FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
Formerly the Leasehold Valuation Tribunal

Case Reference	:	**LON/00AK/LSC/2015/0183**
Property	:	**46 Mintern Close, Hedge Lane, London N13 5SX**
Applicant	:	**Mrs T. Kasinos (Flat 46), Mrs M. Hunt (Flat 3) Mrs P. Berguer (Flat 16) Ms G. Panayi, (Flat 25)**
Representative	:	**Mrs T. Kasinos**
Respondent	:	**Mr M. Maunder Taylor Mr B. Maunder Taylor (Joint Tribunal appointed Managers)**
Representative	:	**Mr M. Maunder Taylor**
Type of Application	:	**Reasonableness of Service Charges - Sections 27A and 20C Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Lancelot Robson Mr M. Cartwright JP FRICS**
Date of Hearing	:	**29th January 2016**
Date of Decision	:	**8th April 2016**

DECISION

Decision Summary

(1) The item of service charge; Satellite aerial - £4,350 for the service charge year commencing on 1st April 2014 has been reduced to Nil, and this sum shall be returned to the lessees in their due proportions, rather than paid into the Reserve Fund.

(2) The estimated item of service charge; Satellite aerial - £4,350 for the service charge year commencing on 1st April 2015 has been reduced to Nil, and this sum shall be returned to the lessees in their due proportions, rather than paid into the Reserve Fund.

(3) The remaining items of service charge for the service charge year commencing on 1st April 2014, and the estimated service charge items for the service charge year commencing on 1st April 2015 are reasonable and payable as demanded by the Respondent.

(4) The Tribunal made no order under Section 20C of the Landlord & Tenant Act 1985.

Preliminary

1. The Applicants seek a determination under section 27A of the LANDLORD AND TENANT ACT 1985 (as amended) of reasonableness and/or liability under a (specimen) lease dated 14th October 1969 (the Lease) to pay annual service charges for the service charge year commencing on 1st April 2014, and the estimated service charges for the year commencing 1st April 2015.

2. This application arose from a decision of the Tribunal dated 16th April 2014 appointing the Respondents as joint managers of Mintern Close in place of Mintern Close (Management) Limited, a lessee controlled management company mentioned in the Lease. In that case, both applicants and respondents agreed that the appointment of a new manager was necessary. Two candidates were put forward by the parties, one of which withdrew shortly before the hearing, and the other was found by the Tribunal to lack sufficient experience. At short notice the Respondents were proposed. The Tribunal agreed to appoint them.

3. In November 2014 the present Applicants applied for variation of the Management Order to replace the Respondents as the Manager, and later made this application on 27th April 2015. The two cases were consolidated. However a previous Tribunal decided on 16th October 2015 after a Preliminary Hearing that the variation Application should be dismissed and gave Directions for hearing of this application (as amended on 10th November 2015).

4. The Tribunal expressed surprise that the landlord Mintern Close (Holdings) Limited, and the Lease-appointed manager (Mintern Close

(Management) Limited) were not also joined in this application. It was informed that the landlord (whose shares are owned by all except eight of the long lessees) was insolvent and unable to take part. It appeared from the papers that the Respondents were also giving some assistance to the lease appointed manager. The situation was not entirely clear to the Tribunal, but since the Applicants were entitled to apply and the Respondents were properly joined, nothing appeared to turn on this issue.

5. The Respondents confirmed that since their appointment almost all outstanding debts due from lessees had been paid, and they agreed that the lessees, (including the Applicants) had substantially paid or agreed a payment arrangement for the estimated service charge demands for the years in issue. Mrs Kasinos stated that the Applicants did not disagree with the service charges in principle, but she considered they had not been demanded in accordance with the Lease, and that insufficient detail of the amounts spent had been provided. The Applicants had paid large sums on account, but had yet to receive satisfactory explanations of the accounts and estimates.

6. The Tribunal was informed that Mintern Close consists of two separate buildings, both built in the 1960s, with a total of nine stairways and internal common parts, standing in their own grounds. There were 63 flats.

7. The Tribunal identified with the parties, following the Scott Schedules that the following items were in dispute:

a) Powers to charge under the Lease
b) Compliance with Section 20 procedure in connection with Major Works
c) Cleaning (both years)
d) Gardening (both years)
e) Tree surgery 2014/15
f) Satellite aerial (both years)
g) Legal and Professional Fees (both years)
h) Management fees – Dispute Resolution (both years)
i) Buildings Insurance (both years)
j) Claims excess (both years)
k) General repairs (both years)
l) Asbestos Works (both years)
m) Contracts for Health and Safety and Fire Requirements Assessment (both years)
n) Drains gutters and pipes (both years)
o) Locks, bolts and keys (both years)
p) Reserve Fund (both years)
q) Major cyclical repairs (both years)
r) Accountancy (both years)
s) Management fees (both years)
t) Other fees paid to managers (both years)
u) Monies paid to Rendall & Rittner (2014/15)
v) Solicitors fees paid to Vanderpump and Sykes (2014/15?)

8. The Applicants also raised concerns that one of the Respondents had been replaced as a Manager in another case, which in their view cast doubt on the fitness of the Respondents to act as Tribunal-appointed Managers. The Tribunal considered that this point was not before it, and had effectively been decided by the previous decision in this case not to vary the Management Order. While forming no part of its decision, it may assist the parties to be aware that potential Managers are proposed by parties, and that the Tribunal's (quite limited) role is to decide whether the persons proposed are suitable. Persons appointed can vary from specialist professionally qualified managers to ordinary leaseholders with no formal qualifications, except a keen interest in efficient and fair-minded management of the property. A Manager, (as opposed to a managing agent) may often have to take difficult financial decisions in the best interests of the body of leaseholders as a whole. Such decisions, perhaps inevitably, will be queried by some, or perhaps even a majority, of the leaseholders. It is always possible, usually with the benefit of hindsight, that a Tribunal might not agree with a particular management decision. Occasionally, even tribunals can be successfully appealed, but that does not necessarily indicate that the tribunal (or manager) concerned was unsuitable for appointment.

