10480

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	: MAN/00BY/LSC/2014/0078
Property	: Flats 34,35,37 and 41 The Bluecoats, Springhill Court Liverpool L15 9EJ
Applicant	: Blue Coat Court Management Company Limited
Representative	: Urban Owners Limited Mr Stephen Charles, Legal Manager
Respondent	: Mr. John Nixon
Representative	: Mrs Roberts of Counsel
Type of Application	: Service Charge determination s27A Landlord and Tenant Act 1985
Tribunal Members	: Mr John Murray LLb Mr David Bailey FRICS Mr Leslie Bottomley
Date and venue of hearing	: Civil and Family Court 35 Vernon St Liverpool L2 2BX 10 December 2014
Date of Decision	: 10 December 2014

DECISION

DETERMINATION

The Tribunal determines that the Service Charges will be as follows

Service Charge 2011

Flat 34 £594.80
Flat 35 £594.80
Flat 37 £65-.31
Flat 41 £849.53

Service Charge 2012*

Flat 34 £364.97
Flat 35 £364.97
Flat 37 £470.19
Flat 41 £764.77

The Tribunal has made no determination under s27a in relation to charges for Electricity. The total charges for the year for Electricity for the service charge year 2012 have been removed from the figures above. The parties are to discuss the charges in the light of s20B Landlord and Tenant Act 1985 and in the absence of reaching agreement as to liability may refer the matter back to the Tribunal for a subsequent paper determination.

Service Charge Year 2013

Flat 34 £1299.52
Flat 35 £1299.52
Flat 37 £1418.84
Flat 41 £1896.32

Service Charge Year 2014

Flat 34 £1022.20
Flat 35 £1022.20
Flat 37 £1117.94
Flat 41 £1452.26

An order is made under s20c Landlord and Tenant Act 1985 preventing the Applicant from adding 50% of the costs of these proceedings to the service charge.

INTRODUCTION

1. The Applicant Management Company applied to the Tribunal under s27A of the Landlord and Tenant Act 1985 for determination of liability to pay and reasonableness of service charges for the years 2011, 2012 2013 and 2014 for four flats held on lease by the Respondent at 34,35, 37 and 41, The Bluecoats Springhill Court Church Road in Liverpool.

THE PROCEEDINGS

2. Directions were made by a Procedural Judge on the 23 June 2014.

3. The Applicant was required to file and serve within 21 days of the Directions a statement of case detailing the service charges for each year concerned and explain the basis on which charges are applied calculated and apportioned. Documentation in support was specified.

4. The Respondent was required to respond within 21 days of receipt of the Applicant's statement of case identifying reasons for opposing the application.

5. Provision was thereafter made for the Applicant to respond to the objections.

6. A hearing was arranged for the 10 December 2014 at 11.30am at the Liverpool Tribunal Centre, Civil and Family Court, 35 Vernon Street Liverpool L2 2BX.

THE PROPERTY

7. The Tribunal carried out an inspection of the Property on the morning of the hearing. Mr. Stephen Charles Legal Manager and Mr James Earnshaw, Property Manager, of the Applicant's Managing Agents Urban Owners Limited, and the Respondent Mr John Nixon, attended the inspection.

8. The Property is part of a substantial School building dating from the early 1900s in the Waverley area of Liverpool which had been converted into 40 apartments and 6 houses by Miller Homes approximately five to ten years ago. Blocks 1 - 2, 3-14, 15-20 21-25 and 27 - 31 were converted from the existing buildings, with block 34-41 (where the Respondent's four flats are situated) being newly built as an "in fill" at the time of the conversion.

9. The building is brick with decorative stonework. It has pitched slate tiled roofs throughout the development, and original features including bell towers. Windows are timber sash and casement. There are two electric access gates to the car park, controlled by key pad or fob. At the time of the inspection, both were open. The Tribunal were told that one had been disabled by decision of the Applicant as it was felt superfluous and presented an unnecessary expense

10. The Tribunal were shown the internal parts of Block 34 - 41 where the Respondent's flats were situated. Carpets were generally clean and hoovered There were some scuff marks to the painted walls and slight impact damage to corners, and some sinking to the stair bead. The external access door to the rear of the building was seen to be operational.

