FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BY/LSC/2015/0065**
Property	:	**32 Bispham House, Lace Street, Liverpool, L3 2BP**
Applicant	:	**Bispham House Management Company Limited**
Representative	:	**J B Leitch**
Respondent	:	**Ms Karen Jones**
Type of Application	:	**Landlord and Tenant Act 1985 – s 27A Commonhold & Leasehold Reform Act 2002 – Schedule 11, Paragraph 5**
Tribunal Members	:	**Judge M Simpson** **Mr J Rostron**
Date of Directions	:	**27 October 2015**

DECISION

Determination:

1. **The service charges for the years ending 31 March 2012, 2013, and 2014 are reasonably incurred and are payable by the Respondent to the Applicant in the amounts set out in the service charge accounts and demands.**

2. **The administration fee of £180 (inclusive of VAT) is reasonable in amount and payable by the respondent to the applicant if, as a matter of fact (to be determined by the Count Court) there had been the none payment of Service Charges in respect of which the Administration Charge was imposed.**

Application

1. This is a reference to the Tribunal arising from an order of District Judge Pugh in Norwich County Court dated 9 June 2015 by which he referred to the tribunal "the question of whether any service charge or the charges expenses or costs are due from the defendant to the claimant".

2. On 2 July 2015 the Tribunal gave Directions for the proper preparation of this case.

3. The applicant management company has complied with those Directions and has filed and served a statement of case with accompanying exhibits, dated 15 July 2015.

4. The respondent has filed and served some documentation, although not in accordance with the Directions but comprising mainly of a statement, un-dated, but filed with the Tribunal on 24 September 2015 accompanied by a record of extended e-mail traffic between her and the applicant management company, and/or her solicitors.

The issues.

5. One of the primary issues raised by the respondent is whether or not there has been a proper account of the payments that she has made, or may have been made by the managing agents who looked after her flat whilst it was being rented out. The issue as to whether, or not, payments have been made and by whom and to whom is not a matter which is within the jurisdiction of the Tribunal.

6. The tribunal can assess the reasonableness of service charges that have been rendered and whether or not, under the terms of the lease, or otherwise, those charges are payable and by whom and to whom. It is not part of the tribunal jurisdiction to take an account as between the parties as to who paid what to whom and when. That will have to be a matter of evidence before the County Court once this tribunal has decided what service charges are payable for the year in question. The only amount currently said to be outstanding is in respect of the year to 31 of March 2014 in the sum of £653. At the time this matter was referred to the

tribunal it appeared that Ms. Jones defence was in respect of, possibly, three years namely 2012, 2013 and 2014.

7. The fact that Ms Jones has made payments on account of the years in dispute does not mean that the Tribunal is deprived of the jurisdiction as to the years to which those payments may have been allocated.

8. Accordingly, the Tribunal took its remit to be a determination as to the reasonableness and pay ability of the service charges for those three years, so far as there had been any discernible challenge to them in the documentation supplied by Ms. Jones.

9. Ms. Jones' documentation does not appear to challenge the reasonableness of the ordinary and usual service charges set out in the service charge accounts, save for two areas. She questions the payment of £180 in respect an administration fee. There is some evidence of her challenging the item of the thousand pounds included in the service charge demands for 2013. Although not articulated in detail, she avers that this amount is in respect of Qualifying Works for which there should have been specific consultation under the provisions of section 20 Landlord & Tenant Act 1985

The lease.

10. The lease under which Ms. Jones holds apartment 32 is dated 31 March 2010. It appears that none of the challenges raised by Ms. Jones are on the basis that the charges levied are out with the lease or not authorised by it. In its detailed statement of case the applicant sets out, clause by clause, the relevant provisions in the lease.

The Applicant's case.

11. The evidence supplied, in accordance with the Tribunal's directions, indicates that for the first period of two years after completion or partial completion of the development (March 2010 to March 2012), a budget was prepared as set out at page 82 of the applicant's bundle. In the light of the experience of the actual cost during the first two years the unaudited accounts of the management company were prepared showing the expenditure on wages, general repairs, cleaning, lift, electricity, insurance, accountancy fees and travel expenses totalling £106,767. Taking into account the payments made my way of service charge by the tenants there was a shortfall of some £34,500.

12. In the year to March 2013 expenditure under the same headings was incurred and the deficit was some £6,668.

13. In the year to March 2014 expenditure under the same headings as was incurred, indicating a similar level of expenditure. The income receivable from tenants, however, was considerably increased, apparently because of the £1,000 provision levied in or about April of 2013, leading to a total

amount received from the tenants of £143,492, and creating a surplus of £45,202.

