



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : BIR/00CW/LSC/2014/0023

Property : Flat 14 Oaklands Court
364 Birmingham New Road
Bilston
Wolverhampton
WV14 9PR

Applicant : Oaklands Residents Management
Association

Representative : Mr. Evans
Director Blue Property Management Ltd

Respondent : Mr. J Turner

Type of Application : Application under Section 27A
Landlord and Tenant Act 1985 for the
determination of the reasonableness of
service charges

Tribunal Members : Judge T N Jackson
Ms. S Tyrer FRICS

**Date and venue of
Hearing** : 27th May and 6th August 2015
Priory Court and Centre City Tower
Birmingham , respectively.

Date of Decision : 14th September 2015

DECISION

Decision

The Tribunal finds the following charges unreasonable and makes the following reductions in all service charge years under consideration, with the exception of those invoices agreed by the Respondent, (see paragraph 24):-

- Bank charges, which are reduced to £250 for service charge years 2009/10, 2011/12 and 2012/13

- Cost of lamps, which are reduced by £10 per unit on all invoices where incorrectly charged

- Cost of cleaning which is reduced to £156 per month, (including VAT)

- Cost of repairs, where:-

- (a) the charge for labour by a caretaker or other unskilled person is reduced to £35 per hour (exclusive of VAT),**
- (b) the charge for labour on replacing/fitting lamps is reduced by 25% in addition to a) above**
- (c) with the exception of invoices referred to in b) above, the charge for labour on all invoices is reduced by 10%**

-Management fee, which is reduced to £2550 (exclusive of VAT) per annum

Background

1. This case concerns the payment of service charges and administration charges for Flat 14 Oaklands Court in Bilston, Wolverhampton. The property is let at a ground rent and for a premium on a long lease.
2. Under the lease, service charges are payable. The Applicant commenced proceedings in the County Court under claim number A7QZ9267 for recovery of arrears of service charges and included an additional claim for various amounts said to be incurred as a result of needing to pursue the payment of service charges plus interest and costs.
3. On 12th November 2014, sitting in the Birmingham County Court, District Judge Davies transferred the matter to the Tribunal for determination.
4. This Tribunal has jurisdiction under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness and payability of service charges and administration charges but not rent, County court costs or statutory interest. The case was therefore confined to the determination of service charges.

5. The case was heard over two days on 27th May and 6th August 2015 at the First tier Tribunal Hearing Centre at Priory Court and Centre City Tower, Birmingham respectively. The Applicant was represented by Mr. Evans. The Respondent attended and was unrepresented. Mr. Howard, Area Manager for West Midlands Blue Property Management gave evidence, as did the Respondent. Both parties provided documentary evidence to the Tribunal. The hearing was preceded by an inspection.

Inspection

6. The Tribunal inspected the property on 27th May 2015 in the presence of the Respondent and Ms. Parton, his partner. The Applicant was not represented at the inspection.
7. Oaklands Court is accessed off the Birmingham New Road and is a detached three storey building, comprising 24 flats divided into four integral blocks each with an individual entrance door, lobby and post boxes. The external communal area includes car parking to both the front and rear of the building, an open grassed area with footpaths and column lighting and a bin compound in both the front and rear car park areas. Each ground floor communal entrance has an electric heater and there is stair and landing lighting. Each block is metered separately for electricity.
8. At the front entrance there is a single opening electric gate for vehicular access whilst to the rear is a sliding electric security gate. The perimeter of Oaklands Court is fenced with metal fencing to the front and rear boundary. At the time of inspection it was in poor decorative order and appeared to be rusting in places. Timber fencing panels separate the boundary of Oaklands Court from the adjoining Nursing Home.
9. In the course of the inspection it became evident that the external render to the elevations of the property had failed in some areas and was showing extensive cracking. There was one large section that had fallen away from the external fabric of the building. The Tribunal noted that the render was missing from a substantial area of the external return wall of the Respondent's flat with wall ties exposed and the external fabric appearing to have been left incomplete upon construction.
10. The rear car park surface had several potholes and was poorly maintained. The external column lighting posts providing footpath lighting showed considerable movement and had been incorrectly fixed.

