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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00MR/LSC/2013/0096** **CHI/00MR/LAC/2013/0016**
Property	:	**Flat 6, Wilton Exchange,** **Pelham Road,** **Southsea** **PO5 3DG**
Applicant	:	**Atlantis Holdings Limited**
Representative	:	**Mr Andrew Strong, director**
Respondent	:	**Mrs Rachael Ross**
Representative	:	**Mr Ken Ross**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges and administration charges**
Tribunal Members	:	**Judge Tildesley OBE** **Mr P D Turner-Powell FRICS**
Date and venue of Hearing	:	**29 January 2014** **Tribunal Offices Chichester**
Date of Decision	:	**24 March 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal sends its determination back to Chichester County Court so as enable finalisation of Claim 3YL75098.

(2) The Tribunal determines that the sum of £147.00 is payable by the Respondent in respect of the service charges for the year ending 31 December 2011.

(3) The Tribunal determines that the sum of £1,469.00 is payable by the Respondent in respect of the service charges for the year ending 31 December 2012.

(4) The Tribunal determines that the sum of £1,446.00 is payable by the Respondent in respect of the service charges for the year ending 31 December 2013.

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

(6) The Tribunal determines that the sum of £525 is payable by the Respondent in respect of administration charges.

(7) Since the Tribunal has no jurisdiction over county court costs and fees, the unpaid court fee of £207 dated 13 February 2012 should now be referred back to Chichester County Court.

(8) The administration charge of £190.20 for service of a section 146 Notice dated 24 May 2013 was not included in the claim before the County Court. The Tribunal considers it has no jurisdiction to deal with it because it was not part of the transfer order from the County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2011, 2012, and 2013.

2. The Applicant also seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Respondent.

3. Proceedings were originally issued in Chichester County Court under claim no. 3YL75098. The claim was transferred to this tribunal, by order of Deputy District Judge Winslett on 13 August 2013.

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

The hearing

5. At the hearing the Applicant was represented by Mr Strong, director, whilst the Respondent was represented by Mr Ross, her husband. The Respondent did not appear in person.

6. The Tribunal admitted in evidence the parties' bundle of documents. Mr Strong and Ms Tina Watkin, the Applicant's Client Finance Director, supplied witness statements. The Respondent also provided a witness statement but she did not attend for cross-examination.

7. Immediately prior to the hearing Mr Ross e-mailed the Tribunal documents in connection with planning applications for the property. Mr Ross intended to refer to these documents as an aid to the construction of the lease. The Tribunal did not consider the documents at the hearing but instead at its conclusion requested Mr Ross to copy them to the Applicant for its views about whether the documents should be seen by the Tribunal. It would appear that Mr Ross did not do this. In any event, the Tribunal would question whether planning documents can be used for interpreting the clauses of a lease.

8. On 5 February 2014 Mr Ross informed the Tribunal that he was hopeful that the parties would agree a settlement ahead of the Tribunal's decision. The Tribunal allowed the parties until 21 February 2014 to resolve their dispute. On 21 February 2014 Mr Ross informed the Tribunal that no agreement had been reached.

The background

9. The Applicant was the freeholder of the development, Wilton Exchange, containing the subject property.

10. Wilton Exchange was built in 2000, and constructed of brick and render with a tile roof. The development comprised nine two bedroom flats occupied over four storeys. There were two communal entrances to the development providing separate access to flats 1 and 2; and to flats 3 to 9. A large bin store was located off the ground floor corridor to flats 3 to 9.

11. Wilton Exchange was situated on the corner of Pelham Street and Elm Grove in central Southsea. There was a car park at the rear of the development which was shared with the neighbouring block of flats known as Elm Grove flats. Access to the car park was also shared and gained from Pelham Street. The residents of Wilton Exchange have six car parking spaces, whilst nine spaces were reserved to the residents of Elm Grove flats.

12. A lift had been installed in Wilton Exchange at the entrance for flats 3 to 9. The Tribunal understands that the lift has never worked because of its poor design and construction.

13. On the 24 November 2011 the Applicant purchased Wilton Exchange together with a number of other sites, including Elm Grove flats, from a Law of Property Act receiver appointed to manage the assets of Mr Ross, the Respondent's representative and husband. The Applicant was no longer the owner of Elm Grove flats following a successful claim for collective enfranchisement by the leaseholders.

14. The Applicant engaged a subsidiary company, Atlantic Estates Limited, to undertake the Applicant's management functions under the lease. Atlantis Estates Limited managed a large portfolio of properties on behalf of freeholders, landlords, management companies and right to manage companies.

