13002

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CJ/ LSC /2017 /0080**
Property	:	**Flat 29 Ettrick Lodge 36 The Grove Newcastle upon Tyne NE3 1NH**
Applicant	:	**Mr Anthony King**
Respondent	:	**Places For People Homes Limited**
Type of Application	:	**Landlord & Tenant Act 1985 – Section 27A Commonhold & Leasehold Reform Act 2002 – Schedule 11**
Tribunal Members	:	**Judge W.L. Brown Mr I R Harris MBE FRICS**
Date of Decision	:	**25 October 2018**

DECISION

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The Decision

(1) The service charge statement of costs for 2015/16 are not certified in accordance with the Lease (Schedule 1, clause 1). Therefore, no sums are payable as service charge by the Applicant. Findings appear in this Decision regarding the payability and reasonableness of charges purporting to be service charges.

(2) Administration charges of £207 and £80 are not reasonable within Schedule 11 of the 2002 Act

(3) Order made under Section 20(C) of the Act

(4) No order as to costs.

Background

1. The Property is a flat within a purpose built block of retirement flats constructed in the late 1980s. There are 46 flats one of which is reserved for a Secretary/Caretaker. The majority of the residents are aged over 80. The Respondent is the leasehold owner and occupier of the Property. The Respondent is freehold owner of the block and also owns the managing agent RMG Limited.

2. By Application dated 13 September 2017 (the "Application") the Applicant made application for the Tribunal to determine the payability and reasonableness of service charges in respect of the Property for the service charge year 2015/16. The determination regarding service charges is made under Section 27A of the Landlord & Tenant Act 1985 (the "Act").

3. Directions were made by initially the Tribunal on 27 September 2017 and on 9 March 2018.

4. The Tribunal inspected the exterior and common parts of the block on 4 December 2017.

5. The hearing of this matter took place over 4 December 2017, 26 February and 22 May 2018 at SSCS Manorview House Kings Manor Newcastle-upon-Tyne NE1 6PA. The Applicant appeared in person. The Respondent was represented by Mr Andrew Rose, Technical Analyst for RMG. Its main witness was Mr Neil Russell, Contract Delivery Manager for the Respondent and present at the hearings was Ms Amy Lines, Property Manager for RMG.

The Lease

6. The parties referred the Tribunal to the lease for the Property dated 22 February 2016. The Applicant and Gwendolyn King were the original leaseholder of the Property. Particularly relevant extracts from the lease are, leaseholder covenant:

4.1 To pay the Service Charge in the manner and on the dates herein mentioned and in accordance with the provisions of the First Schedule hereto provided that if the Service Charge shall remain unpaid for 21 days after becoming due (whether legally demanded or not) the Landlord shall be entitled to interest on the amount of unpaid Service Charge at the rate of 4% per annum above the Base Rate of the Co-operative Bank plc;

Further:

The Landlord hereby covenants with the Leaseholder as follows:

5.1 During the said term to keep in good and substantial repair and to repair re-decorate renew amend and clean when and as necessary and appropriate;

5.1.1 the structure of the buildings on the Property including in particular the foundations floors outside walls (including the window frames) roofs load-bearing walls joists and beams but excluding in particular the walls within the Demised Premises that are not load-bearing walls the paintwork or other decoration in the Demised Premises the interior faces of the external walls and the internal load-bearing walls and all doors door frames and all latches locks fastenings on the doors and windows of the Demised Premises provided that if the Landlord carries out any works to the load-bearing walls within the Demised Premises to make good all damage thereby occasioned to the plastered coverings plasterwork tiles and all other materials;

5.1.2 the gas and water pipes conduits gutters ducts sewers drains and electric wires and cables (including the television aerial) and all other water sewerage drainage and electric and ventilation installations in under or upon the Property excluding such installations and services as are incorporated in and exclusively serve the Demised Premises except to the extent that the same shall be the responsibility of the Public or Local Authority;