9. Extracts from the relevant legislation are attached as Appendix 1 below. Also for ease of reference, the parties' arguments under each item of complaint are noted in turn, with the Tribunal's decision on that item following immediately.

Powers to charge under the Lease

10. It is convenient to deal with this item under the relevant substantive heads of charge below.

Compliance with Section 20 procedure in connection with Major Works

Applicants case

11. The Respondents had not been granted dispensation relating to the Section 20 process. Their demand to the lessees for £300,000 was unreasonable as they had not produced a costed maintenance plan for a 5-10 year period on which the Plan could properly be based, and before the consultation meeting. They were also obliged to base their demand on the contractors' tenders obtained in accordance with the Section 20 procedure. There had been no tender analysis of the Supervising surveyors fees or the scaffolding. The work for the TV aerial had not been consulted upon pursuant to Section 20. Some of the work done had not been included in the Section 20 consultation process.

Respondents' case

12. The only work carried out pursuant to a Section 20 notice was the external repairs contract. The Notices had been properly served. No observations had been received on the first notice. A Section 20 Consultation meeting had been held with the lessees on 29th September

2014. The property was in an advanced state of disrepair when the Respondents took over and the external works were urgent. The figure of £300,000 had been advised by the specialist surveyor, Russell Spiro of Thresholds. It had been explained to the lessees that the money would be demanded in year 1 and the work done in year 2 in accordance with the plan submitted to the Tribunal in April 2014. The contract included all works with which it was proper to deal while the scaffolding was up, and was in accordance with the Specification. A tender analysis had been provided for the project as a whole. The Respondents disputed that such work could have been phased in order to spread the costs, and submitted that the requirement was to consult before the money was expended, not before it was demanded.

Decision

13. The Tribunal considered the evidence and submissions. It decided that the Section 20 consultation process had been followed. There had been a plan approved by the previous Tribunal in April 2014. The works and the estimated costs were based on specialist advice received. The statutory notices had been served, and a consultation meeting, which was not statutorily required, had been held. The works done had been based on a Specification and subject to a Tender analysis covering the project as a whole. It had not been necessary to consult on the TV aerial, as that work had not been done. The Applicants' points on this issue appeared to be based on factual understandings, or misunderstanding of the relevant statutory provisions.

Cleaning (both years)

Applicants' case

14. *(The Tribunal notes that the Applicant's statements of case generally referred to the estimates, rather than the final accounts for the year ending in March 2015, which were published prior to the statements in this application. Thus there will be some unavoidable discrepancies in the figures discussed. The Tribunal has referred to the figures noted in the final accounts for 2014/15, as these are intended to be more accurate than the estimates. The Tribunal also notes that while it made reasonable checks on the general accuracy of the accounts, its members are not forensic accountants, and that unless specific evidence of omissions in the invoice trail is given they will not normally attempt to "second guess" accounts certified by appropriate professionals).*

15. The Applicants submitted that the estimates were for sums of £8,500 (2014/15) and £4,000 (2015/16). The cleaning was carried out fortnightly, i.e. one building per week and was not of a reasonable standard. The Respondents changed the cleaning contractor after their original application in November 2014. There had been no cleaning done between 29th December 2014 and 17th February 2015, when GS Gardening Services took over. The service was limited to vacuuming the floors of the landings and stairways. The floors were rarely mopped, and the landing lights and ceiling corners were rarely dusted. The lessees were cleaning and picking up litter around the main entrance doors. The lessees had been overcharged by £4,203 in 2014/15, and the service was

not of a reasonable standard. A number of photographs were produced of unknown date (Item 9 of Vol. II of the bundle) showing some stairs and landings, looking quite stained. The Applicants considered that the major external works during part of the period had no bearing on the standard of the work done. The standard and cost of window cleaning was also raised. The lessees had been overcharged by £744 in 2014/15, and the estimated sum of £1,000 in 2015/16 was unreasonable as there had been no window cleaning.

Respondents' case

16. The previous cleaners had been appointed by a previous agent. They had proved expensive and unsatisfactory, and their services were terminated in December 2014. GS, the new cleaners, had taken over on 17th February 2015. They did other work for the Respondents, and were considered satisfactory. They produced a better finish than the previous cleaners. They worked to a specification. No specification for the previous cleaners had been given to the Respondents. Their charges were about 50% of those of the previous cleaners, and the lessees had only been charged for the work they had done. There had been problems during the major works contract, as dirt and debris tended to get into the buildings, especially when occupants opened the windows of the common parts, and did not close them again. The Respondents had arranged a "blitz" clean of the common parts and gardens not long before this hearing. The Respondents relied on 3 sets of photographs taken in November 2014, May 2015, and May/June 2015, as well as another taken in December 2015 relating the state of the floors. They also produced a copy of the cleaning specification dated 2nd December 2014. Relating to the window cleaning, the Respondents submitted that the sum of £234 had been paid for 2014/15. The balance had been carried forward to the current year. Five cleans had already been done in the current year totalling £936.

