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FIRST –TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HC/LIS/2013/0072
Property:	Flat 1, 10 South Parade, Weston-Super-Mare, North Somerset, BS23 1JN
Applicant: **Representative:**	Union Pensions Trustees Ltd. & Paul Bliss Powells, Solicitors; Matthew Brown, Coundel
Respondent:	Mrs Maureen Slavin
Representative:	None
Type of Application:	Service Charge
Tribunal Members:	Judge David Hebblethwaite (Chairman) Judge Michael Tildesley Mr Michael Ayres (Valuer member)
Date and venue of Hearing:	12 November 2013 at The Webbington, Loxton 20 December 2013 for reconvening of Tribunal members at Vintry House, Bristol
Date of Decision	12 Feb 14

DECISION

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1. On 6 June 2013 the Tribunal received applications from the Applicant in relation to the Property; one under section 27A of the Landlord and Tenant Act 1985 for a determination as to the payability by the Respondent of service charge for three years; and the other under para. 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for a similar determination in respect of an administration charge. The three years in question are those ended 31 December 2009, 31 December 2010 and 31 March 2012. The third period is in fact for 15 months, following the Applicant changing the accounting year.

2. The law relevant to these applications is as follows:

Service Charge (1985 Act)

Section 18 defines "service charge" as *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.* The "relevant costs" are defined as *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord in connection with the matters for which the service charge is payable.*

Section 19 provides that 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 if the services or works are of a reasonable standard.*

Another relevant section in this case is 20B. Sub-section (1) provides that *if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to sub-section (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.* Sub-section (2) states that *sub-section (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

Administration Charges (2002 Act)

Para. 1 of Schedule 11 sets out the meaning of "administration charge" and "variable administration charge". It is a lengthy definition and, rather than quoting it in full, the Decision will make clear later what expenses in this application are covered. Para.2 provides that a variable administration charge is payable *only to the extent that the amount of the charge is reasonable.*

3. The Tribunal was able to read, before the Hearing, a large bundle of documents from each party. Immediately before the Hearing the Applicant sought to introduce a substantial bundle of additional documents. This had not yet been received by the Respondent. A spare copy was handed to her and the Hearing put back for her to look at this and consider whether she would wish to apply for an adjournment. In the event she did not apply and the Tribunal allowed documents in the additional bundle to be referred to, as relevant. The principal document in the bundles is the Lease. This is dated 8 October 1981. The landlord, Prentisley Investments Limited, and the tenant, Malcolm Stewart Brown, are predecessors of, respectively, the Applicant and the Respondent. The Property, which is fully described in the First Schedule, is demised to the tenant for a term of 999 years from 25 December 1980. The Property is a flat in a building containing four residential flats and a commercial leasehold unit. The lease contains easements and rights for the benefit of both the Property and the rest of the building and both tenant's and landlord's covenants. The "common parts" are defined in clause 1(10), as is the "service charge" in clause 1(13). More detailed provisions about the service charge are found in the Sixth Schedule, which should be read in its entirety; the tenant is to pay 15% of "total expenditure", that being defined in para. 1 of the Schedule as *the total expenditure incurred by the landlord in any accounting period in carrying out its obligations under clause 5(4) of this lease and any other costs and expenses reasonably and properly incurred in connection with the landlord's property including without prejudice to the generality of the foregoing (a) the cost of employing managing agents and (b) the costs of any accountant or surveyor employed to determine the total expenditure and the amount payable by the tenant hereunder.* As that para. states, the landlord's obligations are set out in clause 5(4) of the lease, to which reference should be made.

4. Before the Hearing the Tribunal inspected the Property. Present were the Respondent, and for the Applicant Mr Paul Bliss (one of the two co-owners of the building and therefore landlord, he representing both) and Mr Brown, the

Applicant's barrister. The Applicant's solicitor also attended. The Property is in a period mid-terrace building with a rendered and painted finish. It was not possible to inspect the roof. The ground floor houses a commercial cafe with a separate entrance to the four flats above. The rendering to the front elevation appeared to have been renewed and the Tribunal was shown where the damp had come through on the entrance porch and floor tiles had not been replaced. The front lobby had been decorated recently. This leads to the rear lobby area which had been tidied up with the removal of an old WC, although the Tribunal noted what appeared to be signs of dry rot in the skirtings. The rear lobby leads to an outside yard with shared access on to West Street. The area has suffered from pigeon droppings in the past and further work is still required to eradicate the problem. The Tribunal was shown the interior of the Property. There were signs of previous damp problems which had been fixed.

