10905

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/LSC/2014/0617**
Property	:	**FLAT 3, 102 BRONDESBURY VILLAS, LONDON NW6 6AD**
Applicant	:	**MISS C TROUGHTON**
Representative	:	**IN PERSON**
Respondent	:	**MR CHARLES KAMENOU AND MR GABRIEL CHARLES KAMENOU**
Representative	:	**RINGLEY MANAGING AGENTS**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges and costs**
Tribunal Members	:	**(1) Tribunal Judge Lesley Smith** **(2) Mrs J Davies, FRICS** **(3) Mrs R Turner**
Date and venue of Hearing	:	**Thursday 30 April 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**18 May 2015**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that nothing is payable by the Applicant in respect of service charges for years prior to the year ending March 2010.

(2) The Tribunal determines that the sum of £8048.58 is payable in respect of cleaning, gardening and routine maintenance for the service charges for the years ending 2010 to 2015. The Applicant's share is 25%.

(3) The Tribunal determines that the sum of £17608.20 is payable in respect of the Major Works (as defined at paragraph 24 below). The Applicant's share is 25%.

(4) The Tribunal determines that the sum of £1750 + VAT per annum together with £3291.88 for additional fees is payable in respect of the management charges for the years ending 2010 to 2014. The Applicant's share is 25%.

(5) The Tribunal determines that the sum of £810 + VAT is payable by the Applicant as legal administration charges.

(6) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge

(7) The Tribunal determines that the Respondent shall pay the Applicant £220 within 28 days of this Decision, in respect of the reimbursement of 50% of the Tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2008 to 2014 and continuing.

2. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

3. The Applicant appeared in person at the hearing accompanied by Mr Dunlop and the Respondent was represented by Mr Maloney, a solicitor

with Ringley Legal, accompanied by Miss A Ampadu and Mr Powell, managing agents with Ringley Managing Agents.

4. In addition to the bundle of documents prepared by the Applicant for the hearing, the Tribunal received from Mr Maloney in the course of the hearing 6 bundles of invoices supporting the Respondent's service charge claims for the majority of the years in question. Those already in the bundle as disclosed to the Applicant were incomplete and the further documents were essential to allow the Tribunal and the Applicant to understand the basis of the service charge claims. In addition, the Tribunal sought copies of the Applicant's lease which had not been included in the bundle and was provided with copies of that.

The background

5. The property which is the subject of this application ("the Property") is a 2 bedroom garden flat in a Victorian conversion house ("the Building").

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 Applicant holds a long lease of the Property ("the Lease") 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 are referred to below, where appropriate and set out in Appendix 2 to this decision.

The issues

8. At the start of the hearing the Tribunal identified with the parties that the relevant issues for determination were as follows:

   (i) The payability and/or reasonableness of service charges for the service charge years ending March 2008 and March 2009 at a time prior to the involvement of the current managing agents;

   (ii) The payability and/or reasonableness of the service charges relating to cleaning, gardening and routine maintenance for the service charge years ending March 2010 to March 2015;

   (iii) Whether there had been compliance with the consultation procedures pursuant to s20 of the 1985 Act in relation to major works to the roof and drainage of the Building

(iv) The payability and/or reasonableness of service charges relating to management fees for the service charge years ending March 2010 to March 2014

(v) The payability and/or reasonableness of legal charges and interest raised against the Applicant in relation to non-payment of service charges during the service charge years ending March 2010 to March 2015;

(vi) Whether an order should be made under s20C of the 1985 Act and whether the Applicant should be refunded the fees of her application and the hearing of her application before the Tribunal.

9. 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.

Service charges for the service charge years ending March 2008 and March 2009

10. The Applicant challenged service charges included in her ledger account as at 10 April 2009 amounting to £3194.95 which appeared to relate to earlier service charge years. Of that sum, £1427.12 had been refunded on 14 May 2010 leaving a balance of £1767.83.

The tribunal's decision

11. The tribunal determines that the amount payable in respect of the service charges for years prior to the year ending March 2010 is nil.