Lease

11. A copy of the lease for the property was supplied by the Applicant. It is dated 5th February 2007 and was granted between Heathley Estates

Limited, Oaklands Residents Management Association and the Respondent. The property was let to the Respondent for 125 years from 25th March 2004 with a ground rent of £100 per annum, rising each 25 year period.

12. Clause 5 sets out the Tenant's covenant to contribute and pay 4.6% of the Service Expenses. The Tenant contributes the estimated amount on 25th March and 29th September each year and once the actual amount is ascertained at the end of the service charge year, the Tenant pays the balance or is credited with the overpayment.
13. Clause 6 sets out and obliges the Landlord to carry out the maintenance, repair, and redecoration of the exterior of the Building, and has provisions regarding lighting and grounds maintenance etc. The Clause is not set out in full in this decision, as there is no dispute regarding the interpretation of the Clause.
14. Schedule 4 provides:

"Service Expenses

Part 1

1 The costs and expenses incurred by the Company in carrying out its covenants under Clause 6 of this Lease.....

6 The fees and disbursements paid to any accountant solicitor or other professional person in relation to the preparation of an annual financial report, audit (if required) or certification of any accounts of the costs expenses outgoings and matters referred to in this schedule and the collection of the service charge contributions from the tenants of the flats in the Development.

.....

8 All other expenses (if any) incurred by the Company in and about the maintenance and proper convenient management and running of the Development including in particular any interest paid on any money borrowed by the Company to defray any expenses incurred by it.

.....

10 All costs and expenses (other than those specified above) of whatsoever kind incurred by the Company (including any proper sum for future or contingent liabilities and any reasonable reserve) and a certificate under the hand of the secretary of the Company as to the amount under this paragraph at any time shall be conclusive".

Hearing

15. On the day prior to the hearing, the Respondent submitted further documentary evidence. The Applicant's representative objected to its admission. The Respondent had previously been advised twice of the need to submit documentation prior to the hearing. After taking into account the representations and the previous Directions, the Tribunal determined that it was not in the interests of justice to admit the late documentation.
16. Following the hearing on 27th May 2015, and in accordance with a Directions Order dated 3rd June 2015, the Applicant provided a detailed invoice analysis of the remaining invoices in dispute and this document was considered at the hearing on 6th August 2015.

Evidence

17. The Tribunal sets out the salient points of the evidence together with its determination under each head. Numbers in brackets refer to the page in the Applicant's bundle.

Matters agreed

18. The service charges in dispute date back to 2007/8. The matter is before the Tribunal following a transfer from the County Court arising from debt recovery proceedings. The Lease is a contract between the parties and the provisions of section 5 of The Limitation Act 1980 apply, namely a limitation period of the expiration of 6 years from the date on which the cause of action accrued. The parties agreed and the Tribunal determines that it can only consider service charges from service charge year 2008/9 (25th March 2009).
19. The Applicant managed the property from April 2009 to approximately 1st December 2014. The Tribunal was not provided with the costs incurred for service charges for the service charge year commencing September 2014/5 and, in the absence of evidence, was therefore unable to deal with the reasonableness of any charges in that part of the service charge year that the Applicant managed the building.
20. During the hearing, the Respondent accepted that the buildings insurance was arranged by the freeholder rather than the Applicant. He also accepted the explanation given for the cost of electricity that had varied significantly over the years but for which there had been a final account in 2014 when there was a change of supplier.
21. In relation to an invoice regarding damage to a ceiling, (297), which the Respondent said had been paid for by an insurance claim, the Respondent agreed that the accounts for service charge year 2011/12 showed that the insurance monies had been credited to the accounts (330).

22. The Respondent did not dispute liability to pay the management fee.
23. On the second day of the hearing, the Applicant conceded that the cost of the materials in renewing lamps and light bulbs had been overcharged by £10 per unit.
24. The Respondent had identified within his bundle, (12-13), invoices with which he agreed and the Tribunal has therefore not considered those invoices.

Matters in dispute

25. The Respondent submitted that bank charges and accountant fees are part of management fees and not additional costs to residents.
26. The Respondent submitted that the property was in poor repair, had not been maintained and had deteriorated since the Applicant had taken over in 2009. Since 2010, the electronic gates to the front car park had not worked despite numerous attempts to fix them, the rendering was in a poor state of repair resulting in damp to his property, fence panels had not been maintained and there was a lack of regular maintenance of the grounds. As a result of inadequate work to a ramp to a bin compound, replacement work was required within two weeks.
27. The Respondent further submitted that the charge for certain elements of the service charge were unreasonable, namely fire risk assessments, health and safety risk assessments, cleaning, and the cost of repairs. The Respondent identified invoices that he disputed.
28. The charges (inclusive of VAT) for the development, for each service charge year, are set out below:

	Sept 2008 /09 £	Sept 2009 /10 £	Sept 2010 /11 £	Sept 2011 /12 £	Sept 2012 /13 £	Sept 2013 /14 £	Sept 2014 /15 £
Buildings insurance	5150	4932	4588	5013	5120	4978	No information
Cleaning common areas	5280	3923	1843	3096	3096	3096	
Landscape maintenance	3501	2234	3867	3888	1939	3888	
Accountant's fee	445	445	445	445	445	1147	
Electricity supply	16658	4292	2957	6988	9746	2278	
Administration and management fee	4320	4800	4800	4800	4800	4800	
VAT on management fee	-	840	840	840	840	840	
Health and Safety risk assessment	240	240	240	240	240	240	
Fire Risk assessment	240	240	240	240	240	240	
Repair	5436	2622	9012	11651	9722	6281	
Bank charges	115	820	250	551	322	209	
Window cleaning	172	345	690	862	1035	1296	

Accountant's fees and bank charges

29. The accountant's fee and bank charges were challenged by the Respondent on the basis that these fees should form part of the management fee and not be separately charged.
30. The Applicant's position was that accountant's fees are allowed under the provisions of the Lease and are reasonable in amount. Regarding bank charges, the Applicant said that they arise as a separate bank account is required for the service charge account.
31. The annual charge for accountant's fees was £445 with the exception of 2013/4, where it increased to £1,147 as a result of work by an external accountant to audit and certify the accounts for service charge years 2011/12, 2102/3 and 2013/4.
32. The payment of Accountant's fees is provided for under Schedule 4 Part 1 Clause 6. The Tribunal does not consider the amount charged,

including the external charge by the external accountant is outside the reasonable range of charges that a competent firm of Chartered Accountants would make to prepare, audit and certify service charge accounts.

33. Adopting a normal interpretation of Clauses 8 and 10 of Part 1 of Schedule 4, both of which are widely drawn, the Tribunal finds that the bank charges fall within the terms of the Lease. The Applicant has remained with the same bank over the period before the Tribunal. The Tribunal has only been provided with evidence of charges for 2013/4. These show a monthly account fee of £5.50 with standard charges for transactions such as cheques and statements. The Tribunal notes that of the £209.85 charge, £120 was for four separate referral fees of £30 each. The Tribunal concludes from this that the account has not been managed effectively.
34. The bank charges in service charge years 2009/10, 2011/12 and 2012/13 are significantly more than that in the 2013/4 service charge. The Tribunal has not been provided with documentary evidence setting out the details of the charges nor heard oral evidence from the Applicant of the reasons for the charges in those years, other than a statement that bank charges are reasonable. Having regard to the details for 2013/4, in particular the monthly account fee and that over 50% of the charge was due to referral fees, the Tribunal considers the bank charges in service charge years 2009/10, 2011/12 and 2012/13 to be unreasonable and reduces the charge to £250 per service charge year, which it considers reasonable based on the monthly account fee, standard charge items and the proper administration of the bank account.

Fire risk and health and safety risk assessments.

35. The Respondent said that he was aware that the above assessments could be carried out free of charge and does not accept that the Applicant should levy a charge.
36. The Applicant said that such work could be carried out free of charge but that it is good estate management practice to have it carried out by a trained and qualified person covered by insurance and who issues a certificate of completion and provides a list of matters to be rectified.
37. The Tribunal finds that it is reasonable for a managing agent company to require such assessments to be carried out on a professional basis and from its general experience, finds that the amounts charged are reasonable.