5.1.3 The main entrance hall corridors and stairways communal laundry room the lift and any other interior communal parts of the Property enjoyed or used by the Leaseholder in common with others;

5.1.4 the boundary walls and fences of and in the Property and the entrance ways drives paths forecourts car parking spaces landscaped areas and ground of the Property;

5.1.5 to clean the surfaces of the glass in the windows of communal areas;

5.2.1 to employ a Resident Secretary for general supervision of the Property who shall be appointed by the Landlord who shall have the power to renew or terminate the appointment. The Resident Secretary may be employed exclusively in connection with the Property or in conjunction with duties in relation to any other property or properties owned or managed by the Landlord. The remuneration of the Resident Secretary and the terms and conditions or his or her employment shall be determined by the

Landlord provided that neither the Landlord nor the Resident Secretary can accept responsibility for medical or other case of the Leaseholder and the Leaseholder agrees that he will at his own expense make his own arrangements for all such attention and care as may be necessary;

5.2.2 to provide a 24 hour emergency alarm and intercom system for the general security of the Leaseholder provided that the landlord shall not be liable for any temporary breakdown or withdrawal of the above services for causes beyond the reasonable control of the landlord and provided also that the Landlord may for the better or more economical management of the Property add to omit or vary any of the above services;

5.2.3 to insure and keep insured in the name of the Landlord at full rebuilding or replacement cost the Demised Premises and all other buildings at Ettrick Lodge aforesaid together with such contents as are available for use in common by the leaseholders during the term hereby granted against loss or damage by fire and aircraft and such other risks as are normally covered by a comprehensive policy in an insurance office of repute and to make all payments necessary for the above purpose within seven days after the same shall respectively become payable and produce if required an appropriate extract to the Leaseholder's mortgagee and a copy of the receipt for the last premium due and furthermore to include in such insurance provision for the payment to the Leaseholder of a sum not exceeding 10% of the purchase price paid by the Leaseholder in the event of the Demised Premises becoming unfit for occupation and use by the Leaseholder as a direct consequence of the occurrence of one or more of the insured risks such payment to be by way of provision towards the expenses of the Leaseholder for a maximum period of twelve months in respect of any alternative accommodation he may be obliged to take by reason of any such loss of damage aforesaid;

5.4 That the Landlord will pay into a sinking fund all such sums as are deducted from the repayment sum pursuant to Clause 9.2.4 hereof.

Schedule 1

1. The amount of the Service Charge shall be certified by the Landlord's accountants at the end of each financial year and if such charge shall be greater than the sum paid in advance in any year of the term by the Leaseholder as previously provided in this Lease the balance of the said sum shall be a debt due and owing to the Landlord and payable with the Service Charge for the ensuing year.

2. The said certificate shall contain a summary of the Landlord's expenses and the Service Charge shall (interalia) make provision for the following expenditure in respect of the Property:

2.1 the cost of the Resident Secretary's salary emoluments and provision of accommodation and office and all other costs in connection with the provision of the service of Resident Secretary and the alarm system provided that where the Resident Secretary is employed in conjunction with duties in relation to any other property or properties owned or managed by

the Landlord as referred to in clause 5.2.1 and 5.2.2 hereof the cost shall be apportioned accordingly;

2.2 the cost and expense of the maintenance of the structure exterior and common parts of the Property and reasonable provision for a reserve against expenditure on maintenance repairs and replacements;

2.3 the expense of lighting and cleaning and heating the areas used in common by the Leaseholder and other Leaseholder's and the Landlord;

2.4 the cost of cleaning all outside surfaces of the windows of the Property;

2.5 the cost of keeping the ground cultivated and the forecourt driveways and car parking spaces in good condition;

2.6 the cost of maintaining and repairing and making provision for the replacement of the lift and its machinery laundry equipment the door entry system (if any) alarm system television aerial and fire precautionary equipment;

2.7 the rates taxes and other outgoings (including insurance of risks other than structure and contents) payable upon the Property not separately occupied by the Leaseholder;

2.8 the expense of insurance in accordance with the provisions hereof and of insurance of the parties used in common with all leaseholders;

2.9 auditors fees;

2.10 the costs of management which will not exceed the sheltered management allowance permitted from time to time by the Department of the Environment; and

2.11 all costs and expenses (other than those specified above or in clause 9.2.4 hereof) of whatsoever kind incurred by the Landlord in and about the maintenance and proper and convenient running and management of the Property or otherwise under or in connection therewith including in particular interest on any money borrowed to defray any expenses specified in this Schedule.