11. The external areas include extensive gardens laid to shrubbery, a lawned courtyard area and a lawn to the front next to the school There are two large carparks, for approximately 60 cars, which were found to be clean and tidy, although an abandoned car had been left in one of the visitors' parking bays for some time. Some bulky items of rubbish had been left in the car parking area, presumably by a departing tenant. This was not the same rubbish as shown in the Respondent's photographs from August 2014. The bin store was ready for a clean as rubbish had been left outside of the receptacles.

THE LEASES

12. The Flats are held on tri-partite under-leases between Miller Homes Ltd, the Applicant, Blue Coat Court Management Company Limited, and individual lessees for a term of 199 years (less 10 days) from 21st June 2004. The Superior Landlord are the Incorporated Trustees of the Liverpool Blue Coat School Foundation.

13. The Applicant Management Company is owned by the individual Lessees, who own one share per flat. The Directors are lessees, although not all resident, as indeed the Respondent is not.

14. The Lessees covenant with the Management Company and the Applicant to observe and perform the covenants in Schedule 7

15. The Applicant Management Company covenants with the Lessee to carry out the works and do the acts and things set out in Schedule 9. In Schedule 9 the Applicant covenants to do the works acts and things set out in Schedule 5.

16. Schedule 5 sets out the Applicant's obligations dividing them into four categories which for this judgement we will describe as the "Four Categories". Each category has separate provision to collect charges, keep accounts and makes provision to collect service charges. Other obligations might be summarised as follows:-

    (a) Part 1: Development Expenses: Requires the Applicant to keep the external common parts in good repair and clean and tidy as considered by the Applicant desirable or necessary. To insure the Building Common parts and fixtures and fittings; to paint at least every five years, to clean external windows, to provide and arrange for emptying/cleaning receptacles for household waste; gardening and external works; pest control; abating nuisance; administering notices; provision operation and maintenance of firefighting security and television aerial equipment; general management of the Development including the employment of a firm of managing agents.

    (b) Part 2: Apartment Expenses: Requires the Applicant to clean the Common Parts of the Buildings and provide, operate, maintain, renew and add to fixtures fittings, lighting and furnishings in common parts; to clean, keep in good repair and condition, and clean and tidy the Buildings and Internal Common Parts, insuring as necessary any equipment, furnishings and fittings in the common parts.

    (c) Part 3: Parking expenses: cleaning inspection and maintenance of the car parking area.

    (d) Part 4: Lift Expenses: maintaining and preparing the Lift serving the buildings, and insuring.

17. The Lessees are obliged to observe and perform the Covenants contained in Schedule 7, which include an obligation to pay to the Landlord or the Management Company as the case may be, the Apartment Charge Proportion of the Apartment Expenses the proportions of the charges for the Development, Apartment, Parking and Lift expenses as provided for by Schedule 6.

18. Schedule 6 provides that a summary of the Expenses in the four categories shall be notified to the Lessee for each period ending 31st December and within six months provide an Accountant's Certificate of the total amount of the expenses which shall be binding on the parties.

19. The Lessee must pay in advance on the 1st January and 1st July each year one half of the Charges estimated for the period ending on the next 31st December. Reconciliation of the accounts will be carried out within 21 days of the provision of the Accountant's certificate.

20. The Proportions payable for each Apartment, for each of the Four Categories is as follows:

	Development	Apartment	Car Park	Lift
Flat 34	1.87810%	2.15440%	1.66670%	5.26320%
Flat 35	1.87810%	2.15440%	1.66670%	5.26320%
Flat 37	2.10560%	2.41540%	1.66670%	5.26320%
Flat 41	2.79970%	3.21160%	3.3333%	5.26320%

APPLICATION UNDER S27A(1) LANDLORD AND TENANT ACT 1985

THE LEGISLATION

21. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 02 which reads as follows:

s27A Liability to payable service charges: jurisdiction.

(1)An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to— .

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

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

(3)An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to— .

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

(4)No application under subsection (1) or (3) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant, .
(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, .
(c)has been the subject of determination by a court, or .
(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)in a particular manner, or
(b)on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).