Cleaning

38. The next challenge to the expenditure was for the cost of cleaning. In evidence, Mr. Howard said that the caretaker was employed by the Applicant and worked at several buildings on a rota basis. The caretaker attended Oaklands Court every Thursday for a full working day. The Tribunal was advised that a full working day was made up of 7 hours and on that day, the caretaker would spend 2 hours carrying out the cleaning activities. These cleaning tasks are described in the standard monthly invoice (eg. 221). Mr Howard said that each of the caretakers' vans had a tracker device fitted which allowed their movements to be monitored and therefore as Area Manager, he would have known if the caretaker was not attending to his duties at Oaklands Court.
39. The Respondent said that to his knowledge, the caretaker attended once every two weeks but accepted that he was not at the property during the day, as he worked. No evidence was provided to the Tribunal to show an attendance log for authorized personnel at Oaklands Court.
40. Accepting that the Respondent may not have been aware of the extent of activities carried out by the cleaner, and in the absence of any evidence to the contrary, the Tribunal finds that the cleaning of the communal areas has been carried out and the charges are necessary.
41. The monthly charge for cleaning across each of the service charge years was approximately £252 (including VAT). The Tribunal established that the variation in these charges for each service charge was as a consequence of an accrual to the next service charge year for the cleaning charges. The Applicant confirmed in evidence that the hourly rate is £25 per hour.
42. The Tribunal considers that the cleaning required at Oaklands Court is not burdensome. There are four staircases and entrance lobbies. The requirement is principally for cleaning staircases. Using its general knowledge of the fees likely to be requested by a competent cleaner for the works required, the Tribunal determines that an amount of £156 per month, (including VAT), is a reasonable charge for the cleaning at Oaklands Court. Anything above this sum is not reasonably incurred.

Grounds maintenance

43. The Respondent said the grounds were poorly maintained and challenged the cost of grounds maintenance. The grounds maintenance was not complex. There are few flower or shrub beds. The requirement is principally for lawn mowing. The Respondent said that no work was done or required in the winter months but the service charge invoices including a standard monthly charge for grounds maintenance for the winter months. The Respondent said that the work activities set out in the standard monthly invoices (eg 205) were not completed.

44. The Tribunal sought confirmation of the frequency of visits by the landscape contractor. Mr Evans said that there were 21 visits a year, with 17 carried out on a fortnightly basis during the cutting season and 4 visits during the winter months. In practice the caretaker completed the landscaping. The total annual charge of approximately £3,888 (including VAT) was spread equally over the 12 months and invoiced monthly at £324 (including VAT). The variation between service charge years was due to the accrual of actual costs incurred.
45. As the Respondent worked during the day, the Tribunal finds that he may not have first hand knowledge of the extent of the landscape activities completed. During the winter months, whilst there is significantly less work to do, there is still a maintenance requirement and the Tribunal finds that the expenditure for grounds maintenance was necessary.
46. In relation to amount, following inspection of the site, the Tribunal finds that the gardening costs are a reasonable charge for the gardening work at Oaklands Court. Anything above this amount is not reasonably incurred.

Cost of repairs

47. In this section, references to labour charges are net of VAT.

Gates

48. The Respondent said that for the cost of the numerous repairs that had to be carried out on the front electric swing gate, a new one could have been provided.
49. Mr. Howard accepted that the electric swing gate was not really appropriate for the site, due to the size of the gate. However, the repairs were due to misuse by residents pushing open the gates when they did not have their gate fobs, thus damaging the motor. The motor had been replaced 3 to 4 times. There was neither funds in the service charge account nor motivation by the leaseholders to replace the gates. The leaseholders had asked for the gate to be left out of commission as the cost of repairs was increasing.
50. The Tribunal accepts the Applicant's evidence regarding lack of funds and leaseholder motivation and finds that the repairs were reasonably necessary.
51. The 10 disputed invoices relating to electronic gates account for a labour charge of £3210 and £923 in materials. The Tribunal finds the charge for labour is unreasonable. This is explained and addressed at paragraphs 52-59 below.

