts that works were carried out to the garden during this period. In view of the absence of invoices, the Tribunal limits the costs to that claimed the previous year adjusted for 10 months rather than 12 months.

88. The Tribunal, therefore, determines that costs of £466.67 have been reasonably incurred for gardening and grounds maintenance in the year ended 31 December 2015.

89. Mr Slater arranged for the communal windows to be cleaned by a professional contractor at the request of Mr Cassidy of Flat 3. The specification was that the windows to the front and rear glazed areas on each elevation (excluding roof skylights) would be cleaned every two months at a cost of £24 (£20 plus VAT) for each visit [260].

90. It would appear that the work commenced in March 2015, and the total costs for the period to the end of December 2015 was £120 not £144 as stated in the "Scott Schedule". The Respondent produced five invoices from Central Cleaning Services to substantiate the costs [261-265].

91. Mr Buxton said that the cleaning related to two sets of windows which could be carried out once every six months. Mr Buxton stated there was an element of double charging because the cleaner engaged to do the communal areas, also cleaned the windows.

92. The Tribunal notes that Mr Buxton has not adduced evidence of alternative quotations for window cleaning. The Tribunal accepts Mr Slater's evidence that the cleaners for the communal areas only cleaned the glass in the entrance door. The Tribunal observes that the specification from the new cleaners for the communal area albeit from June 2016 did not include cleaning the windows except for removing finger marks from the glass in the entrance doors.

93. The Tribunal having regard to the nature and location of the building considers that it was reasonable for the Respondent to arrange for the windows to be cleaned once every two months. The Tribunal is also satisfied that a charge of £20 plus VAT was not excessive, particularly when independent contractors were used.

94. The costs of the window cleaning were included in the £620 charge for cleaning, which left £500 for cleaning the communal areas (10 payments of £50 per month).

95. The Tribunal repeats its findings on the standard of cleaning as set out under the service charge for the year ended February 2015. The Tribunal decides that a charge of £620 has been reasonably incurred on cleaning for the period ended 31 December 2015.

96. The final challenge under this period was to a charge of £522 which represented the legal costs incurred by Mr Slater with regard to this dispute with Mr Buxton.

97. The Respondent produced an invoice from Bramsdon and Childs solicitors in the sum of £435 plus VAT of £87 to substantiate the charge [136]. The description of works in the invoice as follows:

> "Professional charges in providing ad hoc legal advice with regard to your dispute with Mr Buxton relating to a service charge increase at Oxon court.
>
> The matter is currently being dealt with by Serhan Handani, a paralegal. Time charged at £150 per hour. Routine letters and telephone calls charged at £15 per item. Perusal of letters received charged at £7.50 per item. Emails charged at the postal rate.
>
> To include writing a total of 9 letters/ emails (£135) and receiving (£60) and includes 11 units of telephone calls (£165).
>
> To include 30 minutes of research on the jurisdiction and composition of the LVT (£75)".

98. Originally the Respondent considered that it could recover the costs as an administration charge payable in full by Mr Buxton. In this respect the Respondent relied upon paragraphs 3 and 3.3 of part 1 of the Fourth schedule to the lease. The Respondent, however, also added the costs to the service charge account for the year ended 31 December 2015.

99. Mr Buxton disagreed that he should be charged for Mr Slater's legal costs in responding to his challenge about the nature of the maintenance costs and their transparency. According to Mr Buxton, he had instructed a lawyer to demonstrate how seriously he was taking his responsibility to pay the service charge. Mr Buxton said that Mr Slater refused to communicate directly with him and advised Mr Buxton to contact his solicitors. Finally, Mr Buxton disagreed with Mr Slater's assertion that the charges had been incurred in the pursuit of unpaid service charges.

100. Mr Slater took a different perspective from Mr Buxton. Mr Slater argued that these costs arose because Mr Buxton was not satisfied

with Mr Slater's initial response of 3 February 2015. Mr Slater insisted that he had met in full Mr Buxton's requests for information.

101. The Tribunal does not consider the legal costs incurred by Mr Slater can be recovered as an administration charge payable in their entirety by Mr Buxton.

102. The Fourth schedule sets out the tenant's covenants. Paragraph 3 to the Fourth schedule states as follows:

> "To pay to the Landlord all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors surveyors and bailiffs) incurred by the Landlord in relation to or incidental to:
>
> > 3.1 Every application made by the Tenant for consent or licence required by the provisions of this lease.
> > 3.2 The preparation and service of a Notice under the Law of Property Act 1925 section 146 or incurred by or in contemplation of proceedings under section 146 of 147 of that Act notwithstanding that the forfeiture is avoided or otherwise than by relief granted by the Court.
> > 3.3 The recovery or attempted recovery of arrears of Rent or other sums due from the Tenant.
> > 3.4 Any steps in connection with the preparation and service of a Schedule of Dilapidations during or after the expiration of the Term".

103. The Tribunal's concludes from its examination of the correspondence between the respective solicitors that Mr Slater's solicitors were responding to Mr Buxton's requests for information on the make-up of the service charges [64-79]. Mr Slater did not instruct Bramsdon and Childs to take proceedings against Mr Buxton for non-payment of service charge. Bramsdon and Childs' advice on the Tribunal's jurisdiction was connected to Mr Buxton's application.

104. The Tribunal is satisfied from the above findings that the costs of Bramsdon and Childs were not incurred on the categories of work identified in paragraphs 3.1 to 3.4 to part 1 of the Fourth schedule. Thus the costs cannot be recovered as an administration charge.

105. The Tribunal considers the position is different when the costs are viewed as a service charge. In this respect the relevant clause in the lease is paragraph 9 part II of the Fifth schedule which was quoted in full in the preceding section.