The Law

9. Section 19 of the 1985 Act states

Limitation of service charges: reasonableness

(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 provision of services or the carrying out of works, only for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.

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

11. Section 27A of the Act states

Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether 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 service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -

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.

12. Also of relevance is Schedule 11 of the 2002 Act which states

Meaning of "administration charge".

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

....

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

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

....

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

Reasonableness of administration charges.

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

The Issues

13. In response to the Tribunal's directions of 9 March 2018 the Applicant set out in a letter dated 26 March 2018 to the Tribunal and copied to the Respondent the issues by then identified for determination by the Tribunal, as follows:

"*1. That the service charge accounts must be independently audited in accordance with the Lease and/or Statute. Failure to do so means that no valid demand has been made and that nothing is yet payable.*

2. That the administrative and legal charges be disallowed.

3. That my Section 20(C) application is allowed.

4. That all of the costs associated with the unnecessary replacement of the emergency lights be disallowed on the grounds that the expense was not reasonably incurred. If not then because the consultation procedure was not carried out correctly then the costs should be limited to the statutory maximum. If not, then the costs themselves are unreasonable and that in contrast to the 153 lights charged for; RMG's own survey (p319 of the bundle) records 109 lights some of which had been installed in locked cupboards.

5. That the disposal costs of £11,000 approx. are unsubstantiated and unreasonable.

6. That the expenditure on the contingency allowance of £4,000 approx. is unsubstantiated and unjustified.

7. That the Kone invoices on pages 219 and 223 which refer to service are an unreasonable and unnecessary expense as any such costs are covered by the new lift warranty. No Statutory thorough examination is required within the 6 months following the installation of the new lift.

8. That the unsubstantiated charge for grounds maintenance is unreasonable and that the works are not to a reasonable standard.

9. The charges for Health and Safety are not a separate item for the service charge and should be absorbed within the Management Charges.

10. The Electricity charge of £5,299 is not the sum of the invoices submitted and 2 of those invoices refer to the previous financial year and should be disallowed.

11. That the Management of the Accounts and the Property has not been carried out to a reasonable standard and has ignored the requirements of the R.I.C.S Service Charge Residential Management Code.

12. That by refusing to account for the expenditure from the reserve funds and ignoring the request to make the accounts available for inspection and by claiming that the legislation does not apply to Ettrick Lodge and misleading the Ombudsman then RMG have been responsible for necessitating this action."

14. The parties had engaged over the consultation exercise required by Section 20 of the Act for major works – being replacement of emergency lighting and works to the lift in the block. The Tribunal notes that the dispute as narrowed before it was limited to the actual costs incurred and invoiced through the service charge to the Applicant and not the consultation formalities as such, although see further paragraph..

The Evidence and Submissions

15. The following is an outline of main points. The Tribunal records that it heard three days of evidence and representations and had careful regard to the cogent articulation from both parties and the documents presented to it.

16. Regarding the service charge accounts, the Applicant argued that they were not properly presented and should be independently audited, particularly in accordance with the lease (Schedule 1 referring to certification of the amount due and providing for auditor's fees as a cost) and the RICS Code of Practice for management of leasehold properties. He argued that a certificate from RMG, is not independent and therefore not compliant with that requirement.

17. He argued that RMG's failure to produce a certified balance sheet with a statement of liabilities means that the true state of the service charge reserves is unknown. To determine the proper level of reserve contribution it is also necessary to know the planned cyclical expenditure and when the next major works, such as exterior painting, are planned. He has tried without success to obtain this information, which should also inform the budget process.