Differential hourly rate

52. Mr. Howard said that the hourly rate for the caretaker was determined by the industry standard rate of the particular trade undertaken on the repair, regardless of the fact that the employee, although experienced in building services, was not a qualified tradesperson in the range of trades. He said that the hourly rate for general maintenance was £35 but work relating to locks was charged at £60. Evidence provided showed a range of rates for the caretaker as follows (£45 per hour for laying slabs (137), £45 and £25 per hour respectively for fitting lamps (135;188/196), £60 per hour for work relating to locks (189) and on the electric gate (525).
53. In relation to the practice of an employee being charged at a differential hourly rate determined by the type of work they are undertaking, the Tribunal cannot see any justification for the differential and considers this to be unreasonable. The caretaker's skills, knowledge and experience have not changed from one activity to the other and the employee is salaried. The Tribunal considers that if a caretaker has been properly trained and provided with the proper equipment, it is standard management practice to include the laying of slabs and changing locks within the normal range of general maintenance services undertaken by a caretaker. Consequently, it was considered unreasonable to charge time spent on such activities at a higher rate than other caretaking activities.
54. Mr Howard's evidence was that another employee, who carried out a range of building work due to his extensive experience in a range of trades, was charged out at "flexible" hourly rates. These ranged from £35 (248,299,304,250,287) to £60 (288- guttering; 268- fixing the door to the gate). A further employee who was described as "skilled" and who was the replacement for the employee previously referred to, was charged at hourly rates ranging from £35 (687- painting;542- clearing snow), £45 (551-fitting manhole cover and repairing riser), £60 (396-fixing the gate;688-ground works). He was also charged at a daily rate of £180 for emptying guttering, which equates to approximately £25 per hour (541). For the reasons set out above, the Tribunal considers it unreasonable to have differential rates without any justification. The Tribunal does not accept that it is reasonable to charge the rate for a skilled tradesperson for work undertaken unless it is carried out by a person who is suitably trained and qualified in that trade. The Tribunal determines that all labour charges for repairs and maintenance carried out by a caretaker or other unskilled employee should be charged at the lower rate of £35 per hour (excluding VAT).

Invoices multiples of an hour/Time spent

55. In response to a Tribunal question which noted that all invoices were either of an hour or multiple of an hour, Mr. Howard said he did not know if the company had a minimum charge of 1 hour. Mr. Evans said that most trades don't account for periods of less than an hour,

but asserted that, in any case, in relation to the invoices in dispute, he thought most of the works would have taken an hour or multiple thereof, although he was unable to provide evidence to support his statement.

56. The Tribunal was unable to obtain evidence of the actual labour costs incurred for each invoice. There are numerous examples throughout the invoices contained within the Applicant's bundle of times taken to carry out work which the Tribunal considers to be unreasonable and some of these are set out below. The unreasonable times may arise partly from the practice of charging for labour in multiples of an hour.
57. The Tribunal finds it incredible that the change of a 13 amp fuse is charged as one hour at a labour charge of £35 (373). The Tribunal does not accept the assertion that a caretaker, who visits several buildings on a rota to carry out general maintenance **may** not have had a fuse within the parts on the van. Without additional evidence, the Tribunal considers it unreasonable that it takes two employees 3 hours each to pick up rubbish dumped in the grounds and take it to the tip at a labour charge of £200 (192); 5 hours for one employee to remove mattresses and rubbish left on site at a labour charge of £125 (353), although following the detailed invoice analysis, the evidence was that was an undercharge and it should have been charged at £175. Mr. Howard said that 5 hours did not surprise him as it **may** have required more than one trip to the tip, which was 15-30 minutes away. There is no hard evidence of the number of trips taken, and even if the assertion is accepted that there were two trips which took 2 hours in return journeys, the time taken to carry out the task is 3 hours. As grounds maintenance checked for rubbish fortnightly, the Tribunal is not persuaded by this assertion and considers the time spent to be unreasonable. The Tribunal considers that it is unreasonable for an employee to take 3 hours to remove overflow rubbish from 2 skips at a labour charge of £105 (269). The fitting of 4 bollard lights was charged as 2 days (15 hours) work at a labour charge of £525 (136); sealing an area around a window and repainting the wall around a window engaged two men each for a full day with a labour charge of £560 (198).
58. The Tribunal had considerable difficulty reconciling the information provided for time spent on repair and maintenance items, not least because there was a failure to differentiate on some invoices between labour and material costs. The Tribunal finds that the time spent on the majority of tasks was unreasonable, partly due to the practice of charging in multiples of an hour.
59. To reflect the unreasonable amount of time spent on activities, and noting that it would be impractical to review each invoice to assess a reasonable amount, the Tribunal, using its general experience and knowledge adopts a broad brush approach by reducing by 10% the net labour charge of all invoices for the cost of repairs, (with the

exception of invoices for replacing/fitting lamps which are dealt with separately below), in each of the service charge years.

60. Following the detailed invoice analysis, the Applicant's evidence in relation to the time spent to fit a lamp changed from the evidence given at the first hearing where it was stated to take one hour. There are four invoices for work on the same day of 1.29 hours each to fit 4 lights in total resulting in a total labour charge of £180 (254-257); similarly seven invoices for work on the same day of 1.29 hours each to fit 7 lights in total resulting in a total labour charge of £315. The Tribunal does not accept the assertion that moving a stepladder around the site **may** account for a significant proportion of this time. The Tribunal is unconvinced that it consistently takes 77 minutes (1.29 hours) to fit one lamp. The Tribunal notes that there is no reduction in time to reflect that the tasks are carried out at the same site on the same day. Further inconsistencies in the amount of time taken to fit a lamp are set out in paragraph 78. The Tribunal further notes that the service charge for cleaning activities include "ensuring all lighting is operating correctly" (181), and considers that replacing lamps falls within this.

61. In relation to the labour cost of replacing lamps, the Tribunal considers this activity forms part of the activities to be charged under cleaning, although the invoices show that it is charged separately as a cost of repair which unreasonably increases the charge made. The Tribunal accepts that it will take time to replace lamps, although it is not persuaded by the evidence given as to the time it is claimed is taken. Rather than review each invoice for replacing lamps to assess a reasonable amount, the Tribunal, using its general experience and knowledge adopts a broad brush approach and reduces the net labour charge of invoices for replacing/fitting lamps by 25%.

Management fee

62. At the hearing, the Respondent confirmed that he did not dispute the liability to contribute to the management fee as it was required to be paid under the Lease. His concerns were in regard to the failure of the Applicant as the Managing Agent to deal with the repair and maintenance of the building and in particular the external render and the poor standard of workmanship on items of repair and maintenance.

Rendering

63. The Applicant started to manage the building in 2009. At this time the Tribunal learned that whilst there were some cracks in the external render, it was not considered a serious problem. When the situation worsened over a number of years, the Applicant sought advice regarding remedial works and, owing to the fact that the property was less than 10 years old, had started a claim with the NHBC in early 2012. The Tribunal heard that there was a dispute

with the NHBC as to the remedial cost of the work and the extent to which the NHBC would be liable to cover such costs. Towards the end of 2013, it appeared that the NHBC conceded and confirmed that they would contribute to the cost of the remedial works. The residents were advised of the shortfall of the costs which were to be recovered in the service charge. They were also advised that the service charge account was in deficit and additional service charges would need to be levied to meet the additional costs. As the work was not recommended to be completed in the winter months, further quotes had to be obtained as the original ones had expired. In about January/February 2014, a further quote was sent to NHBC. They in turn advised that they would contribute a sum of £35,000 towards the works with the balance falling due on the service charge account. The residents agreed that the works would be done in summer 2014. The Tribunal learned that in March 2014, the Residents Management Committee instructed the Applicant not to complete any work other than items of essential maintenance.

64. The Respondent told the Tribunal that the failure to complete the remedial work to the rendering had allowed damp to enter in his flat through the external walls. Mr. Howard said that the Respondent had raised an issue referring to damp, bad ventilation and condensation (page 16 of Respondent's bundle). The Applicant investigated the matter and the view was that it was a build-up of condensation rather than damp. On inspection, the Tribunal saw evidence of condensation.
65. The Tribunal finds that the Applicant acted reasonably in relation to the problem of the rendering and that there should be no reduction to the management fee on this issue.

Poor maintenance/Quality of workmanship

66. The Tribunal heard evidence from the Respondent who said many items of repair were of poor workmanship. Examples of this were that the fence panels had never been painted and only 5 panels had been replaced; a small fence had been erected at the front of the block but was of poor workmanship; the bollard lights had been very badly fitted and each of the posts were insecure; the metal perimeter fencing around the building was rusty as it had never been painted; the ramp made for the bin compound had had to be redone.
67. Mr. Howard said that there was an invoice for the fitting of 11 fence panels (689); the small fence cost as follows (546 i.e. £474.81 materials and labour £490); 3 bollard lights were fitted (389 i.e. £344.97 and £140 labour); the ramp to the bin compound had been damaged and broken and was replaced but this was not due to poor workmanship (137 - relaying slabs £18.75 and £180 labour for 4 hours work).

68. Whilst on inspection, the Tribunal found that the bollard lights were poorly fitted and insecure and that the metal fencing was rusty, it does not consider the items to be so material as to require a reduction in the management fee.
69. However, in the Tribunal's general experience and knowledge, the annual management fee charged of £4800, (excluding VAT), is not within a range of reasonable charges for managing a development of this type and size and the charge is reduced to £3000 (excluding VAT) per annum, which equates to £125 per flat.

Accuracy of invoices

70. The Applicant's bundle included approximately 600 invoices for the cost of repairs over the period of the service charge years in dispute. The Respondent disputed numerous invoices. Mr. Howard gave evidence based on the job sheet for each invoice.
71. On the first day of the hearing, 21 invoices were considered and 14 were found to have errors including:
- a. incorrect calculations (135; 192; 197; 290; 291);
 - b. conflicting hourly rates for the caretaker (135,137 -£45; 188,196-£25; 189,692- £60);
 - c. work allocated to the wrong flat (198; 246);
 - d. split between labour and materials calculated incorrectly by the office (233-236);
 - e. descriptions not matching the job sheets
 - f. substantial delays in raising invoices after the work was completed (189- 3 months ;190- 4 months;192- 2 months) although Mr. Howard acknowledged that good practice was to invoice within 30 days.
72. Mr. Howard accepted that invoices were either incorrect (135; 192; 233; 234; 235; 236) or unclear (190; 196).
73. On the second day of the hearing, the detailed invoice analysis was considered. The Tribunal noted both a shift in approach regarding the evidence given and conflicts with evidence already given with the Applicant asserting that there were many examples of undercharging. The detailed invoice analysis had been prepared by the office staff without any input from Mr Howard, who then had some difficulty giving evidence when attempting to reconcile the analysis sheet with the job sheets. He could not explain the discrepancies between the original invoice , details on the job sheet and the information now provided in the analysis. Further, whilst he could remember some of the works described, due to the passage of time, and the lack of clarity of details in the invoices and job sheets, he was not able to recall the majority of repairs being considered and much of his evidence was speculation as to what "may" have happened.

74. The Tribunal noted that whilst there was a concession that the cost of lamps had been overcharged by £10 per unit, the total cost of invoices for the replacement of lamps remained the same on all “lamp” invoices, as, on the second day of the hearing, it was then stated that the employee had spent time involving fractions of an hour e.g. 1.29 hours on replacing a lamp. This conflicted with evidence given on the first day of the hearing.

75. The Tribunal particularly noted the evidence regarding the Invoice at page 700, dated 12.03.14, which refers to replacing a faulty barrel lock to the front door and handing out keys to new residents, with the details stating:-

		Unit Price	Net amount		
“1.00	Euro cylinder	14.06	14.06		
12.00		24.00	288.00		
				Total	net
				amount	.”
				302.06	

76. Following the detailed invoice analysis, the evidence given to the Tribunal was that this repair involved replacing a lock and providing 12 keys with a materials cost of £182.06 and 3.43 hours labour at an hourly rate of £35 which results in a total net amount of £302.06. The Tribunal notes that this total is the same as the original invoice.

77. The original invoice did not make reference to any labour charge but was clear as to the cost of materials, including the cost of each of 12 keys. The evidence provided following the detailed invoice analysis includes the same materials, but now at a reduced cost. The claimed hourly rate of £35 is consistent with the evidence that the caretaker was charged at £35 for general maintenance work, (although this conflicts with evidence given that he was charged at £60 for lock related work). Further, time spent of 3.43 hours, is inconsistent with the “practice” of charging in multiples of an hour on all invoices with very few exceptions, (notably, time spent on replacing lamps which, following the detailed invoice analysis and the acknowledgement that materials were overcharged, has resulted in fractions of an hour, see paragraph 78 below).

78. A further conflict arises from the detailed invoice analysis regarding the amount of time it takes to fit lamps e.g. 1.29 hours for one lamp, (254-257, 261-267); 1.29 hours to fit one lamp and a starter switch (273-275;276-282;303;348); 1.57 hours to fit 2 lamps (293); 1.33 hours to fit 2 lamps and one fitting (692); 3 hours to fit 3 lamps (354); 3 hours to fit 3 lamps and one fitting (378). Mr. Howard accepted, in questioning by the Tribunal, that 1.29 hours appeared to be a long time to fit one lamp. The evidence above also conflicts with the evidence from Mr. Howard on the first day that it took 2 hours to replace 10 lamps (188) and 2 hours to replace 5 lamps and switches (196).