Reasons for the tribunal's decision

12. Miss Troughton gave evidence that she had purchased the Property in 2005. The freeholder had never been involved with the Building and it was looked after by the tenants. In 2006/7, she thought, she had started to receive demands for money but there was nothing being done to the Building and no evidence of what the demands were for and so she had not paid. On her own admission, 2008 was a difficult time as she owns a number of properties and has a number of mortgages. However, her reason for not paying at that time and at various times since then was that she had not been provided with information about the basis on which money was being demanded. She thought that Ringley Managing Agents ("Ringley") had come on board in March 2009. She had no contact with managing agents before Ringley and she did not understand the opening balance on the ledger in April 2009. Nor did she understand how the refund had been calculated. The Tribunal asked her about what services were being provided before Ringley's involvement. She said there had been none. When asked whether the Property had been insured by the freeholder she was

unable to say but she had not been sent any demands in that regard nor had she seen any policy of insurance or insurance certificate.

13. Mr Maloney confirmed that Ringley had taken over at the beginning of the 2009-2010 service charge year. In response to questions from the Tribunal about how the service charge was calculated, he explained that, notwithstanding the absence of any definition of the service charge year or dates for demands in the Lease, the service charge was calculated each year to 25 March and that demands were made in March and September for each year. Ringley, as prudent managing agents, had made demands for payments to the reserve fund as well as for service charges since they had taken over management of the Building, recognising that significant major works needed to be done to bring the Building up to standard. The Applicant's share of the service charges is 25%. There are five flats in the Building. Three of the flats pay 25% and the other two 12.5% each.

14. In documents before the Tribunal, Ringley had indicated that they were unable to produce evidence in relation to the service charge years ending 2008 and 2009 because they were not involved, the previous managing agents had been asked to produce the documents for that period but had failed to respond.

15. The Tribunal recognises the difficulties faced by Ringley but ultimately would have expected a prudent freeholder to have sought and retained copies of the paperwork relating to service charge demands, particularly where sums remained outstanding and the managing agents were being changed. In the absence of any evidence from either party as to the amounts demanded for each year or what those amounts were for, the Tribunal cannot find that any sum is either payable or reasonable. Accordingly, none of the £1767.83 is payable or reasonable.

Cleaning, Gardening and Routine Maintenance for the service charge years ending March 2010 to March 2015

16. Mr Maloney took the Tribunal through the invoices he had produced for the hearing by reference to the audited accounts for the service charge years in question which showed that the amounts demanded or to be demanded under this head were as follows:-

Year ending 2010:	£160 for maintenance and £370 for cleaning
Year ending 2011:	£220.98 for maintenance and £1626.66 for cleaning and gardening
Year ending 2012:	£370 for maintenance and £1200 for cleaning and gardening
Year ending 2013:	£315 for maintenance and £520 for cleaning
Year ending 2014:	£1275.04 for maintenance and £470 for cleaning
Year ending 2015:	£1698.90 for maintenance and £800 for cleaning

The tribunal's decision

17. The tribunal determines that the amount payable in respect of cleaning, gardening and routine maintenance is as follows:-

Year ending 2010:	£160 for maintenance and £370 for cleaning
Year ending 2011:	£220.98 for maintenance and £1626.66 for cleaning and gardening
Year ending 2012:	£370 for maintenance and £920 for cleaning and gardening
Year ending 2013:	£315 for maintenance and £400 for cleaning
Year ending 2014:	£1275.04 for maintenance and £450 for cleaning
Year ending 2015:	£1140.90 for maintenance and £800 for cleaning

Reasons for the tribunal's decision

18. The main source of debate at the hearing related to the cleaning and gardening element of the service charges. Invoices were produced to support the items of maintenance claimed and none appeared to the Tribunal to be unreasonable. In relation to the service charge year ending 2015, there is 1 invoice in the sum of £558 which Mr Maloney indicated was work done to an individual flat (not the Applicant's) and so that invoice will not be charged to the service charge leaving a figure for maintenance for the year to March 2015 at £1140.90.

19. In relation to cleaning and gardening, the Applicant questioned the regularity of the cleaning and gardening since she had seen little evidence of the Building being cleaned. She pointed out that the communal area in the Building was only a small hall and one staircase. The outside area at the front of the Building was very small and not well kept. The rear garden was private and therefore not maintained at communal expense. She pointed out that a plug to the communal area in the Building had only been fitted in about 2013 so cleaners could not have been vacuuming the hallway and stairs until after that date.