18. Further, the Applicant stated that he had raised request under Section 21 of the Act for a written summary of service charge costs incurred, which request had been denied. Also, the accounts for the year ending 31st March 2016 were not issued until 3rd March 2017.

19. The cost of the major works in replacing the fire alarm and lifts at the block were of significant concern to the Applicant. He did not dispute that those works were necessary. Although not a leaseholder at the relevant time he challenged the consultation process prior to the placing of the works with Kone for the lifts, with Honeywell for the emergency lighting and management of the works with Movveo. He stated that the costs estimated had been expressed at a

residents' meeting on 2 December 2014 as £75,000 plus VAT for the fire alarms and £73,000 (inclusive of VAT) for the lift. The notice of intention regarding the lift dated 1 December 2014 stated that the cost would be £65,420.40 inclusive of VAT. The notice of intention regarding the fire alarm dated 12 December 2014 stated that the cost would be £76,098.34. Neither presentation took account of fees for Movveo to manage the works. It was not until 25 March 2015 that residents were informed of the full costs of the major works, increasing by over £27,000.

20. The Applicant argued that with regard to the lift it was unnecessary to engage Movveo to advise Kone on lift design, manufacture and installation as Kone is one of the World's leading lift manufacturers and the product involved was of a standard type. The Movveo fees of 10% of the contract sum did not represent a reasonable charge. Also, if the contract sums have been inflated by the inclusion of unnecessary work such as the emergency lighting or a consultant's report then charging 10% on such costs is unreasonable.

21. Regarding the cost of emergency lighting the invoiced sum was £67,123.51 plus VAT of £13,424.70. He referred to the number of fittings listed in the RMG survey of Fire Precautions. He identified discrepancies regarding the number of the "bulkhead luminaire" installed and those removed (including sensors and lights). He identified an extra 44 luminaires charged for unnecessarily at a cost of £135 each, i.e. £5,962 plus VAT.

22. The removal and disposal costs charged for the removed equipment is £6,704. The average cost of the disposal of individual sensors was £39 per sensor.

23. The Applicant complained that the Respondent had permitted Kone to charges for the lift inspections during the warranty period; he felt this was unreasonable and should have been covered in the lift installation costs.

24. The Applicant complained that grounds maintenance was poor for the cost charged. The supervision of contracts was poor and not cost-effective. In 2006 over £1,000 was spent on new plants and shrubs. They have not been well cared for. Dead tree branches have not been removed. The lawn was in poor condition and shows signs of neglect. Self-seeded sycamore weeds/saplings have not been dealt with. Ivy is left to grow on tree trunks. Resident volunteers carry out a considerable amount of work in the borders and when assessing the condition of the grounds their contribution should not be underestimated.

25. The detailed complaints above were listed. On inspection it was found that many of the items listed were correct. The total cost of the work undertaken by the in-house team of places for people was £4,138 which was in excess of £200 per visit. It was apparent that the work comprised mainly of grass cutting and hedge trimming. The grounds were found to be fairly large but do not require specialist cutting equipment and the work done was mostly maintenance. The costs are considered excessive for the condition of the grounds, which also were tendered by residents. Mr King suggested a figure of £20 per hour for a gardener and according to Mr King a sum of £3,090 (a reduction of £1,098) was more realistic.

26. The Applicant argued that while there is a committee which makes representations on behalf of residents to RMG it is not a recognised residents association. He considers that RMG takes advantage of the committee's good nature by expecting them to produce and publish minutes of meetings at their own expense of time, ink and paper. Some residents never see those minutes. It is RMG's responsibility to ensure that all residents are kept equally informed. The most serious examples of RMG's failure to produce minutes and keep residents informed are those in connection with the residents' meetings discussions regarding the major works to the lift and emergency lighting.