5. Following the inspection the Hearing took place at the Webbington. Mr Brown represented the Applicant, having lodged a skeleton argument. He was accompanied by Mr Bliss, the Applicant's witness. He personally manages the building and agents are not employed. The Respondent appeared in person. Mr Brown conceded that in respect of the 2009 charge his client was caught by section 20B of the 1985 Act and that, therefore, not all the costs could be claimed. This was further considered by the Tribunal at its reconvening (see later in this Decision). The Hearing proceeded through each of the three years in turn. It is not intended to set out all that was said by the parties or representatives. Such as was relevant and affected the Decision will be set below in the Tribunal's consideration. This took place on a subsequent date because the Hearing had taken up all the available time on 12 November.

6. By reference to each of the service charge demands in the bundle the Tribunal considered each year in question, as follows:

Year ended 31 December 2009

Reference is made to p. 35 of the Applicant's bundle. The Applicant accepted being caught by section 20B of the 1985 Act in respect of some of the items. The cut-off date was 10 October 2009. This includes the buildings insurance (5 February 2009) and electricity, bills for which dated 19 February 2009 and 22 May 2009), as well as £40 of the cleaning charges. Further, the Applicant in effect withdrew the administration costs of £812.50, as these related to proceedings against Mr Slavin. The item for "legal and professional" turned out to be settlement of an invoice from Architecture Plus dated 5 October 2009.

The Tribunal was satisfied that it was not paid until November 2009, upon Mr Bliss's evidence, and that the time between invoice and payment was reasonable (notwithstanding the request on the invoice for payment by return). The leading authority of *OM Property Management Ltd v. Burr* defines the incurring of costs as being when an invoice is presented or payment is made by the landlord. There is no qualification, whichever is first/last, and the Court of Appeal, upholding the Upper Tribunal (Lands Chamber), in effect left it open to any Tribunal to decide in each case. We take the date of payment in this case and find that this item is not precluded by section 20B. We are also satisfied that the charge, for a report and schedule, was reasonably incurred. £1,150 is, accordingly, allowed.

The Tribunal then considered the item of £400 for audit and accountancy. This appears to relate to an undated invoice typed up (on plain, unheaded paper) by Mr P. R. Macey, described as a chartered accountant, appearing in the bundle next to a "chartered accountant's report" for the year in question, a report that is itself undated and unsigned. Paragraph 6 of the Sixth Schedule to the lease provides for an annual certificate *prepared and signed by the Auditors.* They are defined at clause 1 (15) of the lease as *the Auditors for the time being of the landlord who shall be a firm of chartered or certified accountants.* Mr Macey does not comply with this definition. He was an employee of the landlord, which specifically disqualifies him, under clause 28 of the 1985 Act. He had no practising certificate or insurance. Moreover, Mr Bliss told the Tribunal that Mr Macey was never in fact paid £400; he was salaried by the landlord. This appears to be a brazen attempt by the landlord to put an additional £400 on the service charge. So, the amount cannot be found to have been reasonably incurred. The later obtaining by the landlord of a sort of back-up certificate by a firm of chartered accountants does not affect this decision. It should be added that Mr Macey was subsequently disciplined by his professional body (ICAEW) in respect of this and the two following years. The Tribunal has had sight of the Investigation Committee Decision dated 25 October 2013, which orders that he be reprimanded for issuing the "chartered accountant's report" when *(i) he was ineligible to do so under section 1 (15) of the lease as he was neither an auditor or* (sic) *firm of chartered or certified accountants; and (ii) he was not independent as he was an employee of the landlord* and for issuing the invoices *when he knew, or ought to have known, that the amounts were not due to him.*