15. Prior to the hearing the Tribunal inspected the common areas and the exterior of Wilton Exchange in the presence of Ms Wendy Lamb, property manager for the development and employed by Atlantis Estates Limited, and Mr John Grinaway, the Respondent's property manager.

16. The Respondent held a long lease of the property for a term of 125 years from 27 April 2005.

17. Clause 4(4) of the lease required the Respondent to pay by way of further or additional rent a service charge.

18. Paragraph 1(2) to the Fourth schedule defined the service charge as a sum equal to the percentage contribution of the total expenditure. Percentage contribution had the meaning ascribed to in paragraph 8 of the particulars, which in the Respondent's case was $1/25^{th}$ of the cost of maintaining the access way, and $1/9^{th}$ in respect of all other service charge expenditure.

19. Paragraph 1(1) to the Fourth schedule defined total expenditure as:

> " ... the aggregate of the expenditure incurred and the sums of money set aside (including VAT (if any) or any other tax payable thereon) by

the lessor in any accounting period in carrying out its obligations under clause 5 of this lease and any other costs and expenses reasonably and properly incurred in connection with the property including without prejudice to the generality of the foregoing (a) the cost of employing managing agents, and (b) the cost of any accountant employed to determine the total expenditure and the amount payable by the lease thereunder".

20. Under clause 1(16) the accounting period was 1 January to the 31 December in any one year.

21. Clause 5 set out the Applicant's covenants as lessor under the lease. Clause 5 identified those services and charges which the Applicant could recover through the service charge.

22. Clause 5(5) required the Applicant to keep service charge at lowest reasonable figure.

23. The Tribunal intends to deal with the questions of service charge and administration charges separately. The Tribunal held an oral hearing in respect of the services charge dispute. The parties were content for the dispute on administration charges to be determined on the papers.

The issue regarding the Service Charges.

24. The Respondent has failed to pay the service charge demands issued by the Applicant.

25. Deputy District Judge Winslett transferred

- The service charge demand in the sum of £182.89 for the period ending 31 December 2011.
- The service charge demands for payments on account for the period ending 31 December 2012 (two half yearly demands of £822.22 on 13 December 2011 and 1 July 2012).
- Interim demand of £1,444.44 issued on 21 May 2012.
- The service charge demands for payments on account for the period ending 31 December 2013 (only one half yearly demand of £908.44 issued on 1 January 2013 appeared on the claim form under reference number 3YL75098).

26. The Applicant did not pursue the interim demand of £1,444.44 before the Tribunal. The £1,444.44 related to the value of 2011 works which the Applicant was unable to carry out due to insufficient funds. The

Tribunal, therefore, decides that the amount for the interim demand should be nil.

27. The Applicant asked the Tribunal to determine to the payability and reasonableness of service charges for 2011 and 2012 and the estimated service charge for 2013.

28. The Tribunal deals with its determination in five parts

- Overall determination for the years in question.
- Schedule for each disputed year setting out the parties' arguments on the individual charges and the Tribunal's determination for each charge.
- The Tribunal's answers to arguments advanced by the Respondent which applied to the payability of the disputed service charges generally.
- Section 20C order.
- Administration charges.

Service Charge for 2011

29. The service charge account for the period ended 31 December 2011 was exhibited at page 84 of the bundle. The account showed a budget of £12,000 and an actual of £1,646. The Applicant confirmed that the charge claimed was for the whole year but was only seeking a determination of £1,646 (£182 the Respondent's share). Mr Strong informed the Tribunal that the Respondent had applied credits to all leaseholders' accounts in respect of the difference between £12,000 and £1,646.

30. The Tribunal determined that the amount payable for the period ended 31 December 2011 was **£1,325** with the Respondent's share being **£147** (1/9th)

Service Charge for 2012

31. The Applicant asked the Tribunal to determine the actual service charge for the year ended 31 December 2012 which was £14,705 and exhibited at page 182 of the bundle.

32. The Tribunal determined that the amount payable for the period ended 31 December 2012 was **£13,223.20** with the Respondent's share being **£1,469 (1/9th).**

Service Charge for 2013

33. The Applicant requested the Tribunal to determine the estimated service charge for the year ended 31 December 2013 which was £16,352 and exhibited at page 187 of the bundle.

34. The Tribunal determined that the amount payable in advance for the period ended 31 December 2013 was **£13,012** with the Respondent's share being **£1,446 (1/9th).**

The Schedules

35. The Tribunal's findings in respect of the individual charges which made up its determinations for the service charges for 2011, 2012 and 2013 are set out in the schedules attached to the decision.