106. The Tribunal is satisfied that the costs incurred on correspondence responding to Mr Buxton's request for information would fall within *All fees charges and expenses payable to a solicitor in connection with the management of the building.* The Tribunal, however, does

not consider that paragraph 9 covers the charge for research on the jurisdiction and composition of the Tribunal.

107. The next question concerns the reasonableness of the costs. The Tribunal finds that Mr Slater was charged the hourly rate for a para-legal which was lower than that for a qualified solicitor. Further the Tribunal is satisfied that Mr Slater's action in appointing a solicitor to deal with further correspondence was reasonably particularly as Mr Buxton had decided to act through a solicitor.

108. The Tribunal finds that legal costs of £360 plus VAT of £72 have been reasonably incurred.

109. **The Tribunal determines the service charge for year 31 December 2015 at £3,518.67 (£3,802-£193.33 (Gardening) - £90 (legal)). Mr Buxton is liable to pay one sixth which equals £586.44.**

Estimated Service Charge for the Year Ended 31 December 2016

110. The estimated service charge for the year ended 31 December 2016 was £5,679 [319] comprising cleaning £600, window cleaning £144, external ground maintenance £600, communal electric £210, daily repairs £810, building repairs £900, health & safety £210, insurance administration £45, insurance £360, book-keeping £150, accounts fees £150, and management fees £1,500.

111. Mr Buxton repeated his objections to the reasonableness of the charges for cleaning, window cleaning and external ground maintenance as stated in previous years.

112. Mr Buxton considered the estimated charges for daily and building repairs dubious and, in his view, were intended to extract as much money as possible out of the leaseholders. Mr Buxton had no idea of the bases for the charges of £45 and £210 for insurance administration and health and safety respectively.

113. Mr Buxton contended that the charges for book-keeping and accounts fees seemed duplicated. Mr Buxton pointed out that the charge for both was £100 prior to 2014 and then increased to £150 for both.

114. Mr Buxton strongly challenged the proposed management charge of £1,500 believing this was an attempt by Mr Slater to secure a profit from managing the property.

115. Mr Slater argued that the estimated charges for cleaning, window cleaning, external ground maintenance, daily and building repairs were reasonable because they were derived from the amounts expended in previous years on these expenditure items.

116. Mr Slater said that the charge of £45 for insurance administration represented the value of his time spent in telephoning insurance brokers to arrange the insurance. Likewise, the charge of £150 for book-keeping was the amount of time spent by Mrs Slater on the accounts for the property. In addition, the Respondent had paid an accountant to prepare the financial accounts for the year end. In September 2015 the Respondent paid S & H Newland, accountant, £150 for checking books and records and preparing financial accounts for the year ending 28 February 2015 [267].

117. Mr Slater stated that the charge of £210 was for the employment of a second person for the purpose of the twice yearly roof inspection and maintenance programme as required by law.

118. Mr Slater indicated that he was seriously considering the appointment of an external agent to manage the property particularly after this dispute. According to Mr Slater, a managing agent had suggested a charge of £1,500 plus VAT would be considered reasonable for a block of six flats with a rear garden and internal communal area.

119. The Tribunal is concerned with the estimated service charge budget for the year ended 31 December 2016, not with the actual service charge for that period. When examining a budget, the Tribunal has regard to section 19(2) of the 1985 act which provides that

> "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 charge or otherwise".

120. The Tribunal considers the correct approach for determining the budget for the year ended 31 December 2016 is to assess the reasonableness of the costs at the time the budget is demanded (December 2015) having regard to expenditure in previous years.

121. The Tribunal considers the charges for cleaning (£600), window cleaning (£144), external ground maintenance (£600), daily repairs (£810), building repairs (£900), and accounts (£150) reasonable because they were derived from the expenditure figures for previous years. In this regard the Tribunal makes an adjustment of the charge for ground maintenance to £560 to reflect the Tribunal's determination for previous years. The Tribunal notes that Mr Buxton did not dispute the £210 for communal electricity.

122. Applying its own general expertise and knowledge of property management, the Tribunal is satisfied that a charge of £1,500 which works out at £250 per flat (excluding VAT) for external managing agents was reasonable for a block of this size. The Tribunal recognises that no appointment has been made in 2016 so this amount would have to be set off against the payments of the service charge for

subsequent years in accordance with paragraph 4 of part 111 of the Fifth schedule to the lease.

123. The Tribunal finds that the Respondent has charged for the time taken by Mrs Slater in keeping the books of account since 2011/12 when it was recorded as sundry expenditure. The amount charged has increased from £100 to £120 and then to £150 in the service charge for the year ended 31 December 2015. Mr Buxton has only challenged the estimated amount for 2016.

124. Where a managing agent is in place, the Tribunal would expect the managing agent to keep the books of account for onward transmission to an accountant for preparation of the annual service charge accounts. In this case the Respondent has not so far used the services of a managing agent, the Tribunal in these circumstances was satisfied that the services of Mrs Slater as a book-keeper are necessary and authorised by the lease under paragraph 8 of part 11 of the Fifth schedule to the lease. The Tribunal, however, limits the amount to £120 rather than the £150 claimed.

125. The Tribunal is not convinced that the proposed expenditure of £210 for health & safety and £45 for insurance administration were necessary and reasonable. The Tribunal would expect the former to be included in the estimate for building repairs. The Tribunal sees no justification for the £45 charge which the Tribunal understands represented the cost of Mr Slater's time in telephoning brokers to arrange the property insurance for the building.

126. **The Tribunal determines the estimated service charge for year 31 December 2016 at £5,359 (£5,679-£40 (Gardening) - £210 (Health and Safety) - £45 (Insurance administration) - £25 (book-keeping)) Mr Buxton is liable to pay one sixth which equals £893.17.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

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 the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate 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).