14. It is apparent from the Applicant's further statement of case dated 29 September 2015, and filed and served in response to the Respondent's reply to the original statement of case, that the thousand pounds levy arose as a result of decisions taken at the annual general meeting of the applicant management company, having identified the need to spend £24,000 on the car park, £12,000 on the cladding, £9,600 on security, £6,000 on fencing, £6,000 on the ground floor reception flooring and £6,000 a replacement emergency and general lighting.(see minutes at page 23 –Tab 17, of Applicants Reply).

15. The Applicant avers that each of these items are separate and distinct. The £78,000 raised by the levy from the 78 flats was only in part to be used for the items identified, and the balance to remain to either deal with the deficit on the service charge account, for future service charge items.

16. Save for the £24,000 re car Park/Tarmac, none of the individual items discussed at the annual general meeting require the payment of more than £250 for each of the 78 flats, and therefore the consultation requirements were not engaged. In any event, the decision was taken at an annual general meeting in respect of which each flat owner could have the opportunity to attend, which amounted to informal consultation. Further, if there had been a breach of the consultation requirements all the works were necessary, reasonably priced, and therefore there was no prejudice, because of any failure to consult.

The Respondent's case.

17. By the document filed with the tribunal 24 September 2015 Ms Jones set out some of the difficulty she has experienced since she bought this apartment; one of three apparently bought on a buy to let basis. She has been dealing with various managing agents, both of the block itself, and her individual flats. She avers that considerable sums of money have been paid on her behalf of the towards the accumulating service charge debt.

18. She alleges various technical breaches so far as the addressing of appropriate service charge demands are concerned.

19. She also complained of a lack of consultation in respect of any proposals for major works, and a failure to provide a Section 20 notice. She does not go on to clarify or amplify the case in that regard or deal with any questions of prejudice or considerations regarding dispensation.

20. She exhibits e-mail correspondence, some of which is between her and her own solicitor, and therefore privileged, but in respect of which the Tribunal assumes that privilege has been waived so that we can consider the content of those e-mails.

21. She says that it is self-evident that a levy of £1,000 to each of the 78 flats in the development exceeds the £250 limit and is therefore limited to £250 per flat because of the failure to consult on the Section 20.

22. The respondent avers that the £150 plus VAT chasing those arrears payment is entirely unjustified, because there were no significant arrears. She avers that the applicants had received substantial payments on account of service charge from the agents that she was employing as managing agents to let this flat, and other flats which he had bought in the development to let to short-term tenants, but that when preparing the service charge demands the applicant, in this case, had failed to take into account the payments had been made on her behalf.

Determination.

Reasonableness.

23. Notwithstanding the failure of the Respondent to set out specific challenges to the Service Charge amounts, we analysed the Service Charge accounts and Statements and demands. There appeared to be no evidence to show that the amounts were unreasonable in amount or unreasonably incurred.
We noted that for 2013 the management charges of £14,400 represented 23% of total expenditure reducing to 12% in 2014. These sums however, despite being very much to the top end of the band of reasonableness as a percentage, amount to an annual charge per flat of £185 and£152 – well within the band of reasonable charges for this type of scheme.

The levy.

24. By paragraph 14 of Part D of the Lease the Applicant has authority to include reserve fund costs in the service charge, including for items of future expenditure.
The £1,000 levy is such a cost.
The levy was not a charge for works done, but a payment on account of identified likely future expenditure.

25. If that expenditure was to be the subject of a contract with a provider of the works then, if Section 20 and the Consultation Regulations applied, consultation would be required at that time.
The Section 20 requirements are not engaged by the mere raising of a levy.

26. The AGM of 10 April 2013 clearly contemplated this and it is specifically referred to, at the end of the paragraph immediately following the table of required works, in the minutes of that meeting.

27. The items in the table of works are separate items and should not be aggregated for S20 purposes. All of the items, except Car Park Tarmac are below the 78 x £250 limit, and most would remain so even if aggregated for quotation or estimate purposes.

28. There has been no breach of the consultation requirement in respect of the £1,000 levy.

The administration charge.

29. To charge £150 for the work involved in pursuing payment from someone who is, apparently, 2 or 3 years in arrears with substantial service charge payments is not unreasonable.

30. If the arrears existed, the charge is payable.

31. If the arrears did not exist and, in fact the landlord has been paid via the tenant's agents, but the amounts have been wrongly accounted for, then the charge is unreasonably levied and the Respondent is, at the very least, entitled to an apology.