



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

Case Reference : CHI/OOHY-LIS/2014/0069

Property : 71 Grouse Road, Calne, Wiltshire, SN11 9SF

Applicant : Rosewood Apartments (Calne)
Management Co Limited

**Applicant's
Representative** : Ms Ellis of Remus Management Limited

Respondent : Mr J Watson and Miss C Holland

Type of Application : Section 27A(3) Landlord and Tenant Act 1985

Tribunal Members : Judge J Brownhill (Chair)
Mr M Ayres

**Date and venue of
Hearing** : 21st April 2015. The Lansdowne Strand
Hotel, The Strand, Calne, Wiltshire.

Date of Decision : 23rd April 2015

DECISION

© CROWN COPYRIGHT 2015

Introduction

- 1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.

- 2 The Applicant applies under section 27A of the 1985 Act for a determination of the reasonableness of service charges for the years 2013 and 2014. The Respondents were given the opportunity to identify any specific items or amounts in dispute by virtue of the directions dated 26/11/2014 [33]. Only Mr Watson of the Respondents raised any issues. Ms Holland no longer lives at the property. Ms Holland, despite being served with all of the documentation before the Tribunal at her alternative address has taken no part in these proceedings.

The Inspection

- 3 The Tribunal had the benefit of inspecting the property and communal areas of the block in which the property is situated on the morning of the 21st April 2015. Present at the inspection were the Tribunal, Ms Ellis, Ms Francis and Ms Thompson for the Applicants, and Mr Watson of the Respondents.
- 4 The property is a first floor flat in a three storey purpose built block within a larger development. A number of estates make up the development. The property is one of the flats on the Jasmine Court Estate. The Jasmine Court Estate comprises 53 flats (within 11 blocks) and 18 houses.
- 5 The property is above a ground floor carport and has another flat above it. The two flats have their own communal entrance, leading onto a hall and stairs serving each floor. The communal areas on the first and second floors each contain three windows. The block is linked to another block containing other flats with its own communal entrance. The property is served by a purpose built communal bin shed situated across the car park from the block. The development is lit at night with a number of street lights, situated along the roads and within the car parking areas.
- 6 The Tribunal were taken inside Mr Watson's flat and were shown areas of damp and mould which Mr Watson claimed had resulted from previous leaks from the flat above. Mr Watson also pointed out the communal door (which he claimed had not shut properly although this was working correctly at the time of the inspection) and the doors to the bin shed and the street lights.

The Law

- 7 The statutory provisions primarily relevant to applications of this nature are contained in sections 18, 19 and 27A of the 1985 Act. These are reproduced in Appendix A attached to this decision.

The Lease

- 8 The Tribunal has seen a copy of the lease to the property [13]. The property is identified as plot 783 Jasmine Court [16] "...intended to be known as 71 Grouse Road, Calne, SN11 9SF." The lease provides that the lessees should pay "...a fair and reasonable proportion..." of the service charge, as determined by the Management Company acting reasonably [16][23] – paragraph 16 of the Fourth Schedule. The lease defines the service charge year as running from the 01/01 each year to 31/12 each year. There is provision for payment of an interim service charge [17] [23] and [27] (the Seventh Schedule) and a

balancing payment, if required, once the yearly service charge accounts have been finalised (clause 4.5 of the Seventh Schedule)[28].

- 9 The service charge is separated into charges in respect of:
 - a. the estate (in connection with which the Respondents are charged 1/71th of the costs – there being 71 dwellings on the estate (53 flats and 18 houses); and
 - b. block charges, which relate to the flats only and cover charges arising in respect of the 11 blocks of flats (consisting of 53 flats), and in respect of which the Respondents are charged 1/53 of the costs.
- 10 The Tribunal will not set out all of the service charge provisions contained within the lease in this decision as they are not all relevant to the issues raised by the Respondent. However they can be largely found in the Sixth and Seventh Schedules [25][26]. Of particular note were the following clauses of the lease:
 - a. The Fourth Schedule: The Tenant's covenants. Paragraph 7 [22] "To clean all the surfaces of the windows of the Property as often as is reasonably necessary."
 - b. The Sixth Schedule: The Management Company's Covenants for Works and Services. Paragraph 4 [25] "To.....clean....the entrances, halls, landings staircases smoke lobbies, fire escapes, and other parts of the Block (if any) available for use by the Tenant in common with other occupiers of the Block.

