12166

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2016/0306**
Property	:	**87 St John's Court, Finchley Road, London NW3 6LE**
Applicant	:	**St John's Court Finchley Rd Management Co Ltd**
Representative	:	**Blake Morgan LLP**
Respondent	:	**Ms N P Ravandi**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mr P S Roberts DipArch RIBA** **Mrs R Turner JP**
Date and venue of Hearing	:	**6th and 7th February 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26/4/17**

DECISION

Decisions of the tribunal

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

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The tribunal determines that the respondent shall within 28 days of this decision reimburse the applicant any tribunal fees paid by the applicant.

(4) This matter should now be referred back to the county court sitting at Central London.

The application

1. Proceedings were originally issued at the County Court Money Claims Centre under claim no. C05YJ384. The claim was transferred to the county court sitting at Central London and then in turn transferred to this tribunal, by order of District Judge Avent on 3/8/16.

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

The hearing

3. The applicant was represented by Ms N Atkins of counsel and the respondent appeared in person. The hearing was listed for two days. Both parties completed giving evidence late on the second day therefore the tribunal had to reconvene on 3/3/17 for its deliberation.

4. In addition to the evidence submitted prior to the hearing by the applicant in a number of lever arch files, the following additional evidence was submitted by both parties;

   (i) Applicants skeleton argument dated 5/2/17 handed at the start of the hearing.

   (ii) Letters / emails from four management companies submitted by the respondent at the start of the second day of the hearing.

   (iii) An email relating to the gas supply to the property, the breakdown of the apportionment of the service charge, and the statement of account dated February and September 2014 submitted by the applicant at the start of the second day of the hearing.

(iv) Various correspondence between the respondent and applicant handed by the respondent in the afternoon on the second day of the hearing.

(v) The Directors Report and Financial Statements for the years ending 31 December 2011, 2012, 2013, 2014, the applicants memorandum and articles of association, and a further explanation of how the service charges were demanded by the applicant. This was received after the hearing, with the tribunals permission, on 21/2/17.

(vi) An email dated 5/3/17 from the respondent.

The background

5. The property which is the subject of this application is a 9 storey building comprised of commercial units on the ground and first floors and 94 residential flats on the 7 upper floors. The residential flats are all held on long leases. The respondent claims to have been living continuously at the property for the last 10 years or so. Although the respondent stated that other lessees were unhappy with the service charges, the respondent confirmed that she did not have any letters or witness statements from any of the other lessees. Both parties confirmed that none of the other lessees have made any legal challenges disputing the relevant service charges. The applicant was of the view that approximately 50% of the flats were rented out by lessees. The respondent was of the view that approximately 30-40% of the flats were rented out by lessees.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as set out under each of the sub-headings below.

9. Both parties confirmed the disputed service charge years concerned the service charge years ending December 2011 to 2014 totalling service charge arrears in the sum of £21,582.47. Both parties agreed the statutory consultation process in relation to the proposed major works concerning the lobby area was incomplete, no costs have yet been

incurred or demanded, therefore the tribunal was not required to determine any issues concerning this.

10. The applicant was unable to explain what the demands for £300 and £240 pleaded at the County Court related to and confirmed the tribunal was not required to determine whether these were payable as they were not recoverable as a service or administration charge. The applicant further confirmed the interest pleaded at the County Court in the sum of £6,254.94 was sought under the County Court's inherent powers and was not recoverable under the terms of the lease and therefore the tribunal was not required to deal with the interest claimed.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Were the relevant service charges demanded?

12. The applicant states the statement of account dated 30 November 2011, on page 224 of the bundle, was sent to the respondent at 5 Temple Grove, London, NW11 7UA. This refers to the yearly service charge in advance and the yearly reserve charge in advance for the years ending December 2011 and December 2012. Amongst other things, this letter states "In order to avoid interest charges being added to your account the charges above should be paid on or before the due date". The letter further states, amongst other things, "This demand is issued to assist the tenant in fulfilling obligations to pay charges on the due date". The applicant states that this is a valid service charge demand.

13. The applicant states the statement of account dated 11 February 2014, a copy of which was provided at the start of the second day of the hearing, was sent to the respondent at 5 Temple Grove. This refers to the yearly service charge in advance and the yearly reserve charge in advance for the year ending December 2013. This letter also provides the same additional information referred to in the letter in the preceding paragraph and is a valid service charge demand.

14. The applicant states the statement of account dated 10 April 2015, on page 211 of the bundle, was sent to the respondent at 5 Temple Grove. This refers to the yearly service charge in advance and the yearly reserve charge in advance for the year ending December 2014. This letter also provides the same additional information referred to in the two previous statements of account and is a valid service charge demand.