(7)The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

THE HEARING

The Applicants were represented by Mr Stephen Charles, Legal Manager and Mr James Earnshaw, Property Manager for their Managing Agents, Urban Owners Ltd. No Directors of the Applicant company were in attendance. The Respondent attended along with his daughter Ms Michelle Nixon; he was represented by Mrs. Roberts of Counsel.

THE EVIDENCE AND SUBMISSIONS

THE APPLICANT'S SUBMISSIONS

22. The Applicant had provided (undated) written submissions prepared by the Managing Agents Urban Owners Limited on it's behalf. Those submissions were made in support of the application for a determination on service charges for each of the four flats for the service charge years 2011 to 2014 the Respondent having failed to pay in full those charges and being in arrears. The Managing Agent stated that the Respondent had not provided the Applicant with specific detail of his objections, so in their submissions they provided copies of the demands budgets (and accounts where available) issued for each Flat for each year and provided detail of the Service Charges demanded, the amounts, and which of the Four Categories those charges were ascribed to.

23. Charges have been made for

(a) Repairs and Maintenance
(b) Lift Maintenance
(d) Cleaing and Refuse
(d) Door Entry System and Security
(e) Grounds Maintenance
(f) Electricity
(g) Professional Fees Management Fees and Accountancy Fees
(h) Insurance
(i) Reserve Fund Charges

24. The Applicant stated in relation to each charge made that they were entitled to recover the costs under the terms of the lease and that the Respondent had not raised any concerns of any specific aspect of the particular costs.

THE RESPONDENT'S SUBMISSIONS WITH THE APPLICANT'S FURTHER WRITTEN RESPONSE

25. The Respondent provided submissions in response. He made general comment that costs had increased, until 2014 when they were reduced (but the 2014 figures were the budget figures as opposed to the final accounts). He said that in his view Urban Owners on behalf of the Applicant had failed to diligently manage the estate, and failed to engage with Lessees disputing service charge levels. He felt that services which had been invoiced and paid had not been carried out, or had not been carried out well.

26. The Respondent accepted before the Tribunal that the 2014 budget was a reasonable figure which he did not seek to challenge under s19(2) of the 1985 Act.

27. Specifically, the Respondent raised, and the Applicant responded to the following objections/enquiries:

28. £7260 had been allocated for the Reserve Fund each year. The Respondent asked how much the fund was, and how it was being calculated. The Applicant replied that the reserve fund contribution was agreed by the Applicant's Directors each year; the fund currently stands at £22,120.

29. At the hearing the Respondent confirmed that he took no issue with the reserve fund.

30. Repairs and Maintenance for 2011 were listed as £7390 but the Respondent stated that total costs as detailed in the Applicant's records in the bundle were £2417.36. The Applicant confirmed that the accounts for 2011 showed repairs and maintenance expenditure of the former amount. The accounts had been certified by accountants as being supported by documentation. The Respondent had been referring to detail held by Urban Owners who had only managed the block for part of the year; for the rest of the year the former agents Mainstay had been managing. The Applicant stated in their view the sum was reasonable for a block of 45 flats.

31. At the hearing Counsel for the Respondent pointed out that there was no evidence before the Tribunal as to what had been spent on repairs and maintenance by way of invoices from Mainstay for the period prior to the new managing agents taking over management part way through 2011. The Applicant said that the accounts certified what was due and payable The Tribunal were also told that copies of all the invoices were uploaded for inspection by Lessees on their website.

32. The Managing Agents stated that repairs had all been invoiced and all invoices authorised and signed off before payment by a resident Director.

33. Cleaning and Refuse for 2011 which totalled £8221, and for 2012, which totalled £7048. The Respondent did not believe the invoiced works had been carried out, pointing to scuffs on the paintwork to internal walls, dead flies in the stair well light fittings and bulk items of rubbish in the car park and bin store. The Applicant responded by pointing out that cleaning costs worked out at £685.08 (2011) and £615.83 (2012) per month which they felt to be a reasonable amount for a block of 45 flats. They said that no evidence had been supplied that the cleaning had not taken place and no other complaints had been made by other residents. The issues the Respondent referred to would have incurred additional costs as they were not within the cleaner's schedules. Again, the Tribunal, was told that all invoices were approved and signed off by a resident Director before being paid.