Service of the documentation.

- 11 As is referred to above, the Tribunal accepted that Miss Holland had been served with all the documentation before the Tribunal, including the bundle and the supplemental bundle containing Mr Watson's submissions and the Applicant's response. Miss Holland had been invited to take part in and attend at the hearing, but had not done so.

The Hearing

- 12 Mr Watson indicated to the Tribunal at the start of the hearing that he didn't have his copy of the bundle with him. The Tribunal specifically asked Mr Watson to confirm that he had actually previously received a copy of the bundle: he stated that he had but that his mother had been ill the night before and that he had left his bundle at his girlfriend's house. Mr Watson was therefore provided with the clerk's copy of the bundle to use during the course of the hearing.
- 13 It is worth noting that at no stage during the course of the hearing did Mr Watson indicate to the Tribunal that he had not previously seen any of the documents being referred. However, at the very end of the hearing, as the parties were leaving Mr Watson asked the Tribunal's clerk if he could be provided with a copy of the bundle. The Tribunal asked Mr Watson to clarify this, as he had previously indicated that he had a copy of the bundle but that he had left it at his girlfriend's house. Mr Watson then claimed that he had not received a copy of the bundle used in the hearing and stated that he had been

referring to “..a different bundle.” And that “..I hadn’t seen the bundle, but I had seen the email..” (meaning the supplementary response).

- 14 The Tribunal took some time to ascertain the detail of when the Applicants had sent the various items of documentation to Mr Watson. The Tribunal noted in particular:
- a. At [36D] February 2015 directions: Mr Watson had apparently indicated in an email of 03/02/2015 to the Tribunal that he had received copies of the documents sent by the Applicant pursuant to direction 4 of the November 2014 directions [35]: being copies of all relevant service charge accounts and estimates for the years in dispute, together with all demands for payments and details of any payments made.
 - b. A letter of 16/03/2015 from Remus on behalf of the Applicants stating that copies of the Applicant’s supplementary response had been posted by recorded delivery to the property addressed to Mr Watson and sent by email to him. Ms Ellis for the Applicant indicated that the email sent had not bounced back nor had any documents been returned in the post.
 - c. Ms Ellis also indicated that a copy of the paginated bundle had been sent to Mr Watson on the same day it had been sent to the Tribunal (it was received by the Tribunal on 04/02/2015). Ms Ellis indicated that the bundle had not been returned in the post;
 - d. Ms Ellis did indicate that a letter to Mr Watson from Remus dated 23/02/2015, sent recorded delivery, had been returned to them as it had not been collected by the addressee, but that this was the only returned item of post.

- 15 The Tribunal was satisfied that Mr Watson had in fact previously received copies of all the documents contained in the bundle. The Tribunal noted in particular that Mr Watson had not raised any objection to the hearing proceeding and had not requested an adjournment. The Tribunal was satisfied that it was in the interests of justice and appropriate for the hearing to have proceeded as it had, and the overriding objective had been complied with.

The Issues.

- 16 Mr Watson raised a number of issues in his response [Supplementary bundle 1] dated 17/02/2015. The Tribunal considered each of these in turn:

Managing Agent Charges

- 17 The Applicants employ managing agents, Remus. Mr Watson indicated that in his view, given that the properties were new (constructed around 2007), there was in fact very little for the managing agents to do, and he expressed his view that their charges were “...far too high..”. Mr Watson accepted that a managing agent was necessary, but did not know what an appropriate level of charge would be.
- 18 The cost of managing agents is recoverable through the service charge in accordance with paragraphs 2 and 3 of The Sixth Schedule to the lease [26].

2013 Service Charge year

- 19 The managing agents fees for the 2013 service charge year are detailed at [48], consisting of £10,812 (in relation to the flats) and £1,339.20 (in relation to the houses), making a total charge of £12,151.20.
- 20 Ms Ellis for the Applicants indicated that Mr Watson and Miss Holland had only been charged 1/53 of the £10,812 (being the cost to the flats in relation to management fees), equating to £204 pa.
- 21 Mr Watson, on realising that this was the figure charged, expressly indicated to the Tribunal that he agreed that this amount was reasonable. The Tribunal, found that:
- a. this was a reasonable amount;
 - b. that such charges had been reasonable incurred and
 - c. that services provided by the managing agents (pursuant to their fee) was of a reasonable standard. The Tribunal refers to its findings below in this regard.

2014 Service Charge year

- 22 As the final accounts for the 2014 service charge were not yet available, the Tribunal were only able to consider the 2014 estimated service charges /budget [53]. These showed that the managing agent fees for the 2014 service charge year in relation to flats were estimated at £11,130. A 1/53 proportion of which amounted to £210pa (being the amount charged to Mr Watson and Ms Holland).
- 23 As above, Mr Watson indicated that he now agreed that this amount was reasonable. The Tribunal found that:
- a. this was a reasonable amount;
 - b. that such charges had been reasonable incurred and
 - c. that services provided by the managing agents (pursuant to their fee) was of a reasonable standard. Again the Tribunal refers to its various findings and conclusions below in this regard.

Window Cleaning

- 24 Mr Watson complained that during the period of his ownership (2010-2014) the windows in the property had only been cleaned once. He stated that the only reason for his conclusion in this regard was because he had only seen someone cleaning the windows once. Later in his evidence he stated in fact the property windows had been cleaned twice over this 4 year period, as he recalled having seen hard water run marks on the windows on another occasion. He explained to the Tribunal that he had lived at the property full time until May 2014, and between May and August 2014 he had lived there "...on and off", but that since August 2014 he didn't spend much time at the property.
- 25 Mr Watson stated that he had complained about the lack of window cleaning to Remus. However he did not provide any details of such alleged complaints. He referred in his submission at [Supp Bundle 1] to having previously sent emails

to Remus complaining of various matters but was not able to produce any of these to the Tribunal. One email he did show the Tribunal from his laptop was from 09/08/2014: this was a covering email with, he said an invoice detailing charges which he said he had incurred. There was not a hard copy of this email. Mr Watson was unable to download the attached document which he said was his invoice. It is of note that having been able to find that email over the luncheon adjournment, the Tribunal were not shown any other emails by Mr Watson, despite on numerous occasions stating that he had complained to Remus in that fashion.

26 Mr Watson indicated that in September 2014 he had received a letter from Remus (sent to all flat owners) stating that from the date of the letter only communal windows would be cleaned. Ms Ellis for the Applicants accepted this.

27 Ms Ellis explained that initially when Remus had taken over managing the estate in 2007, resident directors of the management company had indicated that they wanted all the windows in blocks of flats cleaned (not just the communal ones, but individual flats' windows as well). In 2014 a new resident director had indicated a desire to reduce costs, and Ms Ellis explained that Remus had told the director that the lease only required the cleaning of communal windows. It was therefore decided that from that date, in September 2014, only the communal windows in the blocks of flats would be cleaned.

28 The relevant provisions of the lease in this regard are set out in paragraph 9 above. The Tribunal found that the lease provided that:

- a. The individual leaseholders were responsible for cleaning their own flat windows; and
- b. The management company were responsible for cleaning the windows in the communal parts of the blocks.

29 This meant that in both the 2013 service charge accounts and the 2014 budget, that the costs of window cleaning included an element of works/services not provided for under the provisions of the lease to be recouped through the service charge. The cost in the 2013 account and also in the 2014 budget was £1,680.00

30 Ms Ellis gave oral evidence to the effect that the cost of cleaning the communal windows only at the 11 blocks of flats on the estate, was now £800pa. This covered 4 visits over the course of the year at £200 per visit. The Tribunal considered this to be a reasonable amount.

31 The Tribunal therefore reduced the amount payable under the service charge in this regard to £800 in the 2013 accounts and in the 2014 budget. So far as Mr Watson and Ms Holland are concerned, this will amount to a reduction of £16.60 for 2013 and a further £16.60 reduction in 2014: $£1,680 - £800 = £880 / 53 = £16.60$ reduction in service charge.

- 32 The amount payable by Mr Watson and Ms Holland in 2013 and under the 2014 budget in respect of window cleaning is therefore £800/53 = £15.09pa. The Tribunal considered this to be a reasonable amount.
- 33 The Tribunal considered Mr Watson's evidence that the window cleaning had not been carried out to a very good standard. Mr Watson had provided no corroborating documentary evidence showing that he had complained about the standard of window cleaning at the block: the Tribunal would have expected to see copies of emails or letters sent if the position had been as bad as had been indicated by Mr Watson. There was no reference to any other complaints having been received by others concerning the standard of window cleaning in the block over these years. The communal windows, when inspected by the Tribunal seemed to have been cleaned to a reasonable standard. Further the Tribunal noted that on his own evidence, and since May 2014 Mr Watson was not often at the property, and so presumably may have missed seeing such window cleaning being carried out. Mr Watson's criticism was that he had had to clean the property's windows himself, but of course this is what is required under the terms of the lease. The Tribunal noted that people could have varying standards as to the cleanliness of windows and that it can sometimes be difficult to judge whether in fact windows have or have not been cleaned. In all the circumstances the Tribunal were satisfied that the window cleaning of the common parts had been undertaken to a reasonable standard over the two years being considered.

Door Closer on the lower door.

- 34 Mr Watson complained that the door closer on the lower external door had broken, and though it had been reported to Remus it had not been repaired [Supplementary bundle -1]. The Tribunal noted that the door closer was properly functioning at the time of the inspection. Mr Watson explained that Remus had been notified of the problem (he believed by Ms Holland), but was not able to substantiate this by reference to any documentary evidence. He also stated that he believed this had occurred between October 2010 and December 2010. Mr Watson indicated that he had completed the repair "...a week or so after.." Remus had allegedly been told of the issue. Mr Watson indicated that there had been no issue with the door closer in either 2013 or 2014.
- 35 It was clear that this was not a matter relevant to the 2013 or 2014 service charge. The Tribunal considered whether it was indicative of criticisms which Mr Watson made about Remus's performance as managing agents, but, in all the circumstances and considering the evidence before it and timescales alleged concluded that it was not a valid or significant criticism.

Communal bin shed doors

- 36 Mr Watson alleged that the wooden doors to the communal bin shed "...initially would not shut as the hinges fell loose.." [Supp Bundle 1]. Mr Watson indicated that he had reported this as an issue to Remus but that nothing was done, he therefore claimed to have tightened the hinges himself. Mr Watson then stated that this problem recurred "...I think last year...". He maintained that "...eventually you (*Remus*) sent a chap out, he bodged them,

then he came out again to bodge them some more now there is more of a gap than there is door.”

- 37 The Tribunal clarified with Mr Watson what period this was said to refer to, as his comment at [Supp Bundle 1] “..initially...” could imply this related to the period when he first acquired the lease. Mr Watson replied stating that this was an issue “..in the 2013 and 2014 period.” He explained that he had carried out the first repair by tightening screws on the hinges. He stated that “...I reported it or Cathy (*Ms Holland*).” He continued that there was another problem in Spring 2014 “...maybe later...the doors would not shut and would swing open.” Mr Watson stated that he had seen “...a chap out twice shaving a bit off the doors.” In his response at [Supp Bundle 1] from 17/02/2015 Mr Watson referred to the contractor as bodging the doors, and stated “...now there is more of a gap than there is door”.
- 38 The Tribunal noted that the bin shed doors operated perfectly properly at the time of the visit. The Tribunal also noted that there was no sign of any particular gap between the doors as had been alleged by Mr Watson.
- 39 Mr Watson explained that he felt he had been charged an excessive amount in relation to this repair given what he had had to do himself to repair the doors and that it had taken a long time for Remus to organise works to be done. It is of note that Mr Watson was not able to give details of dates when this item of disrepair had been notified to Remus nor when the doors had in fact been repaired. As stated above Mr Watson alleged that he had himself tightened the screws on the hinges.
- 40 Ms Ellis explained that the estate manager from Remus carried out routine visits to the blocks, leaving her card on a communal notice board after a visit and inserting her card through the letterboxes of leaseholders she had not spoken to. The Tribunal found that there appeared to be a sensible and reasonable system in place for inspection of the blocks. Ms Ellis went onto explain that the items listed in the 2013 accounts for door repairs [50] did not relate to the costs of any bin shed doors. She explained that works had been carried out to the bin shed doors in 2014 and the cost of these works would appear in the finalised accounts for 2014 in the sum of £60. She stated that this covered the total cost for repairing the bin shed doors. It may, in fact, cover one or two visits by contractors, as often contractors will only charge them for one visit even if two occur in order to complete the job.
- 41 The Tribunal found that the cost of £60 (due to appear in the finalised 2014 accounts) was a reasonable sum in relation to this item. Given the nature of the repair and the fact that the doors were bin shed doors the Tribunal considered, on the basis of the evidence available to it, and on the balance of probabilities that the repair had been carried out to a reasonable standard and in a timely fashion. The Tribunal did not find there to be any significant legitimate criticism of the managing agents in their dealings with this issue.

Street Lights

- 42 Mr Watson stated that there were now 1.5 street lights working: one which was very bright and one which worked intermittently and one which didn't work at

all. Mr Watson was asked when he alleged that this issue had been reported to Remus, but he was unable to say other than it was at some point within either 2013 or 2014.

- 43 The Tribunal were not able to verify whether the street lights were working at the time of inspection as the inspection occurred in daylight hours. Ms Ellis had indicated in the Applicant's response [Supp bundle -7] dated 23/02/2015 that Remus had not been aware of or previously informed about any issues with the street lights in this area. This was an assertion which Ms Ellis repeated during the course of the hearing. Ms Ellis stated during the course of the hearing that Ms Jade Francis (the estate manager from Remus) had spoken to a resident director of the Applicant about this issue since receiving Mr Watson's response. The resident director had said that there was no issue with or problem with the street lights on the estate or in this area. Ms Ellis explained that Remus were reliant upon residents (including resident directors) reporting these sort of problems as they did not carry out inspections of properties or estates at night, for obvious safety reasons. Ms Ellis stated that since Mr Watson was still, now at the hearing, maintaining that this remained an issue Remus would speak to the resident director once more and ask an electrician to examine the lights.
- 44 The Tribunal noted that Mr Watson was not now often at the property and it was unclear from his evidence when in fact he had last been at the property during hours of darkness. In considering the impact of this complaint on the service charges for the 2013 and 2014 years Mr Watson explained that he felt that this went to the issue of whether Remus were doing their job properly: i.e. whether they had been providing a reasonable standard of service. On the basis of the information before the Tribunal, the Tribunal were satisfied that the steps taken by Remus in investigating the issue of street lights since February 2015 had been reasonable. The Tribunal were not satisfied that this issue had been raised with Remus by Mr Watson (or Miss Holland) prior to February 2015, and so therefore were not satisfied that this matter related to or detracted from the reasonable standard/provision of services provided by Remus in either the 2013 or 2014 service charge year.

Water leaks into the property from the flat above.

- 45 Mr Watson referred to two occasions when his property had suffered water leaks from the property above [Supp Bundle 2]. Mr Watson was asked to explain how he considered this to be relevant to the 2013 and 2014 service charges being considered. Mr Watson stated, in relation to the first leak, that "It has nothing to do with service charges, it is part of my dissatisfaction of the service I was receiving at the time. In relation to the (*correspondence arising from the*) first leak I accept that this was due to my lack of attendance to the problems and is of no relevance to the case whatsoever."
- 46 The Tribunal noted Ms Ellis' evidence in which she particularised the steps taken by Remus in response to being notified of a potential insurance claim. Ms Ellis detailed at [Supp Bundle 7] that Remus had been notified of a potential claim on 26/04/2013 and sent out a claim form and standard letter requesting estimates for redecoration and photographs of the damage. Remus had received no response to that letter and so sent chasing letters on

20/05/2014; 03/06/2014 and 17/06/2014 at which point they closed the claim with the insurance company. Mr Watson accepted in his evidence that he had not responded to the correspondence from Remus. The Tribunal found that there was no proper basis for any criticism of Remus's actions in this regard. Despite Mr Watson's complaint as initially formulated in his response, it appears that it was as a result of his own failure to reply to correspondence that no further action was taken in progressing an insurance claim.

47 In relation to the second leak, Mr Watson argued that his complaint was relevant to the standard of service being provided by Remus. Mr Watson stated during the hearing that he wasn't sure when he reported the second leak to Remus, "...maybe in December 2014..." he then stated "I've only, a couple of weeks ago, been given authority to get a decorator in to repair the damage. Some of the delay admittedly, a certain percentage of the time was due to myself and the decorator coming round but..." some was also due to Remus' failures. Mr Watson stated that he had initially sent an email to Jade Francis of Remus about this second leak, and received a reply saying that she was away for two weeks. He then received an email from someone called Libby (who it appeared worked within the insurance department). Ms Ellis at [Supp Bundle 8] stated that Remus's insurance department sent out a letter on 09/01/2015 asking for photographs of the damage and a quotation for decorative repairs. This was not contested by Mr Watson. In his email [Supp Bundle 2] Mr Watson alleged that he was due to get a decorator to come and provide a quotation on the 19/02/2015.

48 The Tribunal found that such delay as there was between Remus being notified in December 2014 of the existence of an insurance claim for the cost of redecoration, and their 09/01/2015 letter being sent out was entirely reasonable and understandable given the time of year. The delay between the 09/01/2015 letter and the provision of quotations (it is not clear when in fact this occurred, but appears to have been after 19/02/2015) was entirely the result of Mr Watson's inaction. The period from 19/02/2015 to say early April 2015 (being a couple of weeks before the decision – and the time period referred to by Mr Watson) is in all the circumstances not an unreasonable period of time for an insurance company to consider quotations and give the go ahead to proceed with redecoration works. Nor do the Tribunal find that that delay was the result of any inaction or delay by Remus. In all the circumstances the Tribunal concluded that there was no proper criticism of the service provided by Remus in this regard.

Security door not working

49 Mr Watson alleged that one evening he discovered that the external security door to the common parts of the block was not working properly. Mr Watson stated that this was reported to Remus but was not fixed for at least 10 weeks. He explained that matters came to a head when two teenage boys were discovered eating maltesers on the communal stairs, the letting agent of the upstairs property then reported the issue with the door to the out of hours service. Initially Mr Watson claimed that it was him who had reported the matter to the out of hours service, though later he altered his evidence saying that this was done by the upstairs flat's letting agent. After this Mr Watson stated that the door was quickly repaired. Mr Watson stated that he had first

raised this issue in the middle of December 2014 by email but was unable to provide a precise date when this was done or documentary evidence in support. On his own case he had only raised this as an issue once.

- 50 Ms Ellis for Remus indicated that they had no record of Mr Watson raising this as a matter of disrepair. Further Ms Francis had been to check the door on 11/02/2015 and confirmed that this was in full working order. Mr Watson emphatically denied that this was the case; though of course it is worthy of note that at this time, on Mr Watson's own evidence he was not spending a lot of time at the property. The Tribunal noted that the security door appeared to be in full and proper working order at the time of the site inspection.
- 51 The Tribunal considered the evidence before it, and queried in particular whether the items noted at [50] within the 2013 service charge related to the cost of repairs to the external security doors to the block. After taking some time to clarify the details of these charges Ms Ellis confirmed to the Tribunal that none of these charges related to repairs to the external security door in the block.
- 52 It appeared to the Tribunal that Mr Watson's complaint in this regard related to events which occurred at the end of December 2014 and the beginning of 2015. The cost of the repair, having been incurred in the 2015 service charge year, was not strictly speaking a matter for consideration by the Tribunal. However the Tribunal did consider whether Mr Watson's complaint of events in December 2014 were such that they evidenced a lack of action or inadequate provision of service by Remus. Given that Mr Watson was not sure when he had first reported this issue, and the fact that Remus had no record of any issue with the security door being reported by Mr Watson in December 2014 the Tribunal were not satisfied that, on the balance of probabilities, there was any proper criticism to be made of Remus' actions in this regard. The Tribunal were not satisfied that even had Mr Watson's allegations been substantiated this would (either on its own or in combination with the other complaints made by him) have resulted in the Tribunal concluding that the managing agent's fees charged by Remus were not reasonable or properly payable.