Finally, the management costs of £350, this being per flat and not, as with the other items, to be attributed in accordance with the lease (15%). Mr Bliss "manages" the building himself and relies on an earlier tribunal having said that £350 is an appropriate charge per flat (he

having previously claimed a higher amount based on charging out his time). This is not a binding decision so far as the present Tribunal is concerned. The landlord can only charge for complying with his obligations under clause 5 (4) of the lease. He can employ managing agents but has chosen not to do so. His authority to charge for undertaking this himself must come from sub-clause (h) of clause 5 (4) where he covenants to *do or cause to be done all such works installations acts matters and things as in the absolute discretion of the landlord may be considered necessary or advisable for the proper maintenance safety amenity and administration of the landlord's property*. It is for the Tribunal to decide on reasonableness, both of the services provided by the Applicant and the charge. Now, Mr Bliss has set out what he has done to be charged under this head on a sheet of paper that appears at p. 55 of the Applicant's bundle – it's the left hand column. If you were to apply the hourly rate, as he does with his administration costs, you would get:

£65 x 11 = £715 x 15% = £107.25

considerably less than the £350 charged, though Mr Bliss has added a note that also included are preparation of service charge payment of accounts and general correspondence. However, the 11 hours is made up of 11 sessions of exactly 1 hour each, with very vague descriptions, such as "visit" and "rubbish, etc". Moreover, no service charge demands were issued in the year in question, which the Tribunal considers the absolute minimum that should be done by way of management. The Respondent stated that there was no phone no. to get Mr Bliss and that he was away a lot. In para. 5 of her witness statement (p. 2 of her bundle) she set out a series of examples where Mr Bliss has not met the standards expected of a manager. She produced quotes from firms of managing agents, much cheaper (but it must be noted that they state they would charge extra for overseeing big works). After due consideration, the Tribunal is satisfied that Mr Bliss's "management" of the building fell significantly short of what would be expected from a manager performing to a reasonable standard and he did nothing to justify a management charge and that, therefore, any such charge is unreasonable. Mr Bliss in effect did not manage the building.

To summarize what the Tribunal allows for the year ended 31 December 2009:

Cleaning	180.00
Legal & professional	1,150.00
TOTAL	1,330.00

15% = £199.50

Year ended 31 December 2010

Reference is made to the service charges demand at p. 58 of the Applicant's bundle. The Respondent accepted the charges for buildings insurance, heat and light, cleaning and repairs & renewals. The Tribunal disallows the amount for audit & accountancy for the same reason as the previous year. The item "legal & professional" once again solely refers to an invoice from Architecture Plus, this time for preparation of schedule of works. The Tribunal finds this reasonable and allows the invoiced amount of £1,175. Next come the management charge at the flat rate of £350 and administration costs, time costed at £780. Some details are to be found on a sheet of paper at p. 89 of the Applicant's bundle. Two of the three columns (those headed "working with other advisers" and "tribunals/court") set out timed and dated events that are said to be covered by the management charge of £350, whereas the third column (headed "supervising works") sets out timed and dated meetings or inspections. However, the Tribunal finds that the former contains no recognized work that would come under a management charge. The first column refers to Powells or Bank and all events are in round hours (except one half hour) in length. The information is almost meaningless, and it is even possible to compare Mr Bliss's time for Powells on 12 August 2010 of 2 hours with Powells' own record for the day of attending Paul Bliss 12 minutes, which further undermines the Applicant's document. The Tribunal comes to the same conclusion as it did in relation to 2009 that the Applicant did nothing to justify a management charge and that, therefore, any such charge is unreasonable. The administration costs (subtitled "Supervising works") are disallowed as unreasonable. The building works referred to come in the following year. Andrew Wilson (total 5 hours) was said to be an architect who did not get the job, Mr James is (presumably) the tenant of Flat 2 and "inspection" (6 hours total) is just vague. Finally, there is an item for legal fees, which the Applicant agreed to withdraw.