34. The Respondent told the Tribunal that he had made complaints through his letting Agents Acorn. Acorn were engaged by the Respondent to market and let his flats, but at the same time had also been engaged by the Applicant to carry out quarterly property inspections as their local agents The Managing Agents told the Tribunal that owing to an unrelated dispute with Acorn, the latter had not carried out any inspections since September of 2014.

35. The main bin store had been seen at the inspection to have debris on the floor around of the receptacles, and earlier reports by Acorn had confirmed that the bin store had been found at their inspections to be in need of cleaning. The Applicants said that they gave it a deep clean twice per annum. If they cleaned it more often, the service charges would necessarily increase. This is a matter for the Applicant to consider in the light of complaints received.

36. The Managing Agents told the Tribunal that their website also enabled issues and problems to be reported. The Agents indicated they had not had many complaints but that those complaints that they had received had been dealt with.

37. Ground maintenance for 2011 which totalled £3330 and 2012 which totalled £3335. The Respondent did not believe the invoiced works had been carried out. The Applicant responded that costs worked out at £277.50 (2011) and £277.92 (2012) per month for a development of 45 flats which they felt to be a reasonable amount . They said that no evidence had been supplied that the maintenance had not taken place and no other complaints had been made by other residents. All invoices had been signed off by a resident Director before being paid.

38. Electricity for 2011: £8053 had been listed in the accounts, but invoices from Scottish Power, Haven Power, Southern Electric and EDF totalled approximately £17,436.24 which the Respondent felt excessive. The Respondent said that the sum of £8053 was reasonable for a block of 45 flats and was based on actual readings. There had been four suppliers previously but this has now been reduced to one.

39. Electricity for 2012: £29,250 listed but invoices from Haven Power, Southern Electric and EDF totalled approximately £16,566.60 which he felt was excessive. The Respondent stated that this was as a result of having to pay historic invoices not settled by the previous managing agents.

40. The Tribunal had concerns about the invoices submitted for payment of electricity in 2012. The Applicant had indicated in their submissions that they were "historical" electricity bills forwarded to them by the former managing agents after they had taken over. S20 B Landlord and Tenant Act 1985 prevents a Lessor recovering service charges unless a Lessee is notified of them within 18 months of them being incurred, or warned in writing that such charges had been incurred and are likely to be a liability The parties were invited to consider obtaining copies of the invoices over the lunchtime adjournment, but were unsuccessful.

41. As no evidence was before the Tribunal of the dates of the invoices to the Applicant, the Tribunal could not be satisfied that invoices described as historic would comply with s20B. With the agreement of the parties, this aspect of the service charge was excluded from the determination, pending further disclosure and discussion between them as to the dates of invoices. The parties can return the matter, along with evidence for the Tribunal to consider as a paper determination if necessary.

42. Electricity : communal lights and heaters were left on all day and every day wasting energy and money and was as a result of poor management. The Applicant disputed this assertion stating that communal lighting was on a timer; they questioned how much he felt he would be able to withhold from his service charges.

43. The Tribunal had noted at the inspection that the communal area heating panel timer switches had been overridden presumably by some of the occupants. This is a matter for the Applicant to address, but would incur capital expenditure as would fitting the timer switches to lights, and this cost must be balanced against the increased costs of power.

44. Management Fees charged by Urban Owners were felt by the Respondent to be excessive. The Respondent challenged the efficiency of management, because of failings over rubbish collection to the car parks, graffiti to both entrance walls to the development, the malfunctioning electric gate and the faulty locks to the rear door to the block where his flats were situated. The Applicant responded by saying that management costs worked out at £196.36 (2011) and £194.84 (2012) per apartment, which they stated was reasonable on an industry wide basis. In response to the graffiti issue the Respondents said that they had requested on two occasions that Liverpool City Council remove the graffiti, as the service was offered without charge.

45. The Tribunal pointed out to the parties that it's own knowledge and experience led it to consider that the management costs were on the high side for the Liverpool area. The Tribunal recognised that the building was a refurbished building which would be more complex to manage. Neither party had any comparable evidence to offer.

46. Insurance: the Respondent had enquired whether Directors and Officers Engineering and Engineering were not the same thing. The Applicant stated that they were not. No further challenge was made to insurance costs by the Respondent at the hearing.