27. In criticising the performance of RMG as managing agent, the Applicant noted, in addition to issues relevant to the above, alleged failings as follows:

    Failure to plan and budget properly;

    Failure to communicate properly;

    Failure to provide clear advice regarding the new Fire Alarm system;

    Failure to properly display clear fire action notices;

    Failure to have regard to the particular needs of the aging population of the block;

    Failure to effectively manage the routine requirements of the block.

28. The Respondent refuted the assertion that it had an obligation pursuant to the lease or law to have the service charge accounts audited.

29. Regarding the Applicant's assertion that he had made a request for a summary of relevant costs involving Section 21 of the Act the Respondent stated that the request was contained in an email dated 19 December 2016 stating 'Please may I have a copy of the accounts for 2015.2016?'. There was no reference to the legislation and it was understood by the Respondent that the Applicant wanted a copy of the previously signed-off version of the accounts for that year. If the Applicant had wanted to invoke the legislation he should have been made a clear request.

30. It explained that the Fire Safety Works undertaken by Honeywell were carried out in accordance its proposed schedule of rates estimate of £67,123.51 and with VAT added, £80,548.21. The respondent's Technical Services Team organised the procurement of a tender estimate from Honeywell, checked this, agreed the contract, and then supervised the works. Their fees for project managing the contract were set at 10% of the contract price, £6,712.35.

31. Regarding the lift replacement works it was noted that there were unforeseen changes to the works which had to be agreed as the contract progressed. KONE's tender estimate of £60,347.01, excluding VAT, was slightly reduced to £59,847.00. However, additional costs were agreed for:

- Lift pit tanking, at a cost of £3,298.45 excluding VAT

- Decorations to the lift and a vinyl floor covering, at a cost of £450, excluding VAT

- Goldshield Lift Maintenance, at a cost of £315, excluding VAT.

32. The Respondent's Technical Services Team obtained two estimates for consultancy services with regard to the lift installation work from WSP Group and MovveO. The Respondent's Technical Services Team did not charge any supervision fees.

33. The figure in the accounts of £4,138 for the grounds maintenance service was an accrual, based on the budget figure for the year. Adjustments would be made in the accounts for the following year. The regular grounds maintenance service was provided by PfP Landscapes, operated of the Respondent. The contract required 20 visits to be made annually, fortnightly during the growing season and once a month outside of that. Each visit consisted of two gardeners attending the site. Time spent on site is related to the tasks required at the visit. More time is spent on site if required, less time if not required. With regard to pricing for works, PfP Landscapes assessed that the average time spent on site for the two gardeners is four hours each. The total costs for this service for the year was £4,030 which represents a cost per visit of £201.50 or £25.19 an hour per gardener. PfP Landscapes provide a grounds maintenance service to all of the Respondent's portfolio of properties. Savings are therefore achieved in management and supervision, which otherwise would be an added cost of managing any locally appointed contractor. The accrued figure and actual service costs were represented to be reasonable.

34. Regarding management charges a fixed fee approach was adopted by RMG which should have resulted in a fee of £259.44 per unit. However, for 2015/16 the Respondent agreed that the annual unit fee should be £256.36. The total costs of £11,536 were invoiced quarterly. It was asserted that the management services provided were reasonable and necessary.

THE TRIBUNAL'S FINDINGS AND DECISION

35. The Tribunal was first satisfied that the Applicant's lease provides for recovery of the costs at issue (paragraph 6) and found that these are governed by clause 4.1 of the lease.

36. The Tribunal next considered the format of the service charge accounts for 2015/16. While the Respondent felt justified in producing for the previous service charge year the accounts in a particular simplified form, because of leaseholder request, the Lease prescribes the presentation required (Schedule 1, clause 1 – they are to be certified by the Landlord's accountants.) The accounts for 2015/16 were presented as neither signed nor certified. Until there has been compliance the Tribunal determines that no sums are properly payable by the Applicant for 2015/16. The Tribunal assumes that the relevant accounts will be represented in a compliant form and therefore it has gone on to make determinations on the sums at issue.