20. Miss Ampadu gave evidence in relation to the cleaning and gardening although she had only been responsible for the Building since 2013. She confirmed that the cleaners had been changed a number of times due to complaints from tenants about the standard of the work. She had offered the tenants the opportunity to find their own cleaners but those put forward had not had the necessary insurance.

21. The costs for cleaning varied over the period. Initially the cleaners were Hooneys Cleaning Company who were charging £35 per visit for cleaning and who appear to have attended for 2 months in June and July 2009. They were replaced by FDS Maintenance who appear to have taken over in October 2009. They were charging £60 per month for cleaning and £60 per month for gardening. Miss Ampadu indicated that they would have been attending fortnightly so this charge would amount to £30 per visit. They continued at the same rate throughout

the 2010-11 service charge year, occasionally charging for additional work such as removing a section of carpet and disposing of this and replacing light bulbs. They continued at the same rate at the start of the 2011-12 service charge year but Miss Ampadu gave evidence that they were dismissed in 2011 as their work was not up to standard. They were replaced by Sentinel it appears in May 2011. They charged £650 for the period May to November 2011 and £250 for November to January 2012, £60 for January 2012, £120 for February 2012 and £120 for March 2012 for cleaning only. The Tribunal was told that this equated initially to £100 per month or £50 per fortnightly visit. This rose to £120 per month or £60 per visit at the start of 2012. Sentinel continued to carry out the cleaning in the 2012-13 service charge year, initially charging £120 per month, equating to £60 per visit but reduced to £100 per month or £50 per visit from June 2012. Cleaning was passed to BLOC cleaning services from about June 2013. It appears that no cleaning had been carried out by Sentinel since September 2012. In June 2013, BLOC carried out a deep clean for £60 and thereafter took on routine cleaning fortnightly for £20 per visit with some limited gardening which cost £10 per visit. However, their services were dispensed with in September 2013, again according to Miss Ampadu because the tenants were not happy with the standard of the work. Cleaning was taken over by Begum Maintenance Ltd in November 2013 and they continue to provide cleaning services to date. Miss Ampadu gave evidence that they only clean and do not carry out any gardening and that, although their invoices indicated that they cleaned weekly this was not in fact the case and that they cleaned fortnightly. They charge £80 per month or £40 per visit.

22. The amount charged for cleaning and gardening has varied significantly in the period under challenge as indicated by the sums at paragraph 16 above. To some extent this is due to variations in the service offered and frequency of attendance (which was erratic at times). However, taking into account the evidence which the Tribunal heard about the nature of the extent of the cleaning and gardening required, it takes the view that the maximum which could be justified for either cleaning or gardening is £40 per visit.

23. An analysis of the invoices produced therefore leads to the following figures for this element which the Tribunal considers can be justified as reasonable:-

Year ending 2010:	£370 (as claimed at £35 then £30 per visit)
Year ending 2011:	£1626.66 (as claimed at £30 per visit plus sundries)
Year ending 2012:	£920 (£520 + £200 + £80 + £80 + £40: £50 per visit rising to £60 per visit adjusted down to £40 per visit)
Year ending 2013:	£400 (£80 + £40 + £80 + £80 + £80 + £40: £60 then £50 per visit adjusted down to £40 per visit)

Year ending 2014: £450 (£40 + £20 + £50 + £20 + £80 + £80 + £80 + £80: 1 invoice at £60 reduced to £40)
Year ending 2015: £800 (as claimed at £40 per visit)

Major works for roofing repairs

24. The Applicant challenged service charges for major works to the roof pipes and drainage of the Building ("the Major Works") in the sum of £1860 (part of the service charge for year ending 2014) and £15748.20 paid on 14 September 2014 (and paid for from the reserve fund).

The tribunal's decision

25. The tribunal determines that the amount payable in respect of the Major Works is £1860 and £15748.20 together totalling £17608.20.

Reasons for the tribunal's decision

26. The Applicant challenged the charges for the Major Works on the basis that proper consultation had not been carried out and on the basis that the cost of the Major Works had been increased by the Respondent's failure to carry out the Major Works sooner.