47. Acorn: the Respondent had asked why invoices were credited when they were known to be carrying out site inspections. Urban Owners confirmed that Acorn's costs were part of their costs and had been inadvertently listed as a disbursement of the Applicant, so re-credited.

48. General Building Repairs: 2013 water tank issue incurred costs of £4959; in January 2014 there were further costs of £3588, and the Respondent challenged these charges. The Applicant confirmed that the works related to two separate tanks. The invoices were signed of by the Directors and certified by the Accountants and were payable. The invoices could have been examined by the Respondent.

49. Gate Costs: The Respondent said that the gate was still broken despite costs of £4036.37 and £2170.68 being incurred. The Applicant produced a copy of the contract for services with South Manchester Gate and Barrier Ltd, and submitted that the costs were reasonable and necessary and were not paid without approval of a resident Director of the Applicant.

50. The Acorn reports stated that the gate was open (and presumably not functioning) at various times. The Applicant stated that invoices were paid for and authorised by the resident Director and certified by the Accountants.

51. External Door to the block: the Respondent produced photographs of the lock to the door malfunctioning which which showed this to be a security risk as the door did not lock. The Applicant responded by saying that a recent Periodic Maintenance Inspection reported no issues here. The door was seen to be functioning at the time of inspection. The Acorn reports recorded that the issue had existed for some time before apparently being attended to, and the Respondent produced a copy of an email from 2012 showing his tenant had complained to both him and the Applicant.

52. Internal cleaning: the Respondent produced a photograph showing the cleaning sheet had not been updated since 25.11.13 and photographs showed scuff marks and dead flies in the light fittings. The Applicant responded by saying that a recent Periodic Maintenance Inspection reported no issues here. The Tribunal noted at the inspection that the cleaning sheet was out of date as per the photograph, although the building clearly was being cleaned. There were still flies in the light fittings, although the Applicant said that this was not part of the cleaner's responsibilities under their contract, so no charge had been made for this.

53. Car Park (Ground Maintenance): the Respondent said the area was in a poor state. The Applicant responded by saying that a recent Periodic Maintenance Inspection reported no issues here. The Tribunal found the car park to be in generally very good condition, and found no issues here, save for some moss which ought to be removed. The Tribunal was told that this would attract an additional charge as it was not part of the gardening/cleaning specifications.

54. External: the Respondent said some areas were in a poor state. The Applicant pointed out that a s20 consultation exercise was being embarked upon to address external works, in particular the refurbishment of windows.

55. 2014 Budget: the Respondent objected to refurbishment of windows which he maintained were the responsibility of individual lessees. The Applicant pointed to Clause 1.2 of Schedule 1 to the lease which states that the external structure of the window frames are part of the structure of the building "for the purpose of repainting or other treatment". The Tribunal pointed out that this was not subject of the present application and therefore not due for consideration; but that the Respondent would be given opportunity to address the matter through the consultation process or alternatively and after the event by an application under s27A.

56. Credits: the Respondent asked for clarity as to where monies which had been held by the former Managing Agents Mainstay had been credited to his service charge accounts. An email dated 25 July 2011 to Urban Owners from the Respondent's daughter Michelle Nixon had suggested that there ought to have been credit balances for each apartment. The Applicant produced the previous Managing Agents statements of account from where they had taken their figures. The Respondent had not produced any figures to show that these were incorrect.

57. During the lunchtime adjournment the parties had further discussions on this issue and it appeared that Mainstay may not have fully accounted to the Applicant for monies under s94 Commonhold and Leasehold Reform Act 2002. This was a matter of contract between the parties and they might resolve the issue themselves with Mainstay and if they consider it necessary the Applicant might make an application under s94 to the Tribunal.

58. The Respondent disputed legal fees which had been applied to his service charge account and administration fees ; Mrs Roberts submitted that the lease did not enable the Applicant to charge any legal fees, relying on the Court of Appeal judgment in Sella House Limited v Mears [1989] 21 HLR 147. The Applicants said that they relied upon clause 15 of Part 1, Schedule 5, which enabled them to employ a firm of managing agents and enforce covenants. They also pointed to clause 22 which enabled them to bring or defend proceedings against Third Parties if acting in the interests of occupiers of the Development as a whole. The parties were unable to point to any other provision in the lease pertaining to legal costs.

59. The Respondent produced Periodic Maintenance Inspection reports prepared for Urban owners by Acorn. These contained details of a number of issues of maintenance, repair and cleaning that needed attending to. The Applicant responded by saying that they had addressed all matters referred to them.

THE DETERMINATION

60. The Tribunal has jurisdiction under s27A to determine whether service charges are payable, and who they are payable to.

61. The Respondent having accepted that the budget for 2014 was reasonable, and no decision was required under s19A Landlord and Tenant Act 1985 the Tribunal determined the service charges for 2011, 2012 and 2013.

62. The Tribunal was satisfied on the evidence heard that the costs accounted for repairs, maintenance, cleaning and gardening were reasonable for a development of this size, complexity, age and Grade II listed status. The Applicant's accounts had been audited and certified, and all invoices signed off by a Director of the Management company who lived on site and was in a position to express concerns if charges were being made for works not carried out.

63. With the agreement of the parties the proportion of the 2012 charges for electricity will be removed from service charges payable for the four flats pending the parties reaching agreement as to when they were submitted and whether they are payable in light of s20B Landlord and Tenant Act 1985. In the absence of subsequent agreement the parties might refer this issue back to the Tribunal for a paper determination.

64. The Respondent objected to paying the legal fees element of the service charge.

65. The Applicant had incurred Legal Fees of

i. £1131.07 in 2011 paid to Paul Richards for removal of the former managing agents, Mainstay.
ii. £730 in 2013 : in the service charge expenditure list this was paid to JB Leitch for "acting on your behalf re P Sewards"

66. The Respondent also objected to the Debt Recovery Fees of £180 imposed against the Respondent in relation to his flats numbered 34, 35 and 37 on 1 December 2011 and 30 May 2013. At both of those dates, the Respondent's accounts for those flats were in arrears. Flat 41 had a Debt Recovery Fee of £180 added on 1 December 2011 and thereafter an Administration Charge of £100 for issuing a CCJ (County Court Judgement). No application was before the Tribunal in respect of Administration charges so no determination is made as to whether those charges are reasonable and payable.

67. In relation to legal fees sought by the Applicant, the overriding principle, as considered in the cases of ***St Mary's Mansions Limited v Limegate Investments Company Limited [2002] EWCA Civ 1491*** and ***Sella House Limited v Mears [1989] 21 HLR 147*** is that in order to recover legal costs from the service charge, clear and unambiguous lease terms are required.

68. The Managing Agents relied upon Clause 15 of Part 1, Schedule 5 of the lease, which provides an obligation to the Applicant to "(generally manage and administer) ...the Development and protect... it's amenities and for the purpose employing a firm of managing agents (or charging a reasonable management fee if it carries out the management itself) and (in so far as the Landlord (or the Management Company as the case may be) thinks fit) enforcing or attempting to enforce the observance of the covenants on the part of any tenant of any of the Apartments."

69. There is no reference to the employment of solicitors in this clause.

70. By Clause 18 of Part 1 of Schedule 5, the Applicant can recover the cost of collecting the Rent and the Development Charge Proportion. Similar clauses in Parts 2, 3 and 4 of Schedule 5 permit the recovery of the cost of collecting relevant service charges for those categories.

71. There is no mention of solicitors fees in these clauses.

72. Clause 22 of Part 1 enables the Applicant to bring or defend proceedings against or by third parties deemed desirable in the interests of occupiers of the development as a whole; there was no evidence that the Applicant had been involved in legal proceedings against a third party. They had sought advice in relation to the former managing agents, but there was no evidence that legal proceedings had been anticipated.

73. In St Mary's Mansions Limited v Limegate Investments Company Limited [2002] EWCA Civ 1491 the Court of Appeal held legal costs incurred in proceedings for recovery of arrears of rent and service charge were not recoverable under the following clause: *"The cost of all of the services which the lessor may in its absolute discretion provide or install in the said building for the comfort and convenience of the lessees"* and *"The reasonable and proper fees of the Lessors Auditors and the reasonable and proper fees of the Lessors managing agents for the collection of the rents of the flats in the said building and for the general management thereof."*

74. In the case of Sella House Limited v Mears [1989] 21 HLR 147 a lease provision expressed to cover the costs of employing "...professional persons who may be necessary or desirable for the proper...administration of the building" was held to be not sufficient to enable legal costs to be recovered.

75. The Tribunal determines that in the absence of clear provision, that the Applicant cannot recover legal costs against the Lessees under the terms of the leases.

76. The Tribunal determines that the Applicant should not be able to recover the management fees in full. The Tribunal found that management had not been as focussed as it might have been, with Urban Owners relying on both support from a director (which ought to reduce management costs), and a local agent, (who they were in dispute with, resulting in no professional local support for some time). There have clearly been issues with both the external gate and the external door to the block, which the Applicant did not properly explain to the Tribunal, despite those issues being of major concern for the Respondent.

77. In the circumstances the Tribunal determines a total management fee of £7425 for 2012 and £7650 for 2013 would be reasonable, being an average of £165/£170 per flat. Management fees for 2012 for the development are therefore reduced by £1343 and for 2013 by £1450.

78. The Tribunal determines that the Service Charges will be as follows

Service Charge 2011

Flat 34 £616.01 reduced by legal fees of (£1131.07 x 1.87810% =£21.24) = £594.80
Flat 35 £616.01 reduced by legal fees of (£1131.07 x 1.87810% =£21.24) = £594.80
Flat 37 £674.13 reduced by legal fees of (£1131.07 x 2.10560% =£23.82) = £650.31
Flat 41 £881.20 reduced by legal fees of (£1131.07 x 2.79970% = £31.67) = £849.53

Service Charge 2012

Flat 34 £1264.62 less management fee reduction of (£1343 x 1.87810% = £25.22)= £1239.40

less Electricity*
£14625 x 2.15440% = £315.08
£5850 x 1.66670% = £97.50
£8775 x5.26320% = 461.85
total £874.43

Payable * £364.97

Flat 35 £1264.62 less management fee reduction of (£1343 x 1.87810% = £25.22) = £1239.40

less Electricity*
£14625 x 2.15440% = £315.08
£5850 x 1.66670% = £97.50
£8775 x5.26320% = 461.85
total £874.43

Payable * £364.97

Flat 37 £1372.90 less management fee reduction of £1343 x 2.10560% = £28.28) = £1344.62

less Electricity*
£14625 x 2.15440% = £315.08
£5850 x 1.66670% = £97.50
£8775 x5.26320% = 461.85
total £874.43

Payable * £470.19

Flat 41 £1831.42 less management fee reduction of £1343 x 2.79970% = £37.60)= £1793.82

less Electricity*
£14625 x 3.21160% = £469.70
£5850 x 1.66670% = £97.50
£8775 x5.26320% = 461.85
total £1029.05

Payable * £764.77

(pending agreement or further determination)

Service Charge Year 2013

Flat 34 £1340.46 less
management fee reduction of (£1450 x 1.87810%) -£27.23
legal fees (£730 x 1.87810%) - £13.71
= £1299.52

Flat 35 £1340.46 less
management fee reduction of (£1450 x 1.87810%) -£27.23
legal fees (£730 x 1.87810%) - £13.71
= £1299.52

Flat 37 £1464.74 less
management fee reduction of (£1450 x 2.10560%) -£30.53
legal fees (£730 x 2.10560%) - £15.37
= £1418.84

Flat 41 £1937.26 less
management fee reduction of (£1450 x 1.87810%) -£27.23
legal fees (£730 x 1.87810%) - £13.71
= £1896.32

Service Charge Year 2014
The budgets for 2104 were accepted by the Respondent

Flat 34 £1022.20
Flat 35 £1022.20
Flat 37 £1117.94
Flat 41 £1452.26

Costs

The Tribunal determined that although the estate was generally well managed, charges were on the high side for what was delivered and accordingly reduced. A number of the Respondent's concerns were inadequately addressed.

However the Applicant had to chase the Respondent (an experienced buy to let landlord) for payment, and in those circumstances an order would be made under s20C of the Landlord and Tenant Act 1985 preventing the Applicant from adding 50% of the costs of the proceedings to the service charges.