79. The invoice at 541 details 2 men working 4 hours each emptying blocked gutters at a net labour charge of £360. The evidence submitted based on the detailed invoice analysis states that it took 2 men each a day to carry out the work at a daily rate of £180, totalling a net labour charge of £360. Following a question by the Tribunal, Mr Howard said the work would not have taken two days.
80. The Tribunal does not find the evidence arising from the production of the detailed invoice analysis persuasive. The Tribunal draws the inference, from the evidence in paragraphs 73-79 above, that the descriptions in the detailed invoices analysis have been drafted to arrive at the original invoice amount that was charged and in some cases has attempted to provide consistency regarding charging rates thereby resulting in assertions that the invoices are actually undercharging. The analysis seems to have been drafted regardless of the actual time spent on labour, materials or the purported hourly rate. This affects the reliance the Tribunal places on evidence submitted arising from the detailed analysis document.
81. Further, there are examples in the invoices where general maintenance work which is stated to be charged at £35 per hour, is incorrectly charged at £60 per hour (692, where the fitting of two lamps and a fitting is charged at £80 in total rather than £46.55; 534 where the fitting of a bracket and arm is charged at £120 rather than £70; 197 where the fitting of one lamp and a starter is charged at £60 in total rather than £35).
82. The Tribunal experienced considerable difficulty in trying to assess the invoices provided to support the charges for the cost of repairs. After consideration of all the invoices provided in the Applicant's bundle and particularly the Applicant's evidence and the lack of weight the Tribunal attaches to the detailed invoice analysis, the Tribunal finds that the lack of robustness in the invoicing process results in a lack of credibility in the charges made, for the following reasons:-
- Lack of transparency, as the invoices lack detail as to the nature of the work undertaken, the time spent, hourly rate charged, the materials used including number and cost
 - Where details are given, they are inconsistent e.g. a different hourly rate for the same employee when carrying out the same activity; differing costs of the same materials.
 - Inaccurate descriptions
 - Incorrect or no split between labour and materials
 - Incorrect calculations
 - Differential hourly rates for the same employee dependent on the activity undertaken
 - With the exception of the invoices regarding the change in lock and the fitting of lamps, (which followed the detailed invoice

analysis), invoices were for a multiple of one hours work with no charges for fractions of an hour.

- The amount of time spent on tasks both generally, and more specifically, no reduction in time when the same task was carried out several times on the same day e.g. fitting lamps
- Duplication of charging for the same activity covered under different service charge heads (work charged under (307) included in the regular grounds maintenance activities (316)
- Significant delays in the submission of invoices
- Inconsistency of descriptions of the work done between the invoice and the detailed invoice analysis, including the number of employees undertaking the activity (288)

83. Mr. Evans acknowledged that the invoicing lacked detail at the beginning of the contract and that their accuracy was not good. In response to the issue of the delay of the submission of invoices, he said work had not necessarily been carried out on the date stated in the invoices. The Tribunal accepts that the invoicing got more detailed towards the end of the contract, but, after considering the detail provided by the detailed invoice analysis, in the Tribunal's view, there remained significant differences between the new detail provided and the detail on the original invoices, both of which purported to be based on the job sheets.

84. Mr. Evans expressed concern that the charges were being "scrutinized so closely" as they were charges from companies connected with the Applicant Company rather than external suppliers and that the residents had "too high" expectations of the connected companies. The Tribunal considers that whilst there is no objection to services being provided by connected companies, it is essential that charges levied are based on information which is clear, transparent, robust, and with sufficient detail and accuracy to prevent any negative inferences being drawn or an assertion being made that the charges are a sham. Particularly where services are provided by connected companies, it is essential that they are provided to a standard and at a cost which is demonstrably comparable with such services being provided by non- connected companies.

85. A further reduction of 15% is made to the reduced management fee to reflect the significant inadequacies and failures in the invoicing process. The Tribunal therefore determines that the management fee for each service charge year is reduced to £2550 per annum (exclusive of VAT).

Appeal

86. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to

appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

Judge T N Jackson
First Tier Tribunal