27. In relation to the consultation procedures, Mr Maloney showed the Tribunal the notices served. On 19 June 2011, there was a notice of intention to carry out the Major Works. This was general in terms of the nature of the Major Works and specified them as "External and internal repair and re-decoration". The notice informed the tenants that 4 contractors were to be approached for estimates and the names of those contractors. Tenants were invited to provide names for any other contractors who they wished to nominate within 30 days. On 7 September 2013, notice was given of the intention to carry out the Major Works. The final figures for each of the estimates which had been provided were given. Details were given of how the estimates could be inspected. A further contractor had been included in the list it is assumed at the behest of one of the tenants. No tender had been received from one of the contractors. There were therefore 4 tenders ranging from £34073 to £48345. The Tribunal was shown the tender report prepared by Ringley Chartered Surveyors dated 28 October 2013. This showed that the Major Works included works to the roof pipes and drainage which were those works paid for and which were challenged by the Applicant. The Tribunal was also shown the specification for the Major Works and the fact that this included the Major Works as carried out. Finally, the Tribunal was shown the certificate of payment and invoice in relation to the roofing works in the sum of £13123.50 + VAT and the invoice in relation to the works to the pipes and drainage in the sum of £1860. The certificate of payment and invoice in relation to the roofing works was higher than the tender estimate (by £1460) due to some additional work.

28. Miss Ampadu explained that further major works were envisaged to the Building but, given the passage of time, a further consultation was underway for this with Notice of intention to carry out the works having been served on 8 January 2015.

29. Miss Troughton claimed in her statement and in evidence at the hearing that she had never received the section 20 notices. However, the Tribunal was shown a copy of a letter to her on 5 September 2013 enclosing the stage 2 notice dated 7 September 2013. This was addressed to her address (she does not live at the Property). She indicated that this might have gone astray because the address was given as "Apt 1 9 Lindfield Gardens" and the postman might have mistakenly read this as being "19 Lindfield Gardens". Be that as it may, the Respondent does appear to have complied with the duty to send the notices and consult. The Tribunal notes in this regard that it appears to be a constant complaint by the Applicant that she does not receive documents sent to her by or on behalf of the Respondent and she says that these should all be sent by e mail. Whilst recognising that in this day and age it is not uncommon for professional dealings to be conducted by e mail, the Tribunal does not consider it unreasonable for the Respondent to resort to the usual means of posting documents, particularly where those have to be served to comply with statutory requirements. It is for the Applicant to ensure that she provides the Respondent with the correct address for such service. It might though be sensible in light of the previous dealings between the Applicant and Respondent if documents are notified to her by e mail (although the Tribunal does note from the e mails provided to it that at least reference to various documents is made in those e mails and an offer to provide the Applicant with copies by that means if she required them).

30. The Tribunal also notes in this regard the statement from the owner of Flat 1 of the Building, Miss Morel. Miss Morel did not attend the hearing to give evidence. The Tribunal notes however from her statement that she complains of the fact that she does not feel that the tenants were properly consulted. She says this:-

"Roof works were undertaken to the Building, however I do not feel that the tenants were properly consulted during this process. Rather we were told who would be doing it, the timescale that we were given by Ringley for the repairs was entirely unrealistic and the works took far longer than anticipated. I have been fighting for nearly 8 months to obtain photos (pre/post), survey, request of work made to the selected contractor and final report once work completed".

It is notable that Miss Morel does not complain that she did not know that the Major Works were to be carried out nor which contractor had been selected; indeed it is implicit from this statement that she had received the notices as she had been told who would be carrying out the

Major Works. Accordingly, the Tribunal accepts that the Respondent did properly consult in relation to the Major Works.

31. In relation to whether the cost of the Major Works were increased by the Respondent's delays in carrying out the Major Works, the Applicant and Miss Morel in her statement complained that the Building was in a state of dilapidation due to the Respondent's failures to maintain it over a number of years. Miss Ampadu indicated that this had been due to there being insufficient funds in the Reserve Fund to pay for the Major Works. She submitted to the Tribunal that the Major Works could not be carried out until the funds were available. Whilst accepting that the way in which the Respondent and their managing agents have planned for the Major Works, by building up a reserve, is prudent management, the Tribunal observes that the Respondent, as freeholder and in accordance with the terms of the Lease, does have an obligation to maintain the Building whether the funds are available from the tenants or not. It was though the Applicant's case that the Major Works were necessary and therefore not unreasonable.

32. The Applicant's case appears to be that the cost of the Major Works was increased by the failure to carry out those works earlier. Whilst of course there might have been an element of inflationary consequences of the Respondent not carrying out the Major Works, perhaps back in 2011 when the Major Works were first envisaged, the Tribunal was provided with no evidence that the costs had increased. Indeed the roofing contractor who carried out the most costly part of the Major Works to date had carried those out for the price agreed in the tender (albeit the tendering exercise itself was 2 years after the first s20 notice). There was though no evidence of what the cost might have been if the Major Works had been carried out in, say, 2011 nor any evidence of when the Applicant says that the Major Works should have been carried out. Although the Applicant did say that if the works had been done "when they were meant to be done" (the Tribunal assumes 2011) then not so much work would have been needed. There is though no evidence that if the work had been done then it might, for example, have been possible for the roof to be patched up rather than replaced. Miss Ampadu gave evidence that it would not have made economic sense to do only patch repairs in the scheme of such major works to the Building generally. Further, the specification which was drawn up at around that time provided for a full roof replacement and the Building now has a new roof with a guarantee so it is difficult to see how the Applicant is prejudiced. The Applicant and Miss Morel have been spared a very large demand for the cost of the Major Works which might have arisen if those works had been carried out sooner (rather than those being covered by the reserve fund) and the Tribunal is unable to identify any other reason given by the Applicant for why the Major Works have cost more due to the time lapse in carrying out those works.

33. For the above reasons, the Tribunal considers that the cost of the Major Works as claimed is payable and reasonable.

Management charges

34. The Applicant challenges the management fees claimed by Ringley for the years ending 2010-2014 (there being no figure available as yet for year ending 2015). Mr Maloney identified those figures as being the following:-

Year ending 2010:	£2023
Year ending 2011:	£2056.24 + survey fee of £325 + VAT (£381.88)
Year ending 2012:	£2215.95 + survey fees of £1260 + £180
Year ending 2013:	£2430.72 + survey fee of £510
Year ending 2014:	£2980.32 + survey fees of £300 + £900

The Tribunal's decision

35. The Tribunal determines that the amount payable in respect of management charges for the years ending 2010 to 2014 is £1750 + VAT per annum. In relation to the survey fees, the Tribunal determines that the sum payable is £3291.88.

Reasons for the Tribunal's decision

36. The Applicant's main complaint is that Ringley does not actively manage the Building. As she said, she just wanted to know what she was paying for.

37. Mr Maloney showed the Tribunal the management agreement between the Respondent and Ringleys ("the Agreement"). This is dated 10 March 2009 for management from 10 April 2009. The initial fee payable under the Agreement is a fixed fee of £1750 + VAT per annum to be paid quarterly in advance. The agreement provides for an increase in this sum as follows:-

"[5.4] The fee payable for the Management Package as specified in the Agreement shall be increased annually in proportion to the greater of the increase in the Retail Price Index or 5%, the effective date of increase being the 1st day of the service charge year taking the index for the month of the last review and that current for the twelfth month thereafter."

38. The Agreement provides for various services to be provided for the fee. Those are set out in Schedule 1. Many are in the nature of accounting and leasehold management services and day to day running of the Building and answering queries. Such things as inspections, surveys, supervising contractors, acting as liaison on projects and preparing specifications are additional items which are charged separately. Items such as enforcing covenants against tenants are also charged

separately. This is relevant to the legal charges set out in the next section.

39. Of course, the Tribunal is not constrained by agreements between freeholders and their managing agents in terms of what it is reasonable to charge to tenants. However, it is a starting point in the absence of any other evidence. The Tribunal has carefully considered whether the amount set out in the Agreement given the nature of what is covered by that charge is reasonable. The fee is a fixed fee rather than a per unit charge. If calculated as a per unit charge, this would equate to £325 per unit plus VAT. Whilst the Tribunal considers that this is on the high side, it is not unreasonable. However, the Tribunal considers this to be the case in the current market. The Tribunal is not prepared to go so far as to speculate what the fee should have been when the Agreement was first signed in 2009 as it was provided with no evidence as to the change in the market for management fees and given the economic conditions, there might not be a significant difference between then and now. The Tribunal does consider though that a fee of any more than £325 + VAT per unit is not justified and reasonable in the current market, particularly given the limited services actually covered by the Agreement. Accordingly, the Tribunal considers that only £1750 + VAT is reasonable for each of the service charge years from year ending 2010 to 2014. The Tribunal notes that VAT rates have altered in the period from 15% to 17.5% on 1 January 2010 and from 17.5% to 20% on 4 January 2011. Accordingly, the parties will need to calculate the effect of those changes on the figures claimed in each of the years in question.

40. In relation to the various surveys, the survey fee for £325 + VAT (£381.88) is for a fire and risk assessment survey. The fee of £1050 + VAT (£1260) was for inspecting the Building and preparing the specification for the Major Works. The fee of £150 + VAT (£180) was to serve the section 20 notice in June 2011. The fee of £425 + VAT (£510) was for a fire and risk assessment survey (carried out every 2 years). The fee of £750 + VAT (£900) is for the tender analysis for the Major Works. The fee of £250 + VAT (£300) is for the s20 notices served in January 2015.

41. The Applicant and Miss Morel complained that they were never provided with the surveys. The Applicant did though say at one point in her evidence that she was not happy about paying for one survey because it was only 4 pages long, she had expected it to be accompanied by photographs and "it was not personalised" to the Building. The Tribunal was also provided with e mail exchanges between the Applicant and others at Ringleys eg Mr Deller where an offer was made for example to send the specification to the Applicant.

42. Having considered the fees and having been provided with all the invoices for those fees, the Tribunal considers that fees are payable. The Tribunal also considers that the majority of the fees are reasonable

having regard to what they cover. However, the Tribunal notes that the cost of the fire and risk assessment varies between the first and second by £100 + VAT and does not consider such an increase in fees to be justified. Also, the cost of service of the section 20 notices has increased from £150 + VAT to £250 + VAT and in a period of such low inflation, the Tribunal does not consider that such an increase is reasonable. Accordingly, the Tribunal considers that the sum of £200 + VAT should be deducted from the survey fees claimed.

Legal charges

43. The Applicant challenges legal charges levied against her by the Respondent as administration charges. Mr Maloney set out the amounts claimed as follows:-

Year ending 2010:	£40.25 (£35 + VAT)
Year ending 2011:	£374.39 (£41.13 + £41.13 + £70.50 + £100 + £10 + £41.13 + £70.50)
Year ending 2012:	£258 (£72 + £72 + £72 + £42)
Year ending 2013:	£406 (£42 + £10 + £72 + £210 + £72)
Year ending 2014:	£126 (£42 + £42 + £42)

The Tribunal's decision

44. The Tribunal determines that the amount payable in respect of legal charges is £810 + VAT. This is calculated as 12 letters at £20 per letter, 2 sets of drafting at £60 per set, 2 entries of judgment at £60 per entry, 2 land registry fees at £10 each and 2 court fees at £100 and £210.

Reasons for the Tribunal's decision

45. The Applicant challenged the legal fees claimed both on the basis that they were not payable and also because they were not reasonable. Again, she claims not to have received documents and to have been unaware of the demands or Court proceedings until it was too late. She admitted to having received "erratic demands for thousands" but said that because she was in constant communication with Ringleys she presumed that "it would go away". She had involved solicitors but only because she was not receiving post at her address (before that, it appears from e mails that Ringleys were sending post to the Property as she had not provided a correspondence address although she said that her brother lived at the Property at some time). Judgment in default had been entered against her but she knew nothing of it until it was too late as she had been away for the summer. In early 2011, solicitors had become involved and she thought it was all sorted when they had paid £4465. Thereafter, she had started making periodic payments, Ringleys having refused to let her do so before then.

46. Mr Maloney explained the basis for claiming payment as being either clause 4(d) of the Lease which is the standard clause for claiming legal

costs associated with proceedings linked to forfeiture or paragraph 6 of the Fifth Schedule. The Tribunal pointed out that if the claim were made under the latter, that the Respondent could only claim 25% from the Applicant as her share of the service charge. Mr Maloney accepted this but submitted that his primary case was that it was payable under clause 4(d). The Tribunal accepts that clause 4(d) is sufficiently widely drafted to enable the Respondent to claim legal charges for rent arrears recovery. There is no doubt in the alternative that paragraph 6 of the Fifth Schedule would cover recovery of legal costs and the Tribunal notes that legal costs appear to be accounted for by Ringleys within the service charge expenditure. However, if that were the basis on which the charges were being claimed then only 25% would be payable by the Applicant and that does not seem to the Tribunal to be fair on the other tenants. Accordingly, the Tribunal considers that the legal charges are payable under clause 4(d) of the Lease.

47. Turning then to reasonableness, Mr Maloney explained the basis of the charges. The sums of £40.25, £41.13 or £42 were letters before claim which appear to be charged as £35 per letter plus VAT. He thought that the difference in sums was due to VAT (which would make sense looking at the dates concerned). There are 3 letters charged at £72 which Mr Maloney said were letters to the Applicant, her mortgage company and her solicitor about enforcement of the judgment debt (those being £60 + VAT). The figures of £100 and £210 were court fees in relation to 2 sets of Court proceedings. The figures of £70.50 and £72 related to drafting the 2 sets of Court proceedings (the difference again probably accounted for by changes in VAT rates). The £10 figures were Land Registry fees to prove ownership and mortgage details of the Property for the purposes of Court proceedings. There were 2 figures of £70.50 and £72 for entering judgment in the 2 sets of proceedings (again the variation probably being due to changes in VAT rates and equating to £60 + VAT).

48. The Tribunal accepts that the Court fees are reasonable. Similarly, the carrying out of Land Registry searches for the purpose of legal proceedings is reasonable so the £10 fees are reasonable. The Tribunal accepts that the charges levied for drafting proceedings and entering judgment are reasonable. However, the Tribunal considers that the charges in relation to letters before claim are excessive. Ringleys are paid as managing agents to recover arrears as part of the Agreement. The Tribunal would expect therefore that before they passed an arrears case to their in house legal department, they would have calculated the amount of arrears and should have the paperwork such as the account to show this. All that should then be required of the lawyer would be to check the figures claimed and write to the tenant concerned. In the view of the Tribunal, a sum of £20 + VAT per letter is reasonable. The same goes for further letters (indeed, there is even more of an argument in relation to further letters as no checking is required). In relation to letters informing the Applicant, mortgage company and solicitor that the Respondent intended to enforce the judgment, there is no reason

why those should be charged at any higher rate (particularly since those letters produced payment and therefore no enforcement action was taken).

49. In light of the above, the figure for legal charges should be reduced by £175 + VAT. In light of the changes in the VAT rate in the period concerned, the parties will need to work out what VAT rate applied to each item reduced in order to reach a final figure.

Application under s.20C and refund of fees

50. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund 50% of the fees paid by the Applicant of £440 (therefore amounting to £220) within 28 days of the date of this decision.

51. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that an order under section 20C should be made so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. Whilst the Respondent has succeeded in relation to some of the items challenged, it has not done so in relation to all and it was not until Mr Maloney provided the documentation at the hearing that the Tribunal was able to understand the Respondent's case so it is understandable that the Applicant felt constrained to bring this application.

Name: Lesley Smith **Date:** 18 May 2015

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix 1
Relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's 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 a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,

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

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

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

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

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation Tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(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.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Appendix 2
Relevant clauses of the Lease

1. IN this Lease unless the context otherwise requires:-

....

(C) "the Building" means the building of which the Premises (as hereinafter defined) forms part and (where appropriate) includes the adjoining land appurtenant thereto situate at 102 Brondesbury Villas London NW6
(D) "the Premises" means the flat and (if applicable) garden(s) hereby demised as described in the First Schedule hereto
(E) "the Common Parts" means those parts of the Building not included in this demise and not demised to any other lessee of the Lessor and the appurtenant land intended for common use and in particular the entrance halls lobbies and staircases hereof

.....

(H) "interest" means interest at the rate of four per cent per annum above Barclays Bank Plc base rate (or any replacement of base rate) from time to time with a minimum of ten per cent per annum

4. THE Lessee HEREBY COVENANTS with the Lessor as follows:-
(a) To pay the said rents during the said term at the times and in manner aforesaid AND in the event that any rent hereby reserved shall remain unpaid for more than 28 days after the date upon which the same becomes due (whether demanded or not) or in the event that the Lessee fails to pay any other sums payable to the Lessor hereunder within 28 days of demand then without prejudice too any other right or remedy of the Lessor hereunder to pay interest on such rent or sums from the due date for payment or (as appropriate) date of demand until payment
.....
(d) To pay all costs charges and expenses (including Solicitors costs and Surveyors fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 or Section 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court

5. THE Lessee HEREBY COVENANTS with the Lessor and as a separate covenant with any owners and lessees of the remainder of the Building that the Lessee will at all times:-
.....
(ii) Contribute and pay 25 per cent of the costs and expenses mentioned in the Fifth Schedule hereto all such contributions and payments to be made in the following manner and at the following times:-
(a) the Lessee shall pay to the Lessor within 28 days of demand by way of interim service charge contribution 25 per cent of such sum or sums as the Lessor may anticipate expending in respect of any of the costs and expenses mentioned in the Fifth Schedule hereto
(b) the Lessee shall pay to the Lessor by way of service charge contribution within 28 days of demand 25 per cent of such sum or sums as the Lessor shall

have expended in respect of any of the costs and expenses mentioned in the Fifth Schedule hereto

6. THE Lessor HEREBY COVENANTS with the Lessee (but not so as to bind the Lessor for the time being after it shall have parted with all its estate and interest in the Premises) as follows:-

(ii) That subject to the payment of the rents and service charge contributions hereinbefore reserved and made payable by the Lessee the Lessor will as and when necessary maintain repair and renew

(a) the main structure and in particular the roof chimney stacks gutters and rainwater pipes exterior walls foundations and any walls of the Building not demised by this lease or any lease of any other part of the Building

(b) the gas and water pipes sewers drains and electric cables and wires now or hereafter in under and upon the Building and enjoyed or used by the Lessee in common with the Lessor and the owners and occupiers of the remainder of the Building

(iii) That (subject as aforesaid)the Lessor will so often as reasonably necessary redecorate and repair the exterior of and the Common Parts of the Building and will keep all such Common Parts as appropriate reasonably cleansed and lighted

THE FIFTH SCHEDULE
Costs and Expenses

1. The expense of maintaining cleansing repairing and renewing

(i) The main structure and in particular the roof chimney stacks gutters and rainwater pipes exterior walls foundations and any walls of the Building not demised by this lease or a lease of any other part of the Building

(ii) The gas and water pipes sewers drains and electric cables and wires in under or upon the Building and enjoyed or used by the Lessee in common with the owners and occupiers of the remainder of the Building

2. The cost of redecorating and repairing the exterior of the Building and the Common parts pursuant to Clause 6(iii) hereof and the cost of keeping the Common Parts reasonably decorated maintained cleansed carpeted (if appropriate) and lighted

.....

4. The cost incurred in the payment of the proper fees of the surveyor or agent and workmen appointed by the Lessor in connection with the supervision and carrying out or prospective carrying out of any of the repairs and maintenance herein referred to and the apportionment of the cost of such repairs maintenance and collection between the several parties liable to reimburse the Lessor for the same

....

6. The costs and expenses incurred in management and administration of the Building including in particular collection of ground rents and service charges and preparation and auditing of accounts and the costs and expenses incurred in enforcing the performance and observance by the several lessees

of the flats in the Building (including the Lessee) of their obligations under their respective leases

7. The costs incurred in providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure and interest charges as the Lessor shall reasonably deem necessary for the general benefit of the Building and its lessees whether or not the Lessor has covenanted to incur such expenditure or provide such services facilities and amenities or carry out such works

.....

9. Such sums as the Lessor shall reasonably consider necessary from time to time to put to reserve to meet the future liability of carrying out works to the Building or the Premises with the object so far as possible of ensuring that the contributions payable by the Lessee shall not fluctuate substantially in amount from time to time