37. The Honeywell contract and the lift replacement are part of a countrywide framework agreements run by RMG, to undertake repair, replacement and renewal work on the Respondent's managed properties. We were advised that these were consulted upon at the time they were proposed and no objections were received. It is doubted if any residents understood the nature of these contracts. The Tribunal is therefore obliged to regard them as agreed, but this does not remove from RMG the need to supervise the contract and each individual piece of work undertaken.

38. The invoice from Honeywell for the replacement fire alarm system totalled £67,132.51 plus VAT. The Respondent provided a breakdown of cost in accordance with their framework agreement. The breakdown identified installed bulkhead luminaires for 153 pieces of lighting. It was accepted by the Respondent that 174 redundant items were removed, but it was unclear how many may have been sensors. The RMG fire report identified that there was one sensor in each flat and one in each of the bin store and laundry – a total of 48, which was in accordance with the Honeywell invoice of 3 September 2015. The evidence was conflicting in respect of other fittings. RMG's own survey of 2 September 2015 identified only 109 luminaires, whereas Honeywell had charged for 153. The Tribunal found that on a balance of probabilities there was an excess charge for 44 luminaires at a cost of £135.50 each, i.e. £5,962, plus VAT. The Honeywell contract added 20.5% for "head office overheads and profit" – i.e. £1,222.21 - plus VAT. Therefore, the overcharge is £7,184.21 plus VAT of £1,436.84 – a total of £8,621.05 for luminares.

39. The removal and disposal of electrical fittings by Honeywell was pursuant to The Waste Electrical and Electronic Equipment Regulations 2013 ("WEEE") disposal regulations requiring a disposal record (as it concerned electronic equipment). The Honeywell breakdown (page 503 of the bundle) showed 174 devices each at £17.50 and 81 sensors each at £39, plus 2 "other" items being removed for disposal. The Tribunal could not determine the number of devices disposed of, quoted at 174, which appeared to be excessive, but a realistic number could not be identified. However, the Tribunal considered that as all would not be WEEE required disposals the cost of £17.50 per item was excessive. The Tribunal determined that a reasonable charge for disposal in accordance with WEEE affected items would be £10 per item – total of £1,740. That shows an excessive charge of £870.00 which, plus the profit and overheads charge (£178.38) and VAT of £209.67, a total reduction for this element of £1,258.02.

40. As to the disposal of sensors there were 81 recorded. Again, in accordance with WEEE, but as these contained radioactive substance a higher charge would be appropriate. The Tribunal's experience is that the cost of disposal varies between £1 and £75 per item. The figure charged of £39 would not be unreasonable, however only 47 sensors were installed. The Tribunal was persuaded that the number given by the Respondent of disposed of items – 81 - could not be relied upon. A difference of 34 items allegedly removed at £39 each is £1,326 and the Tribunal determined that this sum should be deducted, plus the profit and overheads charge (£271.83) and VAT (£319.57) – i.e. a total of £1,917.40.

41. As to the project management fee the Tribunal determined that engagement of Moveo was a luxury and not a necessity. Involvement caused duplication of work. The Tribunal found that Moveo provided proper value only regarding the disabled access arrangements. Therefore, the Tribunal determined that a more limited consultancy fee would be appropriate. The Tribunal determined that the fee charged of £3,331-60 should be reduced by £500 plus vat at £600, amounting to a reduction to £2731.60 which apportions to the Applicant in the sum of£59.38.

42. Regarding project management fees, the differences of number of fittings disclosed by the RMG Fire survey after the Honeywell contract showed a lack of checking and supervision and a reduction of 50% to £3,356.18 was determined by the Tribunal, which apportions to the Applicant in the sum of £72.96.

43. Concerning the "contingency" cost – for making good after the removal of old fire protection equipment – the evidence from Mr Russell was that leaseholder requested (prior to the Applicant's ownership) a higher level of redecoration and on behalf of the leaseholder, Mr Fowler had agreed inclusion of a sum for this of £4,000. The Tribunal finds that this has therefore been properly charged.

44. Regarding the Kone charges for the lift inspections the Tribunal was persuaded that the inspections at issue were required by the Lift Operating Regulations 1998 and were reasonably incurred. It was an inspection not a repair of defects.

45. Regarding gardening costs, on inspection it was found that many of the items listed by the Applicant of concern were correct. The total cost of the work undertaken by the in-house team of the Respondent was £4,138 which was in excess of £200 per visit. It was apparent that the work comprised mainly of grass cutting and hedge trimming, with little maintenance involved. The grounds are fairly large but do not require specialist cutting equipment and the work done was maintenance. The costs are considered excessive for the condition of the grounds, which also were tendered by residents. The Applicant suggested a figure of £20 per hour for a gardener. The Tribunal felt that a more supervised and expert attention could have been provided for the costs incurred as described to it and noted at inspection a reasonable figure was that presented by the Applicant, i.e.£3,040 (a reduction of £1,098).

46. The Tribunal found that it was appropriate to charge for health and safety items separate from general management charges. The work described to the Tribunal was not excessive or inappropriate and therefore the cost is reasonably incurred and reasonable in amount.

47. The Applicant identified two invoices for electricity charges he said were not relevant to the service charge year at issue. The Respondent explained them as accruals, for expense's incurred although not invoiced, in that service charge year. The Tribunal accepted that explanation.

48. On the question of management generally the Tribunal found that the level of supervision and checking of the substantial works carried out in the service charge year was low, for example the mis-counting referred to above concerning light fittings. In general, the supervision of contracts seems not to rest with

RMG but was contracted out, for example to Moveo regarding the lift. The presence of an on-site caretaker reduced the management company's day to day responsibilities but it was unreasonable to expect that individual to overview major contract works and more detailed management would have been appropriate.

49. The Tribunal also found there had been some unhelpful administration – such as inviting inspection of tender documents only at its offices at Haddesdon, Hertfordshire, a round trip of some 500 miles.

50. There was a lack of clarity regarding administration of the reserve fund, with no breakdown of the sum charged to the reserve fund of £166,088.

51. The management charge of approximately £250 per flat (inclusive of VAT) is in line with current market rates, however, in light of the Tribunal's findings it determines that a reasonable management charge for the service charge year at issue would be £200 per flat, inclusive of VAT – i.e. a reduction from £11,536 to £9,200, being £2,336.

52. In the circumstances the Tribunal determines that the service charge costs for service charge year 2015/16 are not all reasonably incurred and should be reduced by £15,230.47, plus Moveoo and project management fees of £2,731.6 and £3,356.18 respectively, a total of £21,318.25, apportioned (divided by 46 apartments) making an excess of £463.44 charged to the Applicant.

53. The Applicant also asked the Tribunal to rule on payability of legal and administration charges of £207 and £80 respectively. These related to his not settling the service charge demands and the Respondent stated they followed as a consequence. The Tribunal found that these penalties were 'variable administration charges' for the purpose of Schedule 11 of the 2002 Act. The Respondent did not identify a provision in the Lease permitting recovery of those charges, but given that the Applicant has been found to have good grounds to challenge elements of the service charge the Tribunal found that those two charges were not reasonable in accordance with that Schedule.

As to Section 20C and Costs

54. The Applicant made application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years.

55. The Respondent objected to a Section 20(C) Order. It contended that the Applicant had made no formal request for accounts information in accordance with Section 21 of the Act, so as to engage a requirement for accountant certification of the accounts. Therefore, the Application had not been appropriate.

56. The Tribunal was satisfied that the Respondent had tried to respond to the complaints by the Applicant, both before and during these proceedings. However, the Application was certainly not mis-conceived and the Applicant

have been successful in these proceedings. Therefore, the Tribunal determines that it should make an order under Section 20C of the Act.

57. There was no application before the Tribunal concerning fees and it makes no order as to costs.

Tribunal Judge : Mr W Brown Dated: 25/10/2018