Cleaning of communal parts

- 53 Mr Watson stated that in his view the cleaning in the communal areas had been of good standard until October/November 2014 when the standard of cleaning dramatically decreased.
- 54 Ms Ellis gave evidence that this had been the general view of others in other blocks too, and that as a result of a number of complaints received Remus had taken action and given the cleaning contractor one month's notice and a new cleaning contractor had been employed from January 2015.
- 55 The Tribunal found that Mr Watson had no criticism of or issue concerning the service charge cost or of the standard of service provided concerning the cleaning of communal areas in 2013. The Tribunal were satisfied that such costs were recoverable under the terms of lease (specifically The Sixth Schedule Part 2 paragraph 2 [26] and The Sixth Schedule Part 1 paragraph 4

[25]). The Tribunal finds that the cleaning costs included within the 2013 service charge are reasonable and payable.

56 In relation to the 2014 budgeted costs, the Tribunal noted that Mr Watson had no criticism of or issue with the cost of or standard of cleaning work between January 2014 and October/November 2014. In October/November 2014 when an issue arose (as notified to Remus by others, and not Mr Watson), Remus took appropriate and timely action in terminating the cleaning contract and engaging a different company. The budgeted cleaning costs for 2014 were £4,752 [53] – this was £5 less than the 2013 charges. The 2014 budgeted figure amounted to an annual charge of £432p.a. per block, and a charge of £86.66pa for the property. In all the circumstances the Tribunal considered that this was a reasonable charge for cleaning and that the standard of cleaning having been satisfactory over 10-11 months of the year didn't merit any reduction in the service charge costs.

57 The Tribunal further considered this item in the context of assessing the standard of service provided by Remus in relation to their fee. The Tribunal concluded that it illustrated active and appropriate management of the blocks.

Other issues

58 Mr Watson also made criticism of Remus for the way in which they put documents in his post box, so that they had become wet. He accepted during the hearing that this was not relevant to any of the Tribunal's considerations. Mr Watson went on to refer to what he deemed to be unnecessary letters being sent out by Remus to him particularly in relation to matters which were not relevant to him or the block in which the property was situated: he referred to in particular to a letter concerning bikes and wellingtons in communal areas. Ms Ellis explained that the managing agent charge charged by Remus was a fixed charge and was not dependant on nor varied with the number of letters sent out. The Tribunal suggested to Mr Watson that perhaps Remus were including all leaseholders in letters of this sort so that leaseholders could see the action they were taking in other areas of the estate, and so as to show the work that was being done by them and which the leaseholders were ultimately paying for. Mr Watson agreed that this might indeed be the case. The Tribunal did not consider this issue to have any bearing on the payability of either the 2013 nor the 2014 service charge.

59 Mr Watson stated that he had sent an invoice to Remus covering the cost of repairs he had carried out and damage he claimed had been caused to his car whilst it was parked in the carport underneath the property. The Tribunal were not shown a copy of this invoice, but were shown on Mr Watson's laptop computer the covering email of 09/08/2014 by which it was sent to Remus. The Tribunal did not consider this invoice would, in any event, have impacted upon the service charge matters before the Tribunal. If Mr Watson claimed to have a monetary claim against Remus in relation to certain matters (for example allegations of damage to his car being caused, potentially, by Remus employees) then that was something which Mr Watson would need to separately pursue against Remus. It was not, so far as the Tribunal were able to determine, on the basis of the evidence before it, relevant to the issue of the 2013 or 2014 service charges.