15. The applicant stated that it had a "diary of events" on the respondent's account as well as the other service charge payers' accounts to show when demands were generated. These demands were generated for a

purpose, namely, to collect service charges that were due. Having generated these demands, it is obvious that they would have been sent out. Otherwise there would be no need to generate these demands in the first place. It is a matter of course that the applicant sends out these demands specifying the outstanding balances.

16. The respondent stated that she had received the statement of account dated 10 April 2015 sometime after June 2015 but she could not recall the exact date. The respondent stated that she was sure she had not received anything similar to the statement of account before 2015. The respondent stated that the first time she had received any service charge demand was in a letter dated 7 August 2015 from the applicant's solicitors. The respondent confirmed that the address at 5 Temple Grove was her sister's address and an address that she had provided to the applicant as a billing address. The respondent was suspicious as to why the applicant had provided the statement of account dated 11 February 2014 overnight.

17. On balance, the tribunal accepts that the statements of account referred to had been generated and sent to the respondent at 5 Temple Grove on the dates stated within each of the statements. The tribunal accepts that the statements of account were generated for a purpose and that that purpose would be defeated if the statements of account were not sent to the service charge payers. The tribunal found nothing suspicious about the statement of account dated 11 February 2014 being produced overnight. The statement of account looks very similar to the other statements of account produced and sent before and after this particular statement. The tribunal accepts that the applicant made a simple error by not including that document in the bundles already provided.

18. Whilst the respondent disputed receiving the statements of account referred to, the respondent did not argue that they could not amount to valid service charge demands. Having considered the contents of the statements of account, the tribunal is satisfied that they were valid service charge demands.

19. For the reasons given, the tribunal is satisfied that the applicant had issued valid service charge demands to the respondent.

Did the service charge demands include information regarding tenants rights and obligations?

20. The applicant stated that the relevant information was provided with each of the service charge demands referred to above. The respondent stated that she had not received any of the service charge demands except for the statement of account in 2015, which included information regarding tenants rights and obligations.

21. Having found that the applicant had sent valid service charge demands to the respondent, and the respondent accepts that she had received information regarding tenants rights and obligations with the statement of account she had received in 2015, on balance, the tribunal accepts that the applicant had provided the relevant information regarding tenants' rights and obligations with each of the statements of account sent to the respondent.

Were the 'actuals' for each of the relevant service charge years sent to the respondent?

22. The applicant states the letter dated 16 July 2012, on page 206 of the bundle, was sent to the respondents billing address. As stated in the letter, a copy of the audited annual accounts for the financial year to 31 December 2011 was enclosed.

23. The letter dated 3 October 2013 on page 207 of the bundle was sent to the respondents billing address. As stated in the letter, copies of the financial statements for 2012 were enclosed.

24. The letter dated 29 September 2014 on page 208 of the bundle was sent to the respondents billing address. As stated in the letter, a copy of the audited annual accounts for the financial year to 31 December 2013 was enclosed.

25. The letter dated 9 June 2015 on page 209 of the bundle was sent to the respondents billing address. As stated in the letter, a copy of the audited annual accounts for the financial year to 31 December 2014 was enclosed.

26. The respondent stated that she did not receive the letter on page 206 of the bundle. The respondent confirmed that she had received the letter on page 207 of the bundle. The respondent did not know whether she had received the letter on page 208 of the bundle. The respondent confirmed that she had received the letter on page 209 of the bundle. The respondent confirmed that she now had all the 'actual' accounts for each of the relevant service charge years.

27. The tribunal finds that the audited annual accounts for the years ending 31 December 2011, 2013, and 2014, speak for themselves. The tribunal accepts that the "financial statement for 2012" referred to the 'actuals' for that year as the letter also stated that the surplus on the year would be added to the existing reserves. On balance, the tribunal accepts that the 'actuals' for each of the relevant service charge years had been provided to the respondent on the dates referred to within each of the relevant letters. In any event, the respondent accepts that she now has the 'actuals' for each of the relevant service charge years.

What is the amount of service charge payable by the respondent under the terms of the lease?

28. The applicant states the amount calculated under the terms of the lease based upon the rateable value is 1.2461%. The respondent stated at the hearing that she accepts what the lease states, but she would like to pay 1% as the applicant cannot prove the rateable value and she would like to know what the rateable value is.

29. The applicant stated at the hearing that all it could provide was a schedule of the apportionment as between the various flats (which was provided on the second day) and it was unable to get the actual figures used to calculate this as it had inherited the schedule of the apportionment from the previous managing agent.

30. The tribunal noted the following; this particular issue had not been raised by the respondent at the case management conference. The applicant had specified in the Scott schedule the percentage payable by the respondent. The respondents witness statement on page 157 in reply did not raise any issues concerning the percentage payable by the respondent. The Scott schedule completed by the respondent on page 161 did not raise any issues concerning the apportionment payable by the respondent. However, the respondents statement on page 178 states "How was the percentage of 1.2461% for my flat calculated, is it just the size or is it the position too?" The applicant considered this as a request for clarification rather than a dispute, as stated in the witness statement on page 195 of the bundle. The applicant clarified on page 202 of the bundle that "The percentage due from the respondent had been charged since before the current agent took over management of the property (and, as I understand it, since the lease was first granted). I understand this relates to rateable values".

31. In the circumstances, the tribunal is satisfied that the respondent had not previously challenged this particular matter but had raised a simple question for clarification, which has now been answered by the applicant. The respondent had not raised any other issues concerning this. The tribunal is therefore satisfied, as per the terms of the lease, the respondent is liable to pay 1.2461%.

Does the lease allow for a reserve fund?

32. The applicant states that by virtue of clause 2(15) on page 8 of the lease the respondent is required to pay "such further sums as the management company may reasonably require in the manner prescribed in clause 4 of this lease". Clause 4 on page 25 of the lease states "to provide a sinking fund to cover future items of substantial capital expenditure". Clause 8(e) on page 16 of the lease states that the landlord decides the reserve fund.

33. The applicant stated the sum sought (£560.75) annually was reasonable and payable. That is the amount that has been collected over the last eight or nine years and the building has always been properly financed.

34. The respondent stated that based upon her own interpretation of the lease, the applicant cannot demand any sums for a reserve fund. When asked to explain how she had interpreted the lease and to comment upon the clauses relied upon by the applicant, the respondent did not provide any explanation.

35. For the reasons provided by the applicant, and in the absence of any persuasive argument to the contrary by the respondent, the tribunal is satisfied that the lease allows for a reserve fund.

Whether the £13,153.23 paid by the respondent's mortgagee in 2013 was payable and reasonable and had been properly accounted?

36. The applicant stated that this related to arrears arising out of previous service charge years and was not relevant to the disputed service charge years before the tribunal. As set out in the statement of account dated 16 October 2015 on page 36 of the bundle, the service charge arrears for the service charge years ending December 2009 and December 2010 were £10,791-26. The applicant had started proceedings at the county court and had obtained a default judgement in the total sum of £13,153.23 (which included interest and legal costs). That is the amount paid by the respondent's mortgagee and which has been used to reduce the arrears in the service charge account.

37. The respondent's evidence on this matter was unclear. The respondent finally stated "I think it's to cover service charges for the year ending December 2011 onwards. I wanted to pay £6000 for the earlier service charge years but my lender paid more".

38. The tribunal found that the applicant had obtained a default judgement at the County Court. The respondent had not made any application to set aside that decision or to appeal the decision. Therefore, that matter is now settled. The application before the tribunal does not concern the reasonableness or payability of the service charges for the years ending 2009 or 2010 and cannot do so as the matter had been determined and settled by the County Court. The tribunal is satisfied that the amount recovered had been properly accounted in the respondents service charge account.

Is the cost of the gas for each of the relevant service charge years excessive?

39. The applicant stated that the cost related to the communal heating (between the months of October and May) and hot water throughout the year. The approximate cost of the gas for each of the following years were as follows; 2011=£82,000, 2012=£92,000, 2013=£79,000, 2014=£64,000, and 2015=£22,000. The applicant sets a budget in the sum of £70,000. The applicant is currently in the middle of settling "under-billing" by the gas provider due to a defective meter (detected in 2014) concerning the year 2015. Overall, the gas consumption has remained relatively stable.

40. The respondent clarified that this cost did not include any gas used for cooking and that £2 per day was reasonable and payable. The cost of the gas in 2015 was approximately £22,000. Therefore the cost of the gas for 2012 in the sum of approximately £92,000 was excessive. The respondent stated that she had spoken with three different management companies and that based upon the information provided by them, a total sum of approximately £18,000 per year was reasonable. The respondent adduced the evidence from the management companies on the second day of the hearing.

41. The applicant noted that the information from "London Block Management" stated that the reduction in the cost of the gas "appears odd but may be partly down to billing anomalies". The applicant adduced a copy of an email dated 29 August 2014 between the previous managing agent and the utility broker which stated "A new meter was installed on 4/2/2014. When BG updated their records, the meter was incorrectly registered as a type that measures cubic feet, rather than cubic metres. As a result the consumption of the account has been under-billed..." The applicant further stated that copies of all the relevant gas bills had been provided to the respondent.

42. The respondent confirmed that she had checked the gas bills and had provided copies to the management companies to consider.

43. In light of the supporting email provided by the applicant and the comments made by one of the management companies approached by the respondent confirming that there may be a billing anomaly, on balance, the tribunal accepts that the cost of the gas for 2015 is very low due to a billing anomaly as a result of a faulty meter. In the circumstances, a comparison of the cost of the gas for the earlier years as compared to 2015 is unreliable and unfair. The tribunal notes that the respondent has seen all relevant copies of the gas bills and the gas is supplied by a well-known company. The tribunal notes the respondent has failed to provide any persuasive evidence to show that the cost of the gas is excessive. The tribunal therefore finds the amount reasonable and payable.