Respondent's evidence and Arguments

36. The Respondent did not attend to give evidence in support of her witness statement. Instead the Respondent relied on Mr Ross' submissions. Mr Ross gave no explanation for the Respondent's absence. The Applicant was, therefore, unable to cross examine the Respondent on her witness statement. Further the Respondent's suggestions as to what constituted a reasonable amount for the individual charges in her statement were unsubstantiated. In those circumstances the Tribunal gave minimal weight to the Respondent's assertions on the reasonableness of the charges.

37. The Respondent contended that the Applicant was not entitled to make a service charge demand for the year ended 31 December 2011. In this respect the Respondent advanced two separate arguments.

38. The first argument was that the demand was for 38 days. This was contrary to the terms of the lease which required the demand to be issued for an accounting period defined as a period commencing on the 1 January and ending on the 31 December (see clause 1(16) of the lease).

39. The Tribunal accepts the Applicant's evidence that the demand issued related to the amount due for the whole year, which was supported by the published service charge accounts for the year ended 31 December 2011. Also the Applicant credited the Respondent's service charge account with the difference between the budget and the actual amounts

once the accounts had been drawn up. The Tribunal is, therefore, satisfied that the Applicant did not contravene the terms of the lease with the issue of the service charge demand for the year ended 31 December 2011.

40. The Respondent relied on the Tribunal decision (CHI/00MR/LSC /2013/0011) relating to flats at 1 Nancy Road which involved the same parties and a similarly drafted lease as in this Application for her submission that the service charge demands were not in accordance with the lease. The previous Tribunal decision found that there had been no published accounts in respect of the property for over nine years. It was this failure that led the Tribunal to conclude that the service charges for the flats at 1 Nancy Road had not been validly demanded.

41. The Applicant supplied certified service charge accounts for 2011 and 2012 for Wilton Exchange, which was a material difference from the facts in Nancy Road. Also paragraphs 1 and 2 of the Fourth schedule to the lease authorised the Applicant's issue of interim service charge demands for 2012 and 2013.

42. The second argument concerned the Respondent's assertion that the Applicant failed to serve her with a Notice under section 3 of the Landlord and Tenant Act 1985 within two months of the assignment of the freehold interest to the Applicant on 24 November 2011. The Respondent contended the Applicant's failure to serve the notice in time amounted to a criminal offence. Further, the Respondent was not liable to pay the service charge to the Applicant until a section 3 Notice had been served, which according to the Respondent was not until 15 March 2012.

43. The Applicant contested the Respondent's assertion on the late service of the section 3 Notice. Ms Tina Watkin stated that on 24 November 2011 the Applicant wrote to all lessees including the Respondent confirming that it had purchased the freehold of Wilton Exchange. The section 3 Notice was enclosed with the letter.

44. Ms Watkin also said that Eversheds, the solicitors for the Law of Property Act receivers, informed the Respondent on 24 November 2011 that they had completed the sale of the freehold interest in 6 Wilton Exchange to Atlantis Holdings Limited, and that all future payments of rent and other sums should be paid to the new landlord[1].

45. On 15 March 2012 the Applicant sent a letter together with another section 3 Notice to the Respondent. The Applicant stated that the service of the enclosed 3 Notice was without prejudice to the validity of previous letters and notices served which complied with section 3 of the

[1] Copies of the letters are found pages 279, 280 and 281 of the bundle.

1985 Act. The Applicant further advised that the notice was only being served to resolve the matter without need for litigation[2].

46. The 24 November 2011 letters were sent to the Respondent's address at the time in Mill Lane, Langstone. The 15 March 2012 letter was addressed to the Respondent's new address in Waterlooville.

47. Mr Ross pointed out that the Applicant's invoices for service charges and ground rent dated 30 November 2011, 7 December 2011, and 13 December 2011 were sent to the Respondent at the address of the subject property and not to her then home address in Mill Lane, Langstone. Mr Ross considered that the posting of the invoices to the subject property undermined Ms Watkin's evidence that she had sent the section 3 Notice on 24 November 2011.

48. The Tribunal was not persuaded that Ms Watkin had given false testimony to the Tribunal and had fabricated the letter of the 24 November 2011, which was the inference that Mr Ross was inviting the Tribunal to make with his reference to the Applicant's invoices. In those circumstances the Tribunal accepts Ms Watkin's evidence that a section 3 Notice was posted to the Respondent at her Langstone address on 24 November 2011.

49. The Tribunal, in any event, is not convinced of the correctness of Mr Ross' argument that the non service of the section 3 Notice affected the Respondent's liability to pay the service charge. Mr Ross was unable to point to an authority which supported his proposition that the Respondent was only liable for service charges incurred after the date of service of a section 3 Notice.

50. The Respondent argued that a significant portion of the common parts of 16 Wilton Exchange was maintained from the estates budget shared with Elm Grove flats. According to the Respondent, this included the cycle store, the bin areas and the car park, which meant that the Applicant was applying the wrong proportion to some of the charges.

51. The Applicant disagreed with the Respondent's interpretation of the extent of the common parts covered by the estates budget with Elm Grove flats. The Applicant said that the proportion of $1/25^{th}$ only applied to maintaining the access way to the car park. The Applicant further stated that it had not incurred expenditure on maintaining the access way during the period covered by the dispute. The Applicant, therefore, asserted that the Respondent had been correctly invoiced at the proportion of $1/9^{th}$ in respect of the contested service charges.

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[2] Copy of letter at 282 & 283 of bundle

52. Paragraph 8 of the Particulars to the lease defines the lessee's contribution to the service charge as:

> "1/25th in respect of the cost of maintaining the access way shown for the purposes of identification only edged blue on plan 2 and referred to at clause 1 of the Second Schedule of the Lease. 1/9th in respect of all other service charge expenditure".

53. Unfortunately the parties did not produce a copy of the lease which had plan 2 with the area edged blue. This would have provided a conclusive answer to the dispute on the extent of the common parts covered by the 1/25th proportion. The Tribunal, however, considers that applying the usual approach to construing the service charge provisions in the lease, namely, giving effect to the ordinary meaning of the words used, the area of the property subject to the 1/25th proportion was clear. In the Tribunal's view the word *access way* was limited to the entrance to the car park at Pelham Street. The access way was identifiable on inspection and led to the car park which was shared by the residents of Wilton Exchange and Elm Grove flats. The extension of the word *access way* to include the bin area and cycle store stretched the ordinary meaning of the phrase to an unacceptable limit. The Tribunal is, therefore, satisfied that the Applicant was correct to charge the Respondent 1/9th of the service charge expenditure for 2011, 2012 and 2013.

54. Mr Ross raised two objections to the repair and renewals expenditure head of £5,164 in the 2012 service charge account. First Mr Ross said that the service charge accounts were not drawn up in accordance with the *General Rules and Content* for such accounts[3] in particular items of expenditure representing 10 per cent or more of total expenditure were not shown separately. The Tribunal is satisfied that there was no single item of expenditure in the repair and renewals expenditure which exceeded the 10 per cent threshold. The Tribunal would add that even if the Applicant's accounts had not complied with the *General* Rules it would not have constituted a valid denial of the Respondent's liability to pay the service charges.

55. The second objection related to the decision of the High Court in *Phillips v Francis* [2013] EWHC 3650 which ruled that all costs incurred on qualifying works in a single year must be aggregated together to decide whether the threshold level for carrying out consultation had been met. Mr Ross asserted that the Applicant in 2012 had crossed the threshold level for consultation in respect of the expenditure incurred on repairs and renewals, and as it had not consulted on those works the Applicant was not entitled to recover more than £2,250[4] on that expenditure head in 2012.

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[3] See page 268 of the bundle

[4] 9 residents x £250 =£2,250

56. The *Francis* decision has generated considerable controversy with some commentators arguing that it was plainly wrong[5]. Permission to appeal the decision to the Court of Appeal has been granted.

57. The consultation requirements only apply to qualifying works which means "works on a building or any premises". The items of expenditure included in the Applicant's repairs and renewals budget head comprised a wide range of expenditure from removal of rubbish to repairs to guttering. No single item of expenditure exceeded the threshold of £2,250. In the Tribunal's view many of those items would not meet the definition of qualifying works. The amount that could be allocated to qualifying works was £1,805.58 (invoices 132, 135 and 136 in the bundle) which would not have exceeded the threshold as understood in the *Francis* decision.

58. The final general argument advanced by the Respondent was that she was entitled to a credit in the service charge account for the payments made to the former freeholder of Wilton Exchange (Mr Ross). The Respondent adduced no evidence of these payments.

59. The Applicant had no details or knowledge of any sums apparently paid by the Respondent to the previous freeholder and no funds were in the accounts on the date of the purchase. The Applicant had to pay £810 to the Law of Property Act receivers to clear the service charge balance when it purchased the property. The Applicant had requested the Respondent to provide proof of these payments but none had been forthcoming.

60. The Tribunal considers the onus was on the Respondent to supply details of the payment. She has failed to do so, in which case, the Tribunal finds that the Respondent was not entitled to a credit on her service charge account with the Applicant.

Applications under s.20C of the 1985 Act and costs

61. In her witness statement for the service charge dispute the Respondent applied for an order under section 20C of the 1985 Act. The Respondent has, on the whole, been unsuccessful with her dispute with the Applicant in respect of the service charges for 2011, 2012 and 2013. In those circumstances the Tribunal makes **no order** under section 20C of the 1985 Act preventing the Applicant from recovering its costs in connection with the proceedings before the Tribunal through the service charge. There are also no grounds to order the Applicant to pay the Respondent's costs in these proceedings.

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[5] See page 200 *Service Charges and Management 3rd Edition* Tanfield Chambers Sweet & Maxwell.

The Administration Charge

62. Mrs Ross made a separate application challenging the reasonableness of the administration charges imposed by Atlantis Holdings Limited in respect of her leaseholds at Wilton Exchange and Nancy Road. In this decision, the Tribunal deals with the administration charges in respect of flat 6 Wilton Exchange.

63. The administration charges in dispute are as follows:

Date	Charge (£)	Details	Before County Court
14.12.2011	30.00	Late payment charge	Transfer
22.12.2011	30.00	Arrears letter	Transfer
04.01.2012	90.00	Papers to solicitor	Transfer
13.02.2012	207.00	Court Fee	No jurisdiction
12.07.2012	50.00	1st reminder letter	Transfer
24.01.2013	50.00	1st reminder letter	Transfer
09.02.2013	50.00	Arrears letter	Transfer
14.03.2013	180.00	Papers to solicitor	Transfer
20.03.2013	183.00	Charges before action	Transfer
24.05.2013	190.20	Service of s146 Notice	Not before the County Court
28.05.2013	240.00	Charges to issue claim	Transfer

Mrs Ross' Case

64. Mrs Ross sought a determination that the charges were unreasonable, and that all future administration charges should be raised in a reasonable and proportionate manner.

65. Mrs Ross suggested that the charges on 14 December 2011, 22 December 2011 and 4 January 2012 were unlawful because they related to service charge demands (periods ending 31 December 2011 and 30 June 2012) that Atlantis Holdings were not entitled to make.

66. Mrs Ross said that Atlantis Holdings were not permitted under the lease to send the first reminder letter on 12 July 2012. According to Mrs Ross, Atlantis Holdings had not allowed 14 days to elapse from the issue of the demand on 1 July 2013. Mrs Ross referred to clause 4(4) of the lease stated that no interest would be charged until sums had been outstanding for 14 days.

67. Mrs Ross saw no justification for charging separate sums of £50 for the letters sent on 24 January 2013 and 9 February 2013 respectively. Mrs Ross considered £50 for the issue of a reminder excessive. Further she

contended that non payment of arrears charge did not connote any type of service, and that the £50 charge amounted to a penalty.

68. Mrs Ross argued that a charge of £180 to pass the papers to solicitors was completely unreasonable. Mrs Ross objected to the charge (£183) for the Charges before Action letter on 20 March 2013 because it was sent to her mortgage company even though she was disputing the claim.

69. Mrs Ross similarly considered completely unreasonable the charge of £240 incurred on 28 May 2013 by the solicitor to issue the claim.

70. Finally Mrs Ross stated that Atlantis Holdings failed to demand the charges correctly in accordance with statutory requirements. According to Mrs Ross, she was served with an undated Administration Charge demand for £330 which did not include the name of the freeholder.

Atlantis Holdings' Case

71. Atlantis said that it was entitled to recover the charges under Clause 3(11) (to pay all charges incurred by the Lessor in contemplation of section 146 and 147 of the 1925 Act), Clause 4(6) (to pay all legal costs and proper costs incurred by the lessor) and Clause 4(7) (to pay all proper costs incurred by the lessor in running and management of the property).

72. Atlantis stated that the charges related to the enforcement of the Applicant's covenants to pay ground rent and service charges.

73. Atlantis gave at least 28 days for part or full payment of invoices. After which a reminder letter was issued, which was then followed by a further reminder letter after seven days if no payment was made. The second reminder advised the lessee that if no payment was made within seven days, Atlantis would instruct a firm of solicitors to collect the arrears.

74. Atlantis pointed out that the invoice for the service charge demand for the period ending 31 December 2012 was sent on 28 May 2012 and not the 1 July 2012

75. In 2011 the charges for the first and second reminder letters were £30 each, and £90 for sending the papers to a solicitor. In 2012 the charges were increased to £50 for a letter and £180 for referral to a solicitor. Atlantis offered no explanation for the substantial increase in charges from 2011 to 2012.

76. Atlantis asserted that all invoices advised that administration charges would be applied in the case of non-payment. The summary of tenant's rights and obligations was also enclosed with each invoice.

77. Atlantis argued that the charges were not disproportionate to the amount of work involved. The tasks connected with the charges were the identification of arrears, the preparation of letters with the appropriate documentation, ensuring that the demands and invoices complied with the legislation, recording of the actions on the separate accounting and property management systems and updates to the freeholder.

78. According to Atlantis, once the file had been passed to solicitors the amount of work increased substantially with all information regarding accounts, correspondence, leases and legal history having to be collated and passed to the solicitors. Also Atlantis had to carry out additional work on Mrs Ross' file which included meetings with the freeholder and the acting solicitors for updates and discussions on the appropriate course of action.

79. Atlantis did not consider that the solicitors' fees were unreasonable.

80. Atlantis argued that the administration charges were fully justified by the persistent non-payment of ground rent and service charges by Mrs Ross which was putting a continual strain on the funding for maintenance of the site. Atlantis pointed out that Mrs Ross had failed to respond to numerous letters between November 2011 and November 2013. Mr Ross had made no payments in respect of the service charges, and only one payment of £100 in respect of the ground rent of which £800 remained outstanding. Many of the points mentioned in her statement of case had been raised for the first time.

Consideration

81. Paragraph 1(1) of schedule 11 of the Commonhold and Leasehold Act 2002 defines an administration charge as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly in respect of a failure by a tenant to make a payment by the due date to a landlord or in connection with a breach (or alleged breach) of a covenant or condition in his lease.

82. Paragraph 1(2) of schedule 11 states that a variable administration charge is one which is neither specified in the lease nor calculated in accordance with a formula specified in the lease.

83. Paragraph 2 of schedule 11 provides that a variable administration charge is payable to the extent that the amount of the charge is reasonable.

84. Paragraph 5 of schedule 11 gives the Tribunal jurisdiction to decide whether a variable administration charge is payable.

85. The Tribunal is satisfied that the charges which were the subject of this dispute constituted variable administration charges. The charges related to Mrs Ross' purported failure to pay the service charges on

time and or the Applicant's covenant to pay service charges or ground rent. The amount of the charges was not fixed by the terms of the lease.

86. The Tribunal has found that Mrs Ross was liable to pay the service charges for the years ending 2011, 2012 and 2013. The Tribunal is, therefore, satisfied that the Atlantis Holdings through its managing agents was entitled to take action to recover the sums owing.

87. Atlantis Holdings, however, did not provide detailed information on the work involved in the various steps taken to collect the amounts owing from Mrs Ross. There was also no explanation for the substantial increase in the amount of the charges from 2011 to 2012.

88. On the evidence before it, the Tribunal decides that the letters were of standard format, and most likely automatically produced. Further there was no evidence to suggest that the act of sending papers to the solicitors involved more than simply putting a file together of relevant papers and despatching it to the solicitors

89. Likewise in respect of the legal fees, Atlantis Holdings did not explain the category of fee earner involved in the work and the time spent by the solicitors in drafting the documentation. The Tribunal has assessed that it would take an assistant solicitor one hour to prepare the charges before action letter, which was sent to Mrs Ross and not the mortgage company, and a further one hour to issue the claim.

Decision

90. The Tribunal, therefore, determines on the evidence before it that the level of charges was excessive and that the following amounts are reasonable:

Date	Charge (£)	Details	Tribunal decision (£)
14.12.2011	30.00	Late payment charge	25.00
22.12.2011	30.00	Arrears letter	25.00
04.01.2012	90.00	Papers to solicitor	50.00
13.02.2012	207.00	Court Fee	No jurisdiction
12.07.2012	50.00	1st reminder letter	25.00
24.01.2013	50.00	1st reminder letter	25.00
09.02.2013	50.00	Arrears letter	25.00
14.03.2013	180.00	Papers to solicitor	50.00
20.03.2013	183.00	Charges before action	150.00
24.05.2013	190.20	Service of s146 Notice	Not before the County Court
28.05.2013	240.00	Issue claim	150.00

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

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

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

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

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

Section 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) the appropriate 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 20B

(1) 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 subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (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.

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 the appropriate 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 the appropriate 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).