Decision

17. The Tribunal considered the submissions and evidence. The invoices appeared to support the expenditure reported by the Final Accounts for 2014/15, and by the Respondents for 2015/16. The photographs showed a mixed picture, but it was clear that some of the internal common parts looked in need of a deep clean in November 2014, and looked rather better in June 2015. Also, the photographs showed that at times the current cleaners were being hampered by building materials stored in the common parts, apparently relating to a lessee's flat refurbishment. This type of storage could not be other than detrimental to the standard of cleaning. The external repair works were also likely to be a source of dust and debris. All things considered, the Tribunal decided that the cleaning of the internal common parts was being done to a reasonable standard and that the cleaning charges were also reasonable. As to the window cleaning, the facts spoke for themselves. Whether the Applicants were entitled to a reduction in the estimate for next year was unclear, as the year had not ended as at the date of the hearing. There were also photos in the bundle showing the state of the windows from a distance. They appeared clean. The Tribunal therefore accepted those charges also were reasonably made and charged for.

18. The Tribunal notes generally that the tone of the correspondence between the parties was ill-tempered which is unlikely to assist in resolving isues.

Gardening

Applicants

19. The Applicants submitted that the estimated sums for gardening were £9,000 in 2014/15, and £4,000 for 2015/16. The grounds had deteriorated to an unreasonable standard. The lawns were covered with moss and weeds. Plants were dying along the boundary fence due to large weeds. Seven young plants and three young trees had died. The six large rose beds were diseased or dead. The scaffolding was irrelevant to the problem. The estimates were unreasonable as the lessees were overcharged by £663 for 2014/15, and the work was not of a reasonable standard. The Applicants produced photographs taken after those of the Respondents (noted below) in support of their position.

Respondents

20. The Respondents submitted that no other lessees had complained of the state of the gardens or the gardening. The scaffolding, debris, rubble and cable ties falling into the grass and beds had made the work difficult. However the gardeners were now able to access all areas, and were cleaning up. There were problems from time to time with mattresses being dumped, and cigarettes. There were particular problem areas. The cost and work done was reasonable. The Respondents produced photographs of the grounds dated January 2016 in support of their position.

Decision

21. The Tribunal considered the evidence and submissions. The Tribunal considered that the presence of scaffolding and building work would inevitably reduce standards. Thus it rejected the Applicants' evidence on that point. The photographs showed a mixed picture. Generally the photos showed neat and tidy grounds, but there were a number of blemishes, such as cigarette butts around an entrance and grounds, and bare patches, particularly in a small area behind Nos 24 – 39. As the photos were taken in January, it was difficult to tell which plants were alive or dead, but apart from the area noted above, the plants appeared dormant rather than dead. The other beds appeared to have been tended. Gardeners picking up cigarette butts casually thrown down by residents would also appear to be a large cost for a small return. The Tribunal considered that the Applicants' case was overstated. Also the invoices appeared to support the accounts. The Tribunal decided that the work and costs were reasonable.

Tree surgery 2014/15

Applicants

22. The Applicants submitted that this work, estimated at £1,500 had never been done. The cost was therefore unreasonable.

Respondents

23. The Respondents agreed that the work had not been done, as was clear from the final accounts for 2014/15. The estimate had originally appeared in the estimate for that year prepared by the previous agent. The money would be deducted from the next year's accounts.

Decision

24. The Tribunal accepted the Respondent's statement that the money would be deducted.

Satellite aerial (both years)

25. This item was agreed at the hearing, and has been dealt with above.

Legal and Professional Fees (both years)

Applicants

26. The Applicants submitted that these fees (estimated at £5,000 for 2014/15 and £6,500 for 2015/16) were unreasonable and asked for clarification. In their 2nd statement, they disputed the cost of the Respondents' online communication facility (£529 in each year), claiming it was a hidden cost. The charges were not contractually payable under the Lease. The Respondents had also charged £3,000 for defending the Section 24 Application, and for the preliminary hearing of this application. The Respondents had also charged various sums to individual lessees for legal costs incurred recovering monies owed to the service charge. Furthermore, the Respondents had charged for correspondence relating to complaints of poor service and professional negligence. There was no right to charge for these items in the Lease.

Respondents

27. Provision was made in the estimates for solicitors' fees in connection with debt recovery, and also for surveyors fees in drawing up the specification and going out to tender. The online communication facility was a virtual notice board. It was charged to the lessees only at cost. The actual total sum all such legal and professional fees in 2014/15 was £3,209. The Applicants had not inspected the receipts at the Respondents' office, but had been supplied with copies of all invoices up to date in this application. It was reasonably foreseeable that there would be legal disputes at Mintern Close, and the cost had reasonably to be provided for. The Respondents' had had to arrange payment of the disputed fees of Rendall & Rittner, a previous agent, in the year 2014/15 to settle a Court action brought by that company.

Decision

28. The Tribunal considered the evidence and submissions. The online communication facility, although perhaps not used by all lessees, was a useful communication tool if used properly. For example, lessees could see if defects had been reported, and progress in dealing with them. This would save both the lessees' and the Respondents' time in avoiding duplicated queries. The Tribunal noted that the Lease in this case is very deficient in management powers, which presumably was a contributory

cause to the problems encountered by the Lease appointed Manager, and the application for a Tribunal appointed Manager. However Para. 1(e) of the Management Order gave the necessary power relating to the online facility. Legal costs reasonably incurred in managing the property were also properly payable, including costs of collecting service charges and defending actions relating to the property. Para.1 (g) of the Management Order gave the necessary power.