Day-to-day repairs

44. Both parties confirmed the disputed amounts for each relevant year concerned the "day-to-day repairs" costs under the heading "Day to day maintenance and cleaning". Both parties agreed the same arguments were applicable for each of the relevant years.

45. The respondent stated that she disagreed with the total amount for each year as it was "too high". When asked, given that the applicant had provided all relevant invoices and receipts for each year and for each item of expenditure, which particular items she challenged and why, the respondent stated "It is not about each item. It is not a question of receipt. The management should have a budget and stick to that". When asked whether the respondent had anything more to say, the respondent stated that, based upon the information she had obtained from the three management companies, the total sum for each relevant year should be approximately £10,000. The respondent confirmed that she had considered each of the invoices and receipts for each of the relevant service charge years, she was not disputing that any particular receipt or invoice was unreasonable or unfair, and that she was simply arguing that the total figure was too high and therefore had been unreasonably incurred. When asked to give an example of any receipt or item which she felt was unreasonably incurred, the respondent stated that she was not arguing that any particular item was unreasonably incurred. The respondent further confirmed that when discussing the matter with the three management companies, she had not shown them any specific invoices concerning this particular head of expenditure.

46. The applicant stated that the respondent had been shown all relevant receipts and invoices and that the receipts and invoices speak for themselves. The respondent had not identified a single receipt or invoice as being unreasonable. The applicant cannot stick to a budget as there are unforeseen repairs to carry out during the actual year.

47. In light of the respondent's own evidence, that she had considered each invoice and receipt for each of the relevant service charge years and was unable to identify a single invoice or receipt as being unreasonably incurred, it follows that the total of those invoices and receipts must also have been reasonably incurred. The tribunal therefore finds the cost of the day-to-day repairs for each of the relevant years to be reasonable and payable.

Security cameras maintenance

48. The respondent stated that she did not dispute the amount charged for the year ending December 2011 in the sum of £114. However, she disputed the amount charged for the following years in the sum of £9176, £8521, and £4906 respectively. This was because most of the

cameras were "" dummies" and therefore should not cost so much. The respondent stated that the cost should be approximately £100-£150 for the whole block. When asked to explain on what basis the respondent had arrived at this figure, the respondent stated that it was based on the figure for 2011.

49. The applicant stated that the cost partly concerned the cover of the CCTV system. There were eight working cameras in total between the two blocks (four cameras in each block) and two additional dummy cameras. The cost also covered the additional cost of the fire alarm system and the emergency lighting. For example, in relation to the service charge year ending December 2012, the cost of the CCTV was in the sum of £5559 (as set out on page 248 of the bundle), the cost of the emergency lighting was in the sum of £1848, the cost of the lighting/alarm testing was in the sum of £678, and the cost of the fire extinguishers was £1091.1p. In relation to the service charge year ending December 2014, the cost of the CCTV was in the sum of £2442, the fire alarm cost £582, the fire extinguishers cost £183, and the cost of the emergency lighting was £1698. The applicant stated that each relevant receipt number had been provided to show the reason for the relevant expenditure and the amount involved (as set out on page 248 of the bundle for example).

50. When asked what the respondent had to say about each of the individual receipts, the respondent stated that she thought the overall amount was too expensive. The respondent stated that it could have been cheaper, but she did not have any alternative quotes. The respondent stated that it should be a maximum of £3000 for each year. The respondent further stated that she accepts that the applicant had spent the money but that the applicant could have bought cheaper cameras. When asked whether the respondent had discussed the cost of the maintenance of the CCTV with the three managing agents she had approached, the respondent stated that she had discussed the matter and was told that the cost was too high. The respondent stated that she had not asked the managing agents to provide evidence at the hearing as she could not afford to pay their fee.

51. The tribunal notes the respondent had misunderstood the number of dummy cameras being used and that the cost of the fire alarm system and the emergency lighting is also covered under this heading, that the applicant had provided all supporting invoices in relation to the expenditure under this heading, the respondent has failed to provide any comparable alternative quotes, and the managing agents approached by the respondent had not attended the hearing to give evidence in support. In the circumstances, the tribunal finds the amount reasonable and payable for each of the relevant years.

Water hygiene

52. The respondent accepted as reasonable and payable the cost incurred for the year ending December 2012 in the sum of £2,176.00 which resulted in her contribution in the sum of £27.12. The respondent disagreed with the cost incurred for the other years. The respondent stated that the cost for the year ending December 2014 in the sum of £4,164.00, which resulted in her contribution in the sum of £51.89, was too high as compared to the sum of £700 provided to her by the three managing agents she had approached.

53. The applicant stated that it had a water hygiene management contract. This was in relation to the communal hot water system and cold water tank which needed regular inspection. The respondent stated that receipts for the various payments had been provided to the respondent. The respondent stated there were additional costs for the water testing and that the figure varied from year to year.

54. In reply the respondent stated that she had seen the individual invoices, which she did not dispute, and accepts that the applicant had paid the relevant amounts. However, the respondent stated that some of the invoices were too high and therefore not reasonably incurred. When asked to specify which invoices were too high, the respondent stated she did not know as she was not a specialist. The respondent went on to state that her friends pay a lower sum for a similar item in relation to another block. The respondent further relied upon the letter from London Block Management which stated "Running between £3000 and £4000 sounds on the high side for testing and maintenance" and information from another managing agent which stated "benchmark costs £750" based on other blocks.

55. The tribunal noted that the applicant had provided all supporting invoices. The respondent had seen all the relevant invoices and was unable to state which particular invoice she thought was too high and why. The respondent had failed to provide any comparable quotes and the respondent had failed to call any witnesses in support of her claim. In the circumstances the tribunal found the amount reasonable and payable.

Porterage

56. The respondent stated that she only disputed the staffing costs which were approximately £45,000, £47,000, £49,000, and just under £52,000 for each of the relevant service charge years. The respondent stated that two porters were not required, a live-in porter was not required, and that a reasonable sum would be approximately £35,000-£40,000 per year. The respondent stated that she relied upon the information provided by Mr Kernahan, one of the managing agents she had approached, who stated in an email "these costs are coming in at

over £70,000 which as I understand from you relates to having two porters in the building, one of whom lives in one of the flats. In my experience having live-in accommodation is very old-fashioned and unless there is a specific clause in the lease that they should have a 24/7 cover. I need to see a copy of the lease and if you haven't got one available to send to me that would be useful. Nevertheless, I think one porter to service this building on fixed regular hours would be sufficient and in my view costs could be reduced to about £35,000-£40,000 per year. In addition, if the porters flat became available, that could be let in the open market to derive an income to the company, but that is an option on which I cannot give you full details at the moment until I see the terms of the lease".

57. The applicant stated that it has one resident porter and one day porter. Each porter works 40 hours per week and provides cover from 8 AM until 6 PM and also provides cover for Saturday mornings. The building has two separate entrances and therefore there is the need for two porters, one at each of the two separate lobbies. The resident porter usually also provides out of hour services. The applicant stated that none of the other lessees have complained about the service provided by the two porters, that the resident porter had been employed by the applicant for eight years and all the other lessees were happy with him, and that a lot of the people saw the resident porter as a benefit.

58. The applicant stated it is allowed to employ porters by virtue of Clause 5 of the Sixth schedule to the lease, which states "To employ on such terms as the management company may consider reasonable (including the payment of rent for accommodation) such porter or other person whether resident or not as may be necessary to perform any services in connection with the property..."

59. The applicant stated the porters were unable to do the cleaning duties on this block in addition to the porterage service provided as this was a very large building with several floors, long corridors, and stairs.

60. The tribunal finds that the lease allows for a resident porter, who was effectively providing a 24 hour service. The building has 94 flats and two separate entrances and lobbies therefore the tribunal found it reasonable for the applicant to provide two porters, one for each of the separate entrances to the building. The tribunal further notes the advantage of having two porters which includes providing cover for each other with respect to any sick leave or annual leave. The tribunal notes the evidence from the applicants managing agent, who attended the hearing to give evidence, that all the other tenants were happy with the service provided and found the porterage service of value. The tribunal found that the respondent had failed to provide supporting or persuasive evidence to show that the overall cost of the two porters was unreasonable or excessive. The tribunal notes Mr Kernahan had not provided any witness statement nor had he attended to give oral

evidence or to be cross-examined. In the circumstances the tribunal found the porterage cost to be reasonable and payable for each of the relevant years.

Legal costs

61. The respondent stated that she disputed the legal fees for the year ending 2012 in the approximate sum of £10,000 and the year ending 2014 in the approximate sum of £5,700. The respondent stated that the costs appeared to be very high and she did not understand what exactly the legal fees related to.

62. The applicant stated that the breakdown for the year ending 2012 was on page 253 of the bundle, which showed that the total legal fees for the year was in the sum of £7457.68p and there were other non-legal professional fees in the sum of £3240.00. The breakdown for the year ending 2014 was on page 284 of the bundle, which showed that the total legal fees for the year was in the sum of £5671.87. The applicant stated that pages 253 and 284 of the bundle were the expenditure schedules for each of those years. When asked to refer the tribunal to the relevant invoices the applicant initially stated that they appeared in bundle 4. However, the applicant then confirmed that the relevant invoices were not included in the lever arch files submitted by the applicant and that no other evidence was available to explain what the legal costs related to other than what was stated on pages 253 and 284 of the bundle.

63. The tribunal noted that the information provided by the applicant failed to satisfactorily explain what the legal fees related to and for what purpose they had been incurred. For example, reference number 55310 relating to 14 March 2012 on page 253 states "specific legal advice and action re". It then provides an audit number: 106298 and confirms the payment of £4,705.40 to Angel and Co solicitors. The tribunal notes that the respondent had reasonably raised issues concerning the legal costs from the outset. The applicant had provided 4 lever arch files of invoices. However, the applicant was unable to show any relevant invoices or to provide any explanation as to what those legal costs related to. In the circumstances, the tribunal was not satisfied that the applicant had shown that these costs were recoverable. The tribunal accordingly deducted £92.93 for the year ending 2012 and £70.68 for the year ending 2014 (reflecting the proportion the respondent was charged by the applicant in relation to the legal fees for each of those two years).

Vermin control

64. The approximate cost was as follows: 2011=£6,000, 2012=£1,700, 2013=£800, and 2014=£800.

65. The respondent stated that the cost was too much and in any event the service provided was poor. The respondent stated that she had been told by the porters that she would need to get her own pest control. The respondent stated that she had therefore provided her own traps in her kitchen and two bedrooms. The respondent argued that in the circumstances it was unreasonable that she had to pay for pest control.

66. The applicant stated that it used a company called "Safeguard" and it was invoiced on a quarterly basis. The service provided covered all the communal parts (mouse traps were provided on every level and each of the staircases) and in particular the two bin store areas needed attention. The applicant stated that if residents complained about infestations within their own flats, the applicant arranged for Safeguard to attend the premises but any works carried out were charged specifically to that flat. Safeguard generally advise the tenants how to tackle specific problems within their own flats. The applicant explained that the cost in 2011 was particularly high as bird proof netting was put in place in various parts of the building, including at roof level and the balcony areas, to deal with the problem of pigeons. The applicant stated that the costs vary but £800 was the standard charge and additional works resulted in additional costs.

67. In view of the evidence provided, the tribunal accepts that this cost relates to communal parts. This is a very large building and the tribunal accepts that the two communal bin store areas would need particular attention. The tribunal notes that the applicant had provided all relevant invoices and the respondent has not provided any alternative quotes to show that the cost is excessive or unreasonable. The tribunal accepts that the cost in 2011 was much higher due to the additional and substantial works carried out for that particular year. In the circumstances the tribunal finds the amount reasonable and payable.

Window cleaning

68. Both parties agreed there were large windows on each of the two separate stairwells.

69. The respondent stated that the windows were never cleaned, they were always dirty, therefore she should not have to pay for any window cleaning costs.

70. The applicant stated that the windows were cleaned each year on a quarterly basis and the relevant invoices had been provided.

71. On balance the tribunal accepts that the windows were cleaned on a quarterly basis. The applicant has provided all the relevant invoices. The tribunal notes that the other lessees have not complained about this. Given that the windows are cleaned on a quarterly basis, it is

reasonable that the windows would become quite dirty between cleans and therefore may appear to the respondent as if they were never cleaned. The tribunal finds the amount reasonable and payable for each of the relevant years.

Audit and accounting fee

72. The charge for each of the relevant years is £6,060.00.

73. The respondent stated that the charge was too high and that a reasonable amount would be £1200 for each year. The respondent stated that she relied upon the information provided to her by the three managing agents she had spoken with.

74. The applicant stated that the cost each year related to the service charge account and the management company accounts, which the applicant argued was recoverable under the terms of the lease. The applicant queried whether the sum put forward by the respondent was based on a "like for like" comparison. The applicant stated it was in the process of getting alternative quotes and that it had been offered a figure of £5200 per annum. The applicant agreed that the cost appeared to be high compared to the recent "market exercise" it had carried out but nevertheless the previous price was not unreasonable.

75. The tribunal notes the applicant stated that the costs relating to the service charge and management company accounts were recoverable under the lease and the respondent did not argue to the contrary and specifically agreed that they were recoverable under the lease. The respondents argument was simply that the cost was excessive. The tribunal notes the respondent has not provided any alternative quotes from any relevant accountancy firms. The tribunal notes that all relevant invoices have been provided by the applicant. The tribunal notes that the applicant is in the process of carrying out a "market exercise" to get the best possible price. This demonstrates that the applicant is keen on obtaining value for money. The tribunal notes the lower price that has been quoted. However, it does not follow that the previous price was therefore unreasonable or excessive. It simply means that a better price is available in the current climate. For the reasons given, the tribunal finds the amount reasonable and payable for each of the relevant years.

Management fee

76. Both parties agreed the relevant fees charged were as follows: 2011=£36,960, 2012=£38,400, 2013=£39,600, and 2014=£40,800.

77. The respondent stated that the fees were reasonable in amount but due to the poor management service provided there should be a reduction.

The respondent stated that the managing agent consistently provided a poor service during the relevant years. When asked to give examples of three of the most serious incidents, the respondent stated that the property was in a poor state of repair due to the property not being managed properly. The staircases did not comply with health and safety regulations as the height of the balustrade was incorrect and there were gaps between the rails. The wallpaper was peeling off despite being painted. The respondent stated that the property was last decorated 20 years ago. The respondent stated that the builders recently used by the applicant were not professional and that a leak in her balcony had not been dealt with properly. When asked to provide an example of a serious query raised by the respondent, for example any emails or letters sent which had not been responded to adequately or at all by the applicant, the respondent stated that she would need a 10 minute adjournment to identify any such emails or letters. Having given the respondent 20 minutes, the respondent did not identify any such evidence or answer the question that had been put to her. The respondent then stated that her main concern was that the managing agents did not provide her with a breakdown of the service charge accounts until after the matter had come to this tribunal. The respondent further stated that there was a residents meeting in 2012 and another one in 2016. The respondent stated that they should hold annual AGMs. The respondent further stated that evidence of poor management is demonstrated by the managing agents not having a reasonable annual budget.

78. The applicant stated that the common parts of the building are in need of redecoration. The management company is aware of this and had only completed in 2015 a three year external redecoration programme. The intention now was to refurbish the two lobbies and to then refurbish the common parts floor by floor. Whilst the common parts were in need of redecoration they were certainly not in disrepair.

79. With respect to the health and safety issues raised by the respondent concerning the staircase and balustrade, annual risk assessments are carried out and these issues have not been pointed out.

80. During the programme of external redecoration and whilst there was scaffolding on site repairs were undertaken to the balconies. There are cast-iron pipes from each balcony which take away rainwater to an internal rainwater pipe. Water stains appeared on the soffit above the balcony below the respondents balcony therefore the soffit needed to be opened up. The respondent was not happy with the finished work but the builder had stated that the work was done to a satisfactory standard.

81. The applicant sends out each year a set of detailed accounts and the budget. Therefore the respondent should know the services provided.

Auditing service charge account are sent out each year therefore the respondent should know the relevant costs.

82. The letter on page 207 of the bundle dated October 2013 refers to an AGM in October 2013 and an AGM that had taken place in 2012. The letter on page 208 of the bundle dated September 2014 refers to an AGM that was to take place that very week. Therefore there was evidence that AGMs had taken place in 2012, 2013, and 2014.

83. In light of the evidence before the tribunal, the tribunal found that the respondent had failed to provide supporting or credible evidence of poor management. The applicant has a programme of repairs which includes refurbishment of the common parts, entrance halls, lobbies, landings, and had already undertaken external repairs and redecorations completed in 2015 of this large block. The applicant is undertaking repairs. The applicant has an annual health and safety assessment and no issues concerning the staircase have been identified. The tribunal has already found that the applicant had served annual service charge demands and had provided audited annual accounts. When the respondent was asked to provide evidence of any example of a serious query raised by the respondent, for example any emails or letters sent which had not been responded to adequately or at all by the applicant, the respondent was unable to provide any supporting evidence. The tribunal therefore finds the amount charged reasonable and payable for each of the relevant service charge years.

External decorations

84. The applicant stated there were two sets of consultations before the programme of external works were started. The works started in 2013 and were completed in early 2015. The works were broken up into three separate phases. This was because the building is 'U' shaped and the works were divided between the three parts. However, the property was not left as a building site for three years. There were gaps between the various phases and each contract lasted between 14 and 16 weeks. The works included not only external decorations but various repairs to the brickwork, external rainwater goods, the flat roof at the back of the property, easing and adjusting of the Crittal windows, and the whole of the exterior of the block was painted. Scaffolding was needed for the relevant works. The total cost of the works over the three years was approximately £700,000. The applicant was unable to state when the property was previously redecorated (at this stage the respondent confirmed that she had been living at the property for 18 years and that no external works had been completed in the last 18 years except for the recent works).

85. The respondent stated at the hearing, as stated in her Scott schedule, that the costs had not been reasonably incurred. When asked to explain what she meant, the respondent stated that the works had not been

done properly or to a good standard. The respondent stated that the Crittal windows had been painted but the rust was starting to show on the outside. When asked whether the respondent had obtained any reports commenting on the quality of the works, the respondent stated that she relied upon the comments made by 'James'. When asked whether the respondent was not happy with any other aspects of the works carried out, the respondent stated that her main concern was the condition of the Crittal windows. When it was put to the respondent that 'James' did not refer to any other windows except rust on the windows to the stairwell, the respondent provided no answer. The respondent confirmed that the photographs on page 184 were from the inside of the property and that no photographs of the outside of the windows had been taken.

86. With respect to the balcony, the respondent stated that for a long time the applicant did not know the cause of the leaks and had therefore asked an expert to look at it. After the works were completed, the balcony was left in a poor state. The photograph on page 182 shows the state the balcony had been left in for 3 months, namely, a hole on the floor. Photographs 2 and 4 on page 181 shows how the balcony looks now. This photograph was taken last year after the works had finished (no hole). The respondent stated that her main concern about the balcony was the hole that was left for three months. The respondent stated that the end result does not look good cosmetically. The respondent stated that she is an architect and is able to state that it is in a poor state cosmetically.

87. The applicant stated that all relevant works were carried out to the external parts. No works were carried out to the internal parts. The internal condition of the windows on the stairwell were not in good condition and the applicant proposed to carry out relevant works in the future.

88. The applicant had provided letters to 16 flats inviting responses to the works that had been carried out (the remaining flats had provided responses). Therefore leaseholders had the opportunity to highlight defects and no external rust was reported to the applicant.

89. The applicant stated that the surveyor carried out works to the balcony as soon as possible. The repairs were not straightforward and therefore took time. The emails on pages 121-122, 125-128, 130, and 131-132 deal with the issue concerning the balcony. Reading all the emails, it shows that the applicant was doing its best to deal with the problem. Page 127 of the bundle refers to the need for a specialist lead worker. Whilst the repairs may have dragged on, it was not straightforward, the matter was being dealt with, and the defect has now been remedied.

90. In view of the information provided by the applicant, the tribunal accepts that it was reasonable for the external works to be phased.

Overall, although it took a while, the tribunal is satisfied that effective repairs were carried out to the building. With respect to the windows, the tribunal notes that lessees were given ample opportunity to comment on the quality of the finish and that none of the lessees had complained about rust to the windows. The rust on the inside of the Crittal windows is irrelevant to the issue of whether the external decorations were carried out to a reasonable standard as no works were carried out to the internal part of the building, which the applicant proposes to carry out in the future. With respect to the problems concerning the respondents balcony, the tribunal accepts that it was difficult to identify the problem. The emails the tribunal has been referred to demonstrates that the applicant was not ignoring the problem and that there were difficulties in identifying the problem. The tribunal notes that effective repairs to the satisfaction of the applicant's building surveyor had been carried out. In the circumstances, the tribunal finds the external decorations cost reasonable and payable.

Company Secretarial fee

91. The applicant stated that this was recoverable under the terms of the lease. The respondent stated she was "not too bothered". In the circumstances, the tribunal found this cost reasonable and payable.

What should happen to any excess in the service charge account?

92. The applicant stated that for the year ending 2011 there was a surplus of £97,255, for the year ending 2012 there was a surplus of £18,429, for the year ending 2013 there was a deficit of £185,797, and for the year ending 2014 there was a deficit of £145,823. The applicant stated that when there is a surplus in the service charge account, the surplus remains in the service charge account and is not transferred to the reserve fund account. But if money is needed for major works for example, the surplus from the service charge account would be used. The applicant stated that the lease did not expressly state what should happen to the surplus in the service charge account. The applicant stated that considering there was an overall deficit in the service charge account for the years 2011 to 2014, the respondent was better off under the system operated by the applicant.

93. The respondent stated that she did not understand the way in which the lease worked and that she would leave it to the tribunal to determine what should happen.

94. The tribunal notes the following. Clause 4 of the Fifth schedule to the lease (page 23 of the lease) is silent as to what should happen to any surplus. It states: "The total amount together with the amount of value added tax at the date hereof prevailing to be paid by the tenant in any one year shall be the amount certified by the auditors as service charge for the previous accounting period less the sum paid by the tenant in

advance for such accounting period plus the advance payment for the next accounting period as requested by the management company".

95. Subparagraph (iii) on page 9 of the lease states: "Within 28 days of the service of the certificate of the auditors referred to in the fifth schedule hereto... To pay to the management company as an annual service charge the agreed percentage of the cost (calculated as provided in the fifth schedule hereto) of providing the service and other things specified in the sixth schedule hereto together with the amount of value added tax at the date thereof prevailing credit being given for all sums paid on account of service charges during the service charge year". The tribunal finds that this means that the applicant must take into account any surplus from the advance service charge demanded and paid. The tribunal therefore finds that the applicant must deduct any surplus from the previous year.

96. However the tribunal notes the explanation provided by the applicant that the respondent is better off under the arrangement used by the applicant. The tribunal notes that the respondent did not argue to the contrary at the hearing and had not even raised this particular point herself in any event. In the circumstances, the tribunal finds that this is not a matter that needs to be resolved by this tribunal, especially given that the applicant is happy with the present arrangement and the respondent would potentially be worse off.

Application under s.20C and refund of fees and costs

97. The applicant acted reasonably in connection with the proceedings and was successful on nearly all the disputed issues, therefore the tribunal declines to make an order under section 20C.

The next steps

98. This matter should now be returned to the County Court sitting at Central London.

Name: Mr L Rahman **Date:** 26/4/17

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

Section 20C

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

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

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

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

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