SCHEDULE

DISPUTED SERVICE CHARGES S/C YEAR ENDED 31 December 2011

Case Reference: **CHI/00MR/LSC/2013/0096** **Premises:** **Flat 6 Wilton Exchange**

ITEM () = BUNDLE PAGE	COST (£)	RESPONDENT'S COMMENTS	APPLICANT'S COMMENTS	TRIBUNAL'S DETERMINATION
Insurance (88)	283.00	Incorrect apportionment. Commission fee not authorised by the lease.	Insured from exchange of contract. Broker charges 20% commission.	Para 4 Clause 5 authorises insurance but does not extend to commission. 20% commission disallowed. 27.10.11 to 1.7.2012 (219) = £1,074.2265/219 x 1,074.22 = 318.83 Less 20% of the premium 733.81 = 890 = **£264.38**
Legal Fees (90)	302.00	Questioned whether the charges authorised by the lease.	Charge expended on obtaining copies of the lease for. Authorised Para 11(ii) Clause 5.	Para 11(ii) Clause 5 authorises employment of professionals in connection with property maintenance and administration. Not convinced copies of the leases were obtained for those purpose. **Nil Not authorised** by the terms of the lease
Accountancy (151)	360.00	Questioned the reasonableness of the charge for one month's work. Cost should not exceed £250.	Authorised Para. 23 Clause 5. The fee was for preparing the service charge accounts for 2011 year end.	No evidence to substantiate £250 cost. The charge for preparing whole year accounts. Reasonable **£360**

Management Fee (91)	685.00	No justification for the fee because no active management carried out.	£500 related to start up costs (5 hours: accounts manager establishing bank accounts; 5 hours property manager, obtaining keys etc. £185 management fee for 39 days.	Authorised Para 11(1) Clause. Satisfied the set up costs connected with the management of the property. Costs reasonable. **£685**
Bank Charges	7.00	No documentary evidence	Mr Strong's evidence that each property unit contributes £5 a month to bank charges	Authorised: Para. 9 Clause 5 of lease. Satisfied expenditure incurred in connection with the property. Charge reasonable: **£7**
Land Registry Searches (93)	9.00	Accepts valid expense		Agreed by the Applicant **£9**
Total	**1,646.00**			**1,325.00**
Respondent's share 1/9th	**£182**			**Say £147.00**

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SCHEDULE

DISPUTED SERVICE CHARGES S/C YEAR ENDED 31 December 2012

Case Reference: **CHI/00MR/LSC /2013/0096** **Premises:** **Flat 6 Wilton Exchange**

ITEM () = BUNDLE REF	COST (£)	RESPONDENT'S COMMENTS	APPLICANT'S COMMENTS	TRIBUNAL'S DETERMINATION
Insurance (88 & 97)	1,777.00 invoices cover periods July to July. Therefore, to calculate the charge for 2012 necessary to calculate the apportionment due from each invoice	Incorrect apportionment commission/administration fee not authorised by the lease	Insurance broker charges 20% commission	Lease does not authorise 20% commission. Apportionment = 181 days of 2011/12 211 days of 2012/13 **Determines £1,420. 20**
Accountancy	600.00	£250 suggested as reasonable. Mr Ross said that the fee charged for his operation was £1,500 per annum for 167 units	No invoice. Amount recorded in the annual accounts. Fee for preparing the annual accounts	Increase in fee from 2011 justified 12 months expenditure compared to 6 weeks previous year. Not convinced by Applicant's evidence **Determined £600 reasonable**

Management Fees (164 – 175)	1,844.00 The invoices totalled £1,879.50 Charge of £150 per month for management fee except November 2012 when it was £157.50. Also included £72 for bank charges	Respondent accepted that on the face of it £200 per unit was a reasonable fee for managing. The Applicant instead contended that the property had not been managed to a reasonable standard.	Atlantis Estates Limited operated as a bona fide arms length company from the Applicant managing about 4,200 units. The Applicant applied the AMRA template to manage the arrangement. The fee was for preparing the service charge, issuing invoices, visiting the property once a month, attending to ongoing maintenance and providing a 24 hour on call service. Applicant did not accept that the property was not managed well. The managing agent pointed out that it was unable to carry out major repairs to the building because of the lack of service charge funds.	The Tribunal finds that a monthly fee of £150 or £200 per unit is reasonable for the day-to day responsibilities of the managing agent. The Tribunal is also satisfied that these day-to-day responsibilities have been carried out to reasonable standard. The Respondent's principal complaint concerned the long term maintenance programme for the block. The Tribunal considers this to be longstanding problem which was partly due to the previous owner's management of the property. The Tribunal accepts the Applicant's argument that it is necessary to put in place effective day to day management of the property before tackling the historical issues with the property. **Determines £1,800 as reasonable.**
Bank Charges (164-75)	36.00	Not authorised by the lease	Amount per invoice = £72	Authorised by lease. **£72 determined.**