60 Mr Watson referred to his feeling that he was the only person being pursued for the service charge when both he and Ms Holland were the leaseholders. The Tribunal explained to Mr Watson that Ms Holland had been sent all the documentation in relation to the Tribunal proceedings and had been invited to attend the hearing but had seemingly chosen not to do so. The Tribunal also explained to Mr Watson that as joint leaseholders and on the basis of the information available to the Tribunal it appeared that both he and Ms Holland were jointly and severally liable for the service charges in respect of the property.

Section 20C

61 The Tribunal explained to Mr Watson the provisions of section 20C of the Landlord and Tenant Act 1985 and that an application could be made by him so that all or any of the costs incurred by the Applicant in connection with the proceedings before the Tribunal were 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. A Tribunal may make an order under section 20C if it considered it to be just and equitable to do so. Mr Watson indicated that he wished to make an application for an order under section 20C.

62 Mr Watson stated that this case could have been avoided if Remus had communicated with him properly. He did accept that there was some delay in communication from his side too, but indicated that he felt that there had been no need to make the application to the Tribunal.

63 Ms Ellis responded to the application saying that the documentation and letters they had sent had been clear. They had sent out chasing reminders in relation to the overdue service charges and the matter had been passed to their legal team. Ms Ellis indicated that there was no mortgage to approach concerning the non-payment of service charges and that the last payment they had received in connection to the service charge for the property had been from Ms Holland on 9th June 2014 for £200 [43]. Ms Ellis also explained that such communication as there had been with Mr Watson had really only occurred since the instigation of the Tribunal proceedings and that Remus had felt that they had no option but to issue proceedings in order to recover the relevant service charges.

64 The Tribunal considered that the provisions of the lease provided for the recovery through the service charge of Remus' charges for bringing, preparing and attending at the Tribunal proceedings, in particular by virtue of paragraphs 8 and 9 of the Sixth Schedule [26]. These provided: "The service costs of any Accounting Period are all the expenditure, liabilities and overheads..... paid or incurred by or on behalf of the Management Company during or in respect of that Accounting Period of and incidental to:....

- a. Paragraph 8 "the cost of employing or engaging solicitors, counsel and other professional persons in connection with the management of the

Development the administration and collection of the Service Charge payable by the Tenant and by the other tenants in the Buildings”;

- b. Paragraph 9 “the cost of bringing or defending any action or proceedings and making or opposing any application.”.

65 The Tribunal noted Mr Watson’s closing submissions in which he stated that a satisfactory solution to the proceedings from his point of view would be the Applicant agreeing to ‘write off’ the service charges for 2014 and also the forthcoming 2015 charges. It is very clear from that expressed position, when compared to the Tribunal’s own conclusions on the matters raised by Mr Watson that Tribunal proceedings were entirely appropriate and necessary. Mr Watson has been unsuccessful in all bar one of the issues which he raised before the Tribunal. To the extent that he had been successful in relation to challenging the window cleaning costs claimed through the service charge this had only made a small difference (amounting to £16.60 reduction for each year in relation to the service charges being claimed from him and Ms Holland).

66 The Tribunal did not consider it just and equitable to make an order under section 20C. However it should be noted that in not making a section 20C order the Tribunal is not making a determination as to whether any such costs which are said to have been incurred by Remus in the Tribunal proceedings are reasonable. Those are not issues for determination under a section 20C application and they were not specifically argued before the Tribunal at the hearing.

Conclusions

67 Having considered each of the issues raised by Mr Watson the Tribunal considered:

- a. the service charges for 2013;
 - i. and found the charges to have been reasonably incurred and payable under the terms of the lease, save that a reduction in the sum claimed for window cleaning should be applied so that the applicable cost is £800 and not £1,680; and
- b. the service charges budget for 2014:
 - i. and found the budgeted charges to be reasonable and payable under the terms of the lease, save that a reduction in the sum budgeted for window cleaning should be applied so that the applicable cost was £800 and not £1,680.

Appeals

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

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

- 70 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.
- 71 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.

Judge J Brownhill (Chair)

Dated; 23rd April 2015

APPENDIX A

Landlord and Tenant Act 1985

Section 18 Meaning of “service charge” and “relevant costs”.

(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 Limitation of service charges: reasonableness.

(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 provision 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.

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.]

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to an 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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.]