To summarize what the Tribunal allows for the year ended 31 December 2009:

Buildings insurance	£724.52
Light & heat	110.23
Cleaning	200.00
Repairs & renewals	316.71
Legal & professional	1,175.00
TOTAL	2,526.46

15% = £378.97

Period ended 31 March 2012

Reference is made to the service charge demand at p. 92 in the Applicant's bundle. Once again, building insurance and heat & light are accepted, as is cleaning. The Tribunal disallows the item for audit & accountancy for the same reason as in the last two years. Next come the management charge at the flat rate of £350 and administration costs, time costed at £990.05 (this shown as a direct cost to the Respondent rather than an overall costs to be included in the total). Some details are to be found on a sheet of paper at p. 151 of the Applicant's bundle. The column headed "10 visits supervising works covered by the management charge" shows 16 hours in total of attendances, all in round hour or half hour sessions, and the next column headed "supervising works covered by the administration costs" shows a further 19 ½ hours in similar attendances and, similarly, all in round hour or half hour sessions. It is plain that the grand total is the time claimed by Mr Bliss as spent in the overall supervision of the major works that took place in this period. He has arbitrarily divided this up so that part is said to come under the flat rate management charge and part under administration costs. The Tribunal does not find this appropriate. The management charge can only be for general management, and is seriously challenged by the Respondent on the basis of a complete lack of any such (see above under year ended 31 December 2009). The Tribunal has carefully considered the Applicant's evidence that Mr Bliss does any routine management and found it lacking. There is nothing to compare with the agreement that you would have between a landlord and a managing agent with a list of duties/responsibilities. There is no transparency about what the Applicant does to "manage". Matters raised by the Respondent do not seem to have been addressed. The Tribunal concludes that there is no evidence of any normal management service on the Applicant's part and, therefore, any charge is unreasonable.

The unusual feature of this period was the carrying out of major works at 10 South Parade. In terms of the service charge accounts the greater part of the large item of £40,491.65 for repairs and renewals is attributable to these works. Of the other bills in this category, the Tribunal considers the following reasonably incurred:

S. May	£175.00
S.May	105.00
Brunel Preservations Ltd.	714.00
Aquablast Drains Services Ltd.	90.00
DS Securities	111.62
D. Hawkins	85.00
Travis Perkins	114.84
TOTAL	1,395.46

There is a major problem with the payment to the contractor Burnham Plastering and Dry Lining Ltd. There is no invoice. The Tribunal has considered the paperwork copied in the bundle. On p. 120 of the Applicant's bundle is a document, apparently prepared by Mr Bliss, headed "Statement of works to common parts and externals". It shows a total due to the builder (less retention) of £38,016.19, less previously paid £15,712.40 (there is no invoice for this), net amount due £22,303.79. Now, it transpires that Mr Spence, the tenant of Flat 4, is the proprietor of Burnham Plastering and Dry Lining Ltd. so Mr Bliss deducts from the net amount due to the company Mr Spence's share of the payment at £6,245.06 and ends "amount due to Burnham Plastering and Dry Lining Ltd. £16,058.73 – cheque enclosed". This is yet another undated document. In her statement of case the Respondent raised the point about no invoices. So, in the Applicant's bundle of additional documents we find a purported invoice at p. 117. In fact, it is another copy of the Statement with some manuscript additions: top left name and address of Shu Shu Executive Pension Trust; top right name and address of the building company; centre, above the figures "Invoice"; and bottom left a VAT no. A date has not been written in. Quite simply, this is not a valid invoice and it is extraordinary that the Applicant tenders it as such. Moreover, Mr Spence's liability is a totally separate matter from the amount due to his company and they should not be mixed up. The RICS Code of Practice Part 12.10 requires contractors to issue appropriately detailed invoices for all works carried out, however minor, which state clearly what the charges are for. Now, here we have a major work in respect of which there are no invoices, let alone any which comply with the Code. In those circumstances the Tribunal cannot possibly approve the inclusion of these amounts in the service charge. This is more than a technicality, as the Tribunal has nothing to go on to consider whether the costs were reasonably incurred. It should be added that Mr Bliss's failing to realize the situation and, therefore, asking the contractor for complying invoices is another demonstration of his lack of management. We also acknowledge that the Respondent has submitted that some of the work is not to a reasonable standard; the Tribunal has decided not to consider this as the amounts are not payable in any event, for the reason given earlier in this paragraph.