Cleaning (139 -149)	1,416.00	Argued that £30 per fortnight reasonable for cleaning 9 units	£1416 made up of £90 monthly charge for 2 visits plus £336 for clearing all communal areas and disposing of rubbish.	Para 8 Clause 5 authorises the Applicant to charge for keeping the entrance hall, stairs and landings clean. Para 21 Clause 5 authorises the Applicant to provide any other services that it may reasonably decide necessary. Tribunal satisfied para 8 authorises the cleaning charge. Para.21 rubbish disposal. Respondent's evidence of £30 unsubstantiated. Tribunal consider charges reasonable. **Determines £1416.**
Repairs (119-138)	5,164.00 Total amount on invoices £5,101.16	Respondent argued that the consultation requirements applied (*Francis).* In respect of individual invoices questioned the frequent expenditure on keys. Respondent argued that the Applicant should have used the Local Authority to remove large items of rubbish. Contended that inspection of electrical fittings unnecessary. Challenged authenticity of the e-mail invoice (132)	Applicant pointed out high turnover of tenants resulting in rubbish being left, keys lost and damage to locks. Replaced communal sockets prevent tenants using communal electricity. Electrical report necessary fire certificate. E-mail provided by sole trader not registered for VAT. Used *Atlantis Maintenance* for routine jobs. Competitive charges and response times. Invoice133 should not be included.	Consultation requirements did not apply. No dispute that the work was done and that it was authorised by the lease. Tribunal preferred the Applicant's evidence. Email sufficient evidence of expenditure. Applicant accepted that invoice 133 for £54 should not be included. Tribunal uses invoice amount £5,101 less £54 = **£5,047**

Electricity (98-116)	580.00	Respondent's dispute was with the estimated amount of £1,500	£580 substantiated by the invoices.	**Determined £580**
Fire health & safety (117)	288.00	Agreed		**Determined £288**
General Reserve	2,000.00	Respondent in principle agreed to setting up a reserve fund but considered that there should be proper consultation beforehand. Respondent in witness statement suggested an amount of £400.	Necessary to set up a reserve for major works. Accepts that the lift was beyond economical repair. Safety mechanism worn	**Determined £2,000 per annum reasonable for roof and windows.**
Decoration reserve	1,000.00	Respondent considered that communal entrances and stairs required decorating now. The external render may still be subject to guarantee.	Reasonable amount for the works required.	**Tribunal considered the works should be done now and be subject to consultation rather than setting up a reserve. Amount determined nil.**
Total	**£14,705**			**£13,223.20**
Respondent's share 1/9th	**Say £1,634**			**Say £1,469**

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SCHEDULE

DISPUTED SERVICE CHARGES ESTIMATE FOR THE YEAR ENDING 31 December 2013

Case Reference: **CHI/00MR/LSC/2013/0096** **Premises:** **Flat 6 Wilton Exchange**

ITEM	ESTIMATED COST (£)	RESPONDENT'S COMMENTS	APPLICANT'S COMMENTS	TRIBUNAL'S DETERMINATION
Accountancy	600.00	Too high	Based on previous year's spend	Reasonable: **£600**
Insurance	1,640.00		Previous year's spend plus indexation	Previous year calculated incorrectly Reasonable: **£1,500**
Cleaning	1,500.00	Too high	Previous year's spend with inflation	£1,500 too high when compared with previous year spend of £1,080 Reasonable: **£1,200**
Communal electricity	1,000.00	Too high	Previous year's position confused by the number of credits given by the supply company. Lots of bulbs	£1,000 too high when compared with previous year spend of £580 Reasonable: **£750**
Entry Door	250.00	Agreed	Cost of contract to maintain the entry phone system	**£250**
Fire Alarm	750.00	Unnecessary, fire alarm tested once a week by a competent person	No previous year expenditure. Costs assessed on quarterly 3 hour tests	Preferred the Applicant's evidence **Reasonable: £750**
General Repairs & Maintenance	4,000.00	Lazy budgeting	Based on previous year's expenditure	**Reasonable: £4,000**

Management Fee	1,962.00	£1,500 reasonable if the job is done properly	Increase of £12 a month on previous year account for inflation and additional responsibilities	£1,962 produces an annual charge of £218 per unit which the Tribunal considers to be reasonable, having regard to its general knowledge and expertise of management charges. **£1,962**
Lift maintenance	1,650.00			Applicant agreed to delete **Nil**
General reserve	2,000.00	No proper planning procedures in place	Necessary in view of the type of building	**Reasonable: £2,000**
Internal and External Decoration reserve	1,000.00	No proper planning procedures in place	Decoration in poor order	Consultation on works should be carried out immediately. Unreasonable to set up a reserve.. **Nil**
Total	**£16,352**			**£13,012**
Respondent's share 1/9th	**Say £1,484.00**			Say**£1,446**

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