29. The Tribunal notes in passing the Applicant's assertions of poor service by the Manager and of failing to deal with complaints, but considers these assertions were unsupported by the evidence, despite the voluminous correspondence in the bundle. In the Tribunal's view, the Applicants appear to want to continue to participate in the management, and are unaware of the Managers' role and powers. The history of the management of this property is that most of the lessees (including at least some of the Applicants or their predecessors in title) participated in purchasing the freehold of this property through a company, and attempted to manage the property themselves, relying on a lease giving the manager insufficient powers. That venture ended in disputes and acrimony between the lessees, and the Freeholder company is now insolvent. The Lease appointed manager was replaced by the Tribunal on the application of a group of lessees including the Applicants, as it was found unfit to manage. Also the property was in urgent need of repair. The Management Order was annexed to the April 2014 decision. The Applicants now seek to rely on the defective lease to prevent the Manager from recovering its costs of recovering service charges and otherwise safeguard the service charge fund. The Applicants also explicitly seek (point 8.1 of their 2nd statement) to prevent the Manager from recovering the costs of the unsuccessful application by themselves to remove it, which also resulted in an order against them under Regulation 13 of the Tribunal Procedure (First-tier Tribunal (Residential Property) Rules 2013 to pay part of the Respondents' costs due to their unreasonable conduct of the action. On this point the Applicants seem quite unrealistic.

Management fees – Dispute Resolution (both years)

Applicants

30. The Applicants submitted that the Respondents had unreasonably disputed the fees of Rendall & Rittner's outstanding management fees, and delayed payment (i.e. enforcement notice and charges dated 3rd and 6th January 2015) to increase costs. The fees (£2,500 for 2014/15 and £3,000 for 2015/16) were not reasonably incurred, unnecessary and avoidable.

Respondents

31. The original claim by Rendall and Rittner predated the Respondents' appointment. On receipt of the County Court judgement dated 3rd December 2014, the Respondents consulted the Directors of the management company, and then arranged for payment. £5,021 was incurred in settling the claim. Another potential claim remains outstanding from Vanderpump and Sykes, again for matters predating

the appointment. It is reasonable to include for settling such issues in the estimated service charge.

Decision

32. The Tribunal decided that it was reasonable, and indeed prudent, to seek information before paying a claim arising from a transaction some years before the appointment. The Tribunal noted that the judgement would have arrived immediately prior to Christmas, and that seeking and obtaining approval at that time of year would take time. The apparent delay (just over a month) was also not unreasonable.

Buildings Insurance (both years)

Applicants

33. Mrs Kasinos submitted that the previous managing agents, HML Hathaways had paid the sum of £6,000 for insurance in March 2014. She considered that the estimate for 2014/15 included a double payment of £7,000 which was unreasonable.

Respondents

34. The Respondents confirmed that the insurance premium for the year was £12,665. Part had been paid by HML Hathaways prior to their resignation on 27th March 2014, to protect the insurance position. The Respondents had demanded the full annual premium. Due to the accountancy conventions (the accruals basis) relating to apportioning insurance premiums, when the final accounts had been prepared it was discovered that £722 had been prepaid less a £35 credit, so that the sum for insertion in the final accounts was £13,352. This was the figure that had been paid, and was in the final accounts. In 2015/16, the insurance for the year 2015/16was reduced to £9,929.35, against an estimated demand for £10,000 in the service charge.

Decision

35. The Tribunal accepted the Respondents' evidence, based on the invoices and other evidence produced to it. The sums demanded were reasonable and payable.

Claims excess (both years)

36. At the hearing, after the reason for demanding the insurance excess £1,500 in the service charge was explained, the Applicants conceded that this item was reasonable.

General repairs (both years)

Applicants

37. The Applicants submitted that the estimates for general repairs (£5,000 for 2014/15 and £9,000 for (2015/16) were unreasonable, or double counting. In 2014/15 the Applicants accepted that works to the value of £6,394.08 had been done, but certain electrical repairs had not been done, although invoices for £2,380.44 were in the bundle. The exteriors of both buildings remained in darkness. In 2015/16, the Applicants accepted that £6,652.76 had been spent, but that included asbestos removal work of £4,200 which appeared as a separate item.

Respondents

38. It was reasonable to make provision for general repairs. The amount actually spent in 2014/15 appeared in the Final accounts (£6,397) and invoices were provided. The work included the lighting work, which had been done. The lights were on push timers. One problem was that the Respondents' staff could not access some electrical cabinets. In 2015/16 renewals of floor tiling had been done totalling £4,200. This was not asbestos work.

Decision

39. The Tribunal considered the evidence and submissions. The final accounts appeared to be supported by the invoices. The current year invoices also appeared to support the Respondents' submissions as far as they went. Also, the financial year was not yet over. The Tribunal decided that the sums demand for this item were reasonable at the times they were demanded, and any credit due could be accounted for in the final accounts for 2015/16.

Asbestos Works 2015/16

Applicants

40. The Applicants made the submission noted above relating to double counting. There was a PLC Consulting Invoice for £900 for a report in 2014/15. There was another invoice for £3,600 for removal of floor tiles on 14.8.15, and also an invoice for an updated register for the common parts for the year 2015/16. The estimated sum of £3,320 for making good Asbestos works in 2015/16 was unreasonable because "making good repairs" were included in the costs under general repairs.

Respondents

41. The invoice for £3,600 related to removal of the affected tiles and stair treads in stairwells 40-43 and 60-63, including air monitoring. The invoice for £3,320 was for fitting new tiles and stair nosings.

Decision

42. The Tribunal accepted the evidence of the Respondents. Clearly there were two invoices for similar amounts, but one was to remove the asbestos (which is a specialist job), and the other was for replacement of the items removed. The Applicants' submission relating to "making good repairs" was not sufficiently clear to be understood.

Contracts for Health and Safety and Fire Requirements Assessment (both years)

Applicants

43. The Applicants submitted that these items (£1,700 for 2014/15 and £1,750 for 2015/16) were double charging. The previous agent had arranged for such inspections on 30th March 2014 and charged for them. The reports should have been sufficient for 5 years. The Respondents had carried out the inspections again on 16th July 2015.

Respondents

44. The Respondents submitted that the previous agents, HML Hathaways had failed to provide copies of their reports. The Respondents had spent £1,620 obtaining a health, safety and fire risk assessment report and an asbestos management survey report in 2014/15, and a further £2,064 had been spent this year on annual reviews of both reports and a 5 yearly periodic electrical installation report.

Decision

45. The Tribunal considered the evidence and submissions. The invoices supported the charges referred to by the Respondents. While it was unfortunate that the previous agents had not passed over the reports it had, the Respondents had a legal obligation to obtain such reports as soon as reasonably practicable. The costs were reasonable, and the Respondents were reasonable in obtaining new reports in the absence of the old ones.

Drains gutters and pipes (both years)

Applicants

46. The Applicants submitted that the sums demanded (£1,500 for each year) unreasonable and double charging. This work should be under the heading for general repairs. The sum expended in 2014/15 was £1,164, and for 2015/16 the sum was £672. There had been unreasonable over-charges.

Respondents

47. The Respondents submitted that these charges were in addition to the General Repairs. The invoices had been copied to the Applicants. The work in the current year related to clearing two blocked stack pipes and two blocked drains. It was accepted that there was an item for renewal of gutters and pipes in the specification for the major external works, but there a number of trees within the grounds of the property. A provision was made as part of a pro-active maintenance programme.

Decision

48. The Tribunal considered the evidence and submissions. It was not unreasonable to make provision for drain clearance when leaves and debris were very likely to enter the drainage system. It was also helpful to identify specific known items rather than include them under the heading of General Repairs. The Tribunal noted that the financial year had not yet ended. It would be premature to decide that the lessees had been over-charged. The Tribunal decided that the charge seemed reasonable and reasonable in amount. However if experience suggested that the estimated charge should be reduced in future, then the Tribunal would expect that to happen.

Locks, bolts and keys (both years)

Applicants

49. The Applicants submitted that this work was a breach of the Lease terms giving rights of access, as it prevented visitors from reaching some of the Applicants' doors. The locks on the main entrance doors were shoddy.

The Respondents kept no records as to who had keys. The locks were a breach of rights of access, and quiet enjoyment. Resident lessees suffered the nuisance of failed deliveries and failed access.

Respondents

50. The Respondents disputed that the work breached the Lease or that it was shoddy. In about July 2014 the Respondents were made aware of two burglaries of a particular flat. On investigation it was discovered that 7 out of the 11 main entrance doors did not have locks or entry phones in working order, which posed a security risk due to unrestricted access. The locks were all in working order and no other lessees had complained. No further attempted break-ins had been reported after the locks had been installed. The Respondents planned to consult on installing Answerphone systems, but the costs would be significant.

Decision

51. The Tribunal considered the evidence and submissions. The Tribunal accepted the evidence of the Respondents, as that of the Applicants was vague. It decided that security and safety considerations took precedence when there was effectively unrestricted access to the internal common parts, and burglaries were actually occurring. While the Tribunal had some sympathy for residents who were inconvenienced by the new locks, it considered that modern communication methods, such as mobile phones and texts, would normally minimise such inconvenience. Also if a group of residents on one particular staircase requested an answerphone system, prior to consultation it could be supplied at their expense. The cost of the work was reasonable, and reasonably done.

Reserve Fund (both years)

Applicants

52. The Applicants submitted that Russell Spiro should have produced a report on which the tenders could be obtained. The Respondent's Management Plan did not state that the works should be completed in one year, and not phased. The Respondents had agreed to non-emergency works and additional works not included in the specification, to increase their commission. They had not been granted dispensation from the Section 20 process. They were required to base their demand on the contractors' tenders in accordance with the Section 20 procedure. The sum of £300,000 was unreasonable as the Respondents did not undertake a properly costed planned maintenance programme over 5 – 10 years upon which the demand could properly be based. It was unreasonable to base the Reserve fund on the cost of one-off major works. Alternatively the amount of £300,000 was unreasonable because the sum was demanded before the expenditure was known, and before the consultation meeting.

Respondents

53. The Respondents disputed that the sum demanded was unreasonable or excessive. It was demanded in accordance with the advice of a chartered building surveyor. Other lessees had written to the Tribunal and mentioned that they were pleased the work was proceeding at long last.

It had been explained to the lessees that the money would be demanded in the first year of the Management Order and that the work would be carried out in the second year, in accordance with the plan submitted to the Tribunal at the hearing when the Management Order was considered in April 2014. The Respondents also effectively reiterated the points made in their submission at paragraph 12 above. In addition they noted that the Section 20 Consultation meeting was an informal procedure. The statutory procedure had in fact been followed.

Decision

54. The Tribunal considered the evidence and submissions. The Applicants' submissions were somewhat confused. While it is correct that the Management Order itself did not refer to the plan of works, this item was clearly set out at paragraph 7 of the Tribunal's decision dated 14th April 2014. The Tribunal recorded Mr Bruce Maunder-Taylor as stating that;

"Year one would be a fire fighting year to set up principles and collect money..." "in year two the major works required would be undertaken, and in year three any dispute arising from those major works would be attended to."

It is not clear from the above why the Applicants thought that the Respondents should implement a 5-10 year plan to phase the works, when the Respondents were only appointed for 3 years, and had made it clear what their intentions were.

55. The Applicants also seemed unaware of the true effect of the Section 20 procedure. It is not the case that a demand must be based on contractor's tenders to satisfy Section 20. A demand for a Reserve fund contribution must be based on reasonably anticipated costs. Their specialist surveyor, Mr Spiro, had advised on that matter, and the Respondents took his advice. For the work to proceed quickly, the Respondents needed to be sure that they had enough funds available to pay the successful contractor, whose tender price would not endure indefinitely.

56. The Applicants' alternative submission that the sum of £300,000 was unreasonable "as it had been demanded before the expenditure was known", and before the consultation meeting, was also unconvincing. The Applicants did not specify what they meant by "known", and it may be that they did not consider that point themselves. If they intended to refer to a fixed figure, such a requirement would prevent any work under a tender from proceeding at all, as no one, no matter how expert, can accurately predict what problems might be found once building work has commenced. Properly drawn tender documents provide for various "Prime Cost" sums, and unexpected items which increase (or decrease) the tender price, as did the tender in this case.

57. In the light of all the above factors, the Tribunal decided that the assertion that the Respondents had added work not in the Specification to increase their fees, was not proved. The amount of the reserve fund was reasonable.

Major cyclical repairs (both years)

58. The Tribunal notes that this item relates to the type of work actually done under the contract.

Applicants

58. The Applicants submitted that the successful contractors' tender could not be relied upon. They had informed the lessees that they "priced the job to patch". The Applicants did not know if the tenders were priced "to patch". The Surveyor's estimated fee of 10% of actual costs was subject to a determination of reasonableness. Thus, they submitted, the Respondents' failure to obtain tenders was prejudicial to the lessees. There was no tender analysis for the surveyor's fee. The cost of the scaffolding was also not included in the Section 20 consultation process and/or "the Notice". The Respondents were informed of additional or unnecessary works not included in the consultation, and no details of costs had been provided despite requests.

Respondents

59. The Respondents submitted that a tender analysis was provided for the external works project as a whole, including the scaffolding. The Respondents had some difficulty in understanding the Applicants' written reference to the replacement of traditional materials. At the hearing this was clarified. The Respondents had expected that all the old materials on the exterior would be removed and replaced, rather than patched. The Respondents confirmed that the tenders had been sought to patch and repair defective parts of the property, rather than replace and renew them. So far as possible the same building materials were used, with the exception of the soffits and gutter boards as it was cheaper to overline the soffits and gutter boards with UPVC material, rather than prepare and repaint them.

Decision

60. The Tribunal considered the evidence and submissions. It seemed clear that the Applicants' case had "developed" between their 1st and 2nd statements, and that the Respondents had not been able to fully reply to their final case in writing. The Tribunal also had some difficulty in understanding certain points made by the Applicants, possibly due to some words being omitted from the text of their statements. The Tribunal's understanding of their case on this issue is as noted above.

61. Contrary to the Applicants' submission, the Section 20 procedure only applies to building works, not professional fees. However, the Tribunal decided that a fee of 10% for the supervising surveyor is not unusual for this type of work, and the Manager's fee of 2% of the value of the works was stated in para. 18 of the Schedule to the Management Order. This level of fee is also not unusual. The Tribunal decided that both fees were reasonable in amount for a satisfactory job.

62. Dealing with other matters raised by the Applicants, the Tribunal also decided that there was ample evidence in the bundle (prepared by the

Applicants) that tenders had been obtained, and that scaffolding had been included in the tender process. If the Applicant's point was that the costs of scaffolding had not been specifically referred to in the notices, the Tribunal decided that scaffolding was a necessary ancillary for the work being done, and there was no reason for it to be mentioned specifically in the notices. It was enough for it to be mentioned in the tenders. The Applicants' point on unnecessary or additional works not included in the specification was too general to address. Without specific information the Tribunal is powerless to make any decision on that matter. The Applicants' last point on failure to advise them of the costs was not supported by the evidence.

Accountancy (both years)

Applicants

63. The Applicants submitted in their 2nd statement that the Accountancy fees (£1,000 for 2014/15 and £1,800 for 2015/16) were unreasonable. (The Tribunal again notes that this part of the Applicant's case was developed mainly in their 2nd statement). The administration costs of the Respondents' accounts department should be included in their Management Fee of £20,790 including VAT. Under the lease, the notices and summary of costs were to be prepared and ascertained by an independent qualified accountant, not the Respondent's accounts department. No details of the accountant's fees had been provided. The fees for the year ended 2013 were payable only in the accounts for 2014/15, and the following year also. The fee of £1,670 for N.Saker's fee for the year 2013/14 was unreasonably incurred, as the accounts were unaudited in accordance with the provisions of Part VI paras. 8 and 9 of the Lease. The same argument was put relating to Myers Clark's fee for the year 2014/15. Ms Kasinos also noted that Ms Saker had been disciplined by her Regulator in relation, she alleged, to the 2013/14 Accounts. A copy of the ICEAW finding was in the bundle. The Lessees were members of Mintern Close Management Limited and entitled to receive audited accounts in accordance with the Companies Acts. The RICS Management Code para.11.4 also applied. Further, the Respondent had interfered in (unspecified) matters outside the scope of Section 24 of the Landlord and Tenant Act 1987. The Service charge accounts for 2013/14 were signed off by the Respondents and the service charge accounts for 2014/15 could not be relied upon.

Respondents

64. The Respondents submitted that the fees were for an external accountant instructed to certify the service charge expenditure. They considered that the year end certifications of the accounts complied with the terms of the Lease. Accountancy fees were not paid on a cash basis. They were accrued to cover the period to which they related, in accordance with guidance in TECH03/11 which was jointly issued by (amongst others) the Institute of Charted Accountants and the RICS. The figures for 2014/15 also included work done by the Respondents on handover figures from the previous agent which did not include a reconciliation or balance.

Decision

65. The Tribunal considered the evidence and submissions. Unpacking the various points it decided as follows;

a)Administration of the annual accounts should be in Respondents' main fee – The Tribunal considered that generally preparing the accounts for audit was an administrative task, most efficiently dealt with by accounting staff familiar with them. The task did not require the qualifications of an auditor. It may be arguable that this function should be part of the basic fee, but the Applicants did not produce evidence of the fee items they disputed so the Tribunal decided that this matter was not proved. The Tribunal also noted that the Respondents had had to do extra work in reconciling and balancing the information and monies handed over to them. That item was certainly not part of the basic fee.

b) The notices and summary of costs were not prepared and ascertained by an independent qualified accountant; preparation and certification by the Respondents (particularly for 2013/14) was insufficient under the Lease.

(i) Clauses 8 and 9 of part VI of the Lease provide:

"8. The account taken in pursuance of the last preceding clause shall be prepared and audited by a qualified accountant who shall certify the total amount of the said costs charges and expenses (including the audit fee of the said account) for the period to which the account relates and the proportionate amount due from the Lessee to the Company under this Lease

9. The Company shall within two months of the date to which the said account is taken serve on the Lessee a notice in writing stating the said total and proportionate amount certified in accordance with the last preceding paragraph(sic) together with details if known and an estimate of the amount required for the following year"

(ii) These clauses are not very clearly worded. It is clear from statute that a qualified accountant must be (inter alia) an FCA, or Fellow of the ICAEW. It is not clear, however, if the accountant is to produce "audited accounts" to international accounting standards, or merely certify that he has checked and audited the accounts satisfactorily. The cost implication of the former is much greater than the latter. The Applicants presumably argue for the former procedure, and the Respondents argue for the latter, so long as the requirements of TECH03/11 (which complies with the relevant statutory provisions relating to certificates), are fulfilled.

(iii) The Tribunal noted that the chartered accountants' certificate dated 8th September 2015 for the year 2014/15 confirmed that they had checked whether the figures in the accounts were extracted correctly from the accounting records of the Respondents, and checked (based on a sample) whether the accounting records were supported by receipts or other evidence. They also checked whether the monies disclosed on the

Balance Sheet agreed or reconciled to the bank statements. In all cases they were satisfied. The Tribunal noted that Myers Clark were Chartered Accountants, and qualified to sign the certificate. The Tribunal decided that the notices of costs and summary had in fact been prepared and audited for the purposes of the necessary certificate by a qualified accountant. However it was not clear to the Tribunal whether the relevant lessees' proportions had also been certified by the accountant in accordance with the Lease. If not, then such certificates should be issued.

(iv) The Tribunal noted the Applicants' apparent concern that the accounts had not been issued within the 2 month period specified in Clause 9. The Tribunal decided that this was a technical breach of the Lease, but so long as the breach had been remedied by supply of the delayed documents, nothing turned on that point. The case might be different if the accounts were delayed by more than 6 months.

(v) The financial year of 2013/14 was not within the period of the Respondents' appointment, nor was that year within this application. The Management Order commenced on 1st May 2014. The Tribunal decided that neither Ms Saker nor the Respondents were charging the service charge in this application for their work on the 2013/14 accounts.

c) No details of the accountants' fees had been provided – This is clearly in error. The accountants' fees were notified, at the latest, in the Final accounts.

d) Such fees were only payable in next following accounting year – The terms of TECH03/11 make clear that accountancy fees should, as a matter of best practice, relate to the year being certified.

e) The accounts were in fact unaudited, and the fees were therefore not reasonable – the Tribunal has decided above that the accounts comply with TECH03/11, and, on balance, the terms of the Lease

f) The lessees were entitled to receive accounts audited in accordance with the Companies Acts – The Tribunal decided that the Lease is the ruling document in that respect. Company accounts should not be confused with service charge accounts, although the former may well be partly founded on the latter. There is some doubt as to whether property service charge accounts should properly appear in company balance sheets at all, but that is a matter outside this Tribunal's jurisdiction.

g) The Respondents had interfered with matters outside the scope of Section 24 – this point appeared to be a general assertion, made without directing the Tribunal to any specific evidence. In any event, the matter was not within the Tribunal's jurisdiction, since it was deciding an application under Section 27A of the Landlord and Tenant Act 1985.

Management fees (both years)
Applicants

66. The Applicants submitted that the fees (£20,790 for both years) were unreasonable and a discount should be made for mismanagement. Also the management commenced on 1st May 2014, but the Respondents had charged for the full financial year. In their 2nd statement the Applicants stated that the Respondents had also wrongly calculated the management fee as a percentage contribution per flat. The Lease made no mention of management fees therefore the percentage set out in clause 3(e) did not apply to this item. The "excessive" management Fee awarded to the Respondents was to resolve animosity, but the Respondents lack of independence and support for "offending lessees" including the "lay directors" had created animosity and divisions. The Respondents provided a poor service, fire and safety regulations were not enforced, lessees received no benefit of a site visit every three months, contractors were not monitored and costs were wasted.

Respondents

67. The Respondents submitted that the fee had been charged in accordance with the Management Order. They disputed that the property had been mismanaged, and noted the Applicants' lack of particularisation of this issue. The accounts for 2014/15 showed that only £17,010 was incurred in respect of management fees. The Respondents disputed that they had charged from 1st April 2014 as alleged. The Applicants appeared to have confused the calculation of the management fee within the Decision dated 16th April 2014 with the annual management fee stated within the Management Order.

Decision

68. The Tribunal considered the evidence and submissions. The Tribunal considered that the Respondents had had no effective opportunity to rebut many items raised in the Applicants' 2nd statement of case. The Tribunal has decided to exclude these items on which no evidence was specifically offered by the Applicants, who should have realised that assertions are not evidence. Thus the only item for decision was whether the Respondents had overcharged for the work done in 2014/15.

69. Paragraph 17 of the Schedule to the Management Order sets a fee of £17,325 per annum (plus VAT) for the remainder of the service charge year 2014/15, and the same annual fee for the year 2015/16. Thereafter the fee was reviewable in line with inflation. Thus 11/12ths of £17,325 is £15,881.25. Adding 20% VAT the final figure would be £19,057.50. The figure for the management fee shown in the final accounts for 2014/14 is £17,010. The Applicants' figures and submissions are thus at variance with the Management Order, and the amount shown in the final accounts. The Tribunal decided that the Applicants case was confused on this point, and accepted the Respondents' submission. As noted above the preponderance of evidence in this case does not suggest mismanagement by the Respondents, whatever the Applicants might think.

Other fees paid to managers (both years)

Applicants

70. The Applicants submitted that they should be informed of other advice given outside their remit as managing agents, and fees earned by the Respondents. Such fees were not contractually payable under the Lease or the Management Order.

Respondents

71. The Respondents submitted that copies of their invoices for fees charged for work additional to the Management fee had been sent to the Applicants by email on 4th November 2015. The Annual Declaration made within the year-end accounts complied with Standard 2.3 of the ARMA-Q Standards, and the Applicants now had sufficient details.

Decision

72. The Tribunal considered the evidence and submissions. The bundle index (Vol II) referred to an email from Mr Maunder Taylor dated 4th November 2015, but the relevant invoices were not attached. The Tribunal noted from surrounding correspondence that the invoices apparently related to extra work charged for by the Respondents relating to much correspondence generated by Mrs Kasinos, over some months, and also relating to the preparation of the Respondents' case in the Applicants unsuccessful application to vary the management order which was decided on 16th October 2015. Mrs Kasinos herself also drew attention to these items when sending the invoice bundle to the Tribunal. The Tribunal decided that the Applicants had sufficient detail of the invoices concerned. It also decided that contrary to the Applicant's submission, the fees of the Respondents for those matters are payable by the lessees through the service charge, by virtue of the Management Order Paragraph 1(g). The only exception relates to the sum determined by the Tribunal on 16th October 2015 under Rule 13 as noted above (£1,385), which is payable by the Applicants only.

Monies paid to Rendall & Rittner (2014/15)

Applicants

73. The Applicants submitted that no information had been provided on the claim, and that the Respondents had failed to supply it in breach of the RICS Management Code 3.4.

Respondents

74. The Respondents disputed that no information had been provided. On 16th July 2015 in paragraph 56 of their statement relating to the other application, the Respondents stated "these related to unpaid management fees pre-dating the Order. Following consultation with the Directors the £4,500 has been paid and the Respondent charged no additional fee." There had been a disagreement as to whether Mrs Kasinos had been on the Board at the time of this transaction, which she had corrected in an email on 6th August 2015, after seeing the statement.

Decision

75. The Tribunal has in fact made any determination necessary on this issue at paragraph 32 above. The Tribunal decided, for clarity, that no breach of the RICS Code had occurred. The Applicants had sufficient information.

Solicitors fees paid to Vanderpump and Sykes

Applicants

76. The Applicants submitted in their second statement (dated 27th November 2015) that the Respondents should have liaised with Vanderpump and Sykes, and would have more information about the claim.

Respondents

77. The Respondents submitted in their statement dated 16th November 2015 that the dispute predated the Management Order. No fees had been paid to Vanderpump and Sykes since the Order was made. Their claim was approximately£16,000. The Respondents had requested a breakdown between the two companies, explaining that the Management company could not pay the debts of the Freeholder company. No such breakdown had been received.

Decision

78. The Tribunal considered the evidence and submissions. There seemed to be no matter the Tribunal could usefully decide on this point under Section 27A, as no charge to the Applicants was shown.

Electricity

Applicants

79. The Applicants submitted that the electricity accounts (£2,000 for 2014/15 and £2,200 for 2015/16) were unreasonable. There were only 3 lights for each of the 11 stairways, and 8 exterior lights which were not working. The stairway lights were on in daylight hours.

Respondents

80. The Respondents referred to the electricity invoices in the invoice bundle. The cost was brokered by Full Power Utilities Ltd. The cost was competitive. The external lights had been repaired in December 2014 and no further complaints had been received. The stairway lights were operated by push buttons.

Decision

81. The Tribunal considered the evidence and submissions. The Final account for this item showed £1,657 had been spent in 2014/15. It also referred to the item as light and heat. The invoices supported this figure. The Tribunal accepted the evidence of the Respondents, as the Applicants' evidence was too vague. The charge was not unreasonable.

Costs - Section 20C

82. The Applicants had made a Section 20C application to limit the landlord's costs (which in fact include the Respondents' costs)

chargeable to the service charge in this case. They submitted that the previous Tribunal had not given the Respondents their costs under Section 20C. The Respondents made no submissions.

83. The Tribunal noted that its powers were discretionary. The Tribunal noted that a Section 20C application had not been before the previous Tribunal, and in any event it was preferable to deal with such a matter at the end of a case. The Tribunal also noted that the Applicant had only been successful, with one minor exception, on matters which had been conceded by the Respondents. The Applicants considered that the Respondents had generally been unhelpful, and had exposed them to unfavourable scrutiny from other lessees. Against that, it was clear from the hearing and the Tribunal's decision that the Applicants had failed to properly consider important documents, such as the Management Decision and Order, and apparently pressed on regardless to argue many issues which were doomed to fail on factual consideration. Their pleading was occasionally difficult to follow or ambiguous. Many of their legal arguments seemed confused, and at times contradictory.

84. The Tribunal decided that it would make no order under Section 20C to limit the landlord's costs payable by the Applicants. .

85. Any sums due as the result of this decision shall be paid within 21 days of the date of publication of this decision, unless previous arrangements to pay them have been agreed by the parties.

Judge Lancelot Robson **8th April 2016**

Appendix 1

Landlord & 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 The 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.

(4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) and (6)....

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 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 leasehold valuation 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 a leasehold valuation tribunal;

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

---