The Applicant also relies on the Architect's certificate, rather confusingly headed "Final account" (bundle of additional documents p. 125) in which the contract figure and retentions are confirmed and figures given for "previously certified" and "amount due". These almost correspond with the "previously paid" and "net amount due" figures on the Statement. On p. 98 of the Applicant's bundle we have a document in manuscript headed "service charge workings" for this period. There is a column under the heading "R&R". The first seven items are those that the Tribunal has approved (see above), followed by the two

payments to Burnham Plastering, in respect of which there are no invoices, and finally a payment to Architecture Plus of £1080; however we can see the invoice for this dated 11 April 2012, after the period to 31 March 2012, so it is not yet payable in the service charge.

To return to the administration costs, those 35 ½ hours (16 + 19 ½ hours) claimed by Mr Bliss (Applicant's bundle p. 151). Now, the earliest item claimed is for 1 hour "inspection" on 24 March 2011 and the latest for 2 ½ hours with Mr Williams (architect) on 31 March 2013. Whilst accepting that Mr Bliss probably spent some time in connection with the major works, his record keeping is so inadequate as to make it very difficult to see what was reasonable. Times are always billed in round figures of hours or half hours. Diary entries (in the Applicant's additional bundle) are vague. There is no independent corroboration and, as in an earlier year, times attributed to Powells are not borne out by their ledger. For example, on 09/12/2011 Mr Bliss claims 2 ½ hours, whereas Powells record an attendance on Paul Bliss of 24 minutes. It is this lack of transparency, as in previous years, that make the Applicant's evidence to support these claims so unsatisfactory, as is the case with times on "other advisers" and "bank meetings". Taking a broad view and doing the best it can, the Tribunal allows £200 for this.

With the regard to "Tribunal" this would appear to refer to Case No. CHI/00HC/LSC/2011/0048, of which the Tribunal has the Decision and notes that 50% "amounting to one day's costs" was allowed on a section 20C application. We also have corroborative evidence of attendance at a PTR for 1 hour (not 4, as claimed). £390 is allowed for this.

All these costs come under service charges and are subject to a 15% apportionment to the Respondent.

The Applicant seeks to add to the service charge legal costs of £2,124.67. The Tribunal has carefully considered the Applicant's arguments on this point, helpfully set out in Mr Brown's skeleton from para. 52. He goes through three possibilities, discounting the first because of *Greening*. It is the view of the Tribunal that to authorize the inclusion of legal costs in a service charge you must have clear and unambiguous wording. *Iperion* stands in isolation from other Court of Appeal decisions on the subject. The wording cited by Mr Brown is, in the Tribunal's view, far from clear and unambiguous coming, as it does, in a clause (para. 1 of the Sixth Schedule) of the lease that specifically authorizes the costs of managing agents, accountants and surveyors. The Tribunal, therefore, rejects Mr Brown's second argument. His third point is firmly rejected. The obligation on a tenant to pay the costs associated with a section 146 notice is personal to that tenant and

nothing to do with service charges. Accordingly, the Tribunal does not allow these costs.

To summarize what the Tribunal allows for the period ended 31 March 2012:

Buildings insurance	£1,475.11
Light and heat	92.86
Cleaning	310.00
Repairs and renewals	1,395.46
Administration	200.00
Tribunal	390.00
TOTAL	3,863.43

15% = £579.51

7. Finally, the Respondent has applied for an order under section 20C of the Landlord and Tenant Act 1985, which provides for such 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* (present Tribunal included) *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.* As far as legal costs are concerned they cannot be claimed in any event (see above) but the Applicant may in due course seek to charge for Mr Bliss's time in regard to these proceedings. Sub-section (3) of section 20C states that *the tribunal may make such order on the application as it considers just and equitable in the circumstances.* In this case the Tribunal has no hesitation in ordering that the costs incurred, or to be incurred, in connection with these proceedings shall not be taken into account in determining the amount of any service charge, because the Respondent has been largely successful.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking