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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**BIR/OOFY/LIS/2016/0029**
Property	:	**Flat 10 & 13** **27 Woolpack Lane** **Nottingham** **NG1 1GA**
Applicant	:	**Blue Property Investment UK Limited**
Representative	:	**Blue Property Management UK Limited**
Respondent	:	**Buxton Management Company Limited**
Representative	:	**S A Law LLP**
Type of application	:	**Application under Section 27A of the Landlord & Tenant Act 1985 for a determination of liability to pay and reasonableness of a service charge**
Tribunal members	:	**Mr G S Freckelton FRICS (Chairman)** **Mr P Hawksworth LLB**
Venue	:	**Nottingham Justice Centre** **Carrington Street** **Nottingham** **NG2 1EE**
Date of decision	:	**21st February 2017**

DECISION

BACKGROUND

1. On 8th August 2016 Blue Property Management UK Limited, 3 East Circus Street, Nottingham, NG1 5AF ('the Applicant') acting on behalf of the Freeholder, Blue Property Investment UK Ltd applied to the First-tier Tribunal ('the Tribunal') for a determination of liability to pay and reasonableness of service charges in respect of Flats 10 and 13, 27 Woolpack Lane, Nottingham NG1 1GA ('the properties'). The Leaseholder is Buxton Properties Limited, 91 High Street, Caterham, Surrey, CR3 5Uh ('the Respondent').

2. The application is in respect of the Service Charge Years ending 31st December 2009, 2010, 2011, 2012 and 2013.

3. The Tribunal issued Directions on 6th September 2016 following which detailed submissions were made by both parties. A Hearing was arranged for 20th December 2016 at Nottingham Justice Centre.

4. The Tribunal subsequently received a letter dated 14th December 2016 from the Respondents' Representative confirming that neither they nor the Respondent would be attending the Hearing but relied on their written submissions.

THE LEASES

5. The properties are both held on Leases dated 21st September 2006 ('the Leases') between Fenbark Properties Limited and Buxton Management Company Limited for a term of 125 years from 1st January 2004 at an initial Ground Rent of £250.00 per annum, doubling every 25 years ('the Leases'). Blue Property Investment UK Ltd were registered as proprietors of the freehold interest in the properties (along with the remainder of the block) on 7th September 2009.

6. The percentage Block Service Charge and Internal Common Parts Service Charge for both properties is stated as being 5% of the whole. The provisions regarding the collection of Service Charges and services provided are specified in the Fifth and Sixth Schedules of the Leases.

THE PROPERTY

7. The Tribunal inspected the property on 20th December 2016 in the presence of Mr Evans of Blue Property Management UK Limited and a representative of the Respondents managing agent.

8. The property was found to comprise of two areas. The original part of the building to the rear fronts onto Belward Street and the modern part fronts onto Woolpack Lane. It is the modern area which contains the two flats which are the subject of this application. However the service charges are apportioned based on the expenses incurred for the whole of the building.

9. The modern part of the building comprises of 14 flats over five floors with the older part comprising of six flats over three floors. The hallways, staircases and landings were noted to be carpeted and it appeared that the carpets themselves were relatively new. The general standard of decoration was satisfactory. There were only limited communal areas internally and a small external communal area to the rear. The internal communal areas were noted to be in tidy condition and were well lit.

10. There is a separate commercial property to part of the ground floor.

THE LEGAL FRAMEWORK

11. Under Section 27A of the 1985 Act, the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:-

    (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

12. Section 19 of the 1985 Act provides that service charges must be reasonable for them to be payable.

    "Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

    And the amount payable shall be limited accordingly."

13. Section 20B of the 1985 Act provides, in so far as it is relevant to these proceedings:

    (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.

14. Section 21B of the 1985 Act provides, in so far as it is relevant to these proceedings:

    i. A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
    ii. A tenant may withhold payment of a service charge which has been demanded of him if subsection (i) is not complied with.
    iii. Where a tenant withholds a service charge under this section any proceedings relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

15. A charge is only payable by the Lessee if the terms of the Lease permit the Lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (Gilje v Charlgrove Securities [2002] 1EGLR41). It was also stated in Gilje above "The Lease moreover, was drafted or proffered by the Landlord. It falls to be construed contra proferentum".

16. If the Lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.

17. The construction of the Lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2 EGLR 100).

THE PARTIES SUBMISSIONS

18. The Tribunal was not assisted by the absence of the Respondent and their Representative from the hearing. Indeed, in view of the issues raised, the Tribunal was surprised that they did not consider it appropriate for them to attend. The Tribunal therefore had no option but to proceed based on the limited written submission of the Respondent and the extensive submissions of the Applicant together with representations from Mr A Beaumont, Counsel on the Applicants' behalf. The Tribunal considered the provisions of Rule 34 of The Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013 and were satisfied that the Respondent and its representative had been notified of the hearing and that it was in the interests of justice to proceed with it.

19. The Tribunal was grateful to Mr Beaumont for providing a list of issues raised by the Respondent and dealing with them by way of a skeleton argument.

20. The Applicant submitted that there were six main issues raised by the Respondent: (1) whether or not any of the invoices were Statute Barred, (2) whether or not the Summary of Tenants' Rights was included with the various invoices, (3) the '18 Month Rule' under Section 20B of the Act, (4) the level of Management Fees, (5) Interest Charges and Administration Fees and (6) the application under Section 20C. The Tribunal agreed with the Applicant's interpretation of the Respondent's written submission and proceeded to deal with the various issues.

21. Before finalising its Determination the Tribunal wrote to both parties requesting the parties' comments on various matters. In particular these were:

    (a) Whether the parties had any comments on the case of *Graham Peter Wrigley v Landchance Property Management Ltd (2013) UKUT 0376 (LC)* as to the time limits set out.

    (b) Whether the parties had any comments on the assertion that where a service charge is reserved as rent it is subject to a six year limitation period.

    (c) The Applicant was requested to confirm the dates the year end accounts were submitted with copies of the letters sending the accounts out and copies of the signed accounts together with an explanation of the relationship between Blue Accounting UK and Blue Property Management UK Ltd in view of the

requirement in the Lease that the accounting statements must be prepared by 'an independent member of the Institute of Chartered Accountants'.

(d) The Applicant was further requested to confirm the date in each year where the advance service charge payment has been exhausted and the amount of accrued service charge from that date to the end of the year in question.

22. The Applicant replied by letter dated 23rd January 2017 confirming:

(a) The Applicant agreed that with regard to the case of *Graham Peter Wrigley v Landchance Property Management Ltd (2013) UKUT 0376 (LC)* a service charge reserved as rent is subject to a six year limitation period.

(b) The Applicant submitted that in its opinion apart from the support of decided cases, statements made in textbooks should be given little or no weight.

(c) The Applicant submitted copies of letters which it submitted were sent to the Respondents enclosing the year end accounts.

(d) The Applicant submitted that Blue Accounting UK Ltd is an independent accountant and that the point regarding certification by a Chartered Accountant was not one which had been raised by the Respondent.

(e) That in respect of the various dates in each year where the advance service charge payment had been exhausted and the amount of accrued service charge the dates and amounts were as follows:

2009
Accrued Service Charge exhausted – 31/12/2009
Accrued amount to year end - £5364.20

2010
Accrued Service Charge exhausted – 02/07/2010
Accrued amount to year end - £9300.56

2011
Accrued Service Charge exhausted – 04/08/2011
Accrued amount to year end - £9536.13

2012
Accrued Service Charge exhausted – 21/03/2012
Accrued amount to year end - £20358.53

2013
Accrued Service Charge exhausted – 28/01/2013
Accrued amount to year end - £10514.00

23. The Respondent replied by letter dated 20th January 2017 confirming:

(a) The Respondent agreed with the decision in *Graham Peter Wrigley v Landchance Property Management Ltd (2013) UKUT 0376 (LC)* and that the service charges reserved as rent were subject to a 6 year limitation period.

(b) That it was noted by the Respondent that Blue Accounting UK Ltd had the same office and same three Directors as Blue Property Management UK Ltd and cannot therefore be considered independent.

(c) That the Respondent did not follow the Applicant's comments regarding the alleged credits made.

LIMITATION

24. The first issue on which the Tribunal sought a submission from the Applicant at the hearing was in respect of the question of limitation. In their written submission the Respondent had stated that Service Charges were reserved as rent under Clause 1 of the Lease and that the Applicant was only claiming for service charges for the period 1st January 2009 to 31st December 2013.

25. The application was issued on 8th August 2016 and the Respondent therefore submitted that the Applicant was statute barred from bringing a claim for any of the service charges that related to the period prior to 8th August 2010 in accordance with Section 19 of the Limitation Act 1980.

26. The Applicant submitted that clause 1 of the lease stated "yielding and paying by way of further rent such sums as are payable in accordance with the provisions of the Fifth Schedule hereto,". The Applicant therefore submitted that without this sentence, service charges would not be rent and that the Tribunal is not bound by the words used but that its task is to ascertain the true meaning of the lease and to determine what is in fact rent and what is in fact service charge.

27. The Applicant further submitted that for residential properties a S146 notice is not required to forfeit a lease for non-payment of rent but it is required to forfeit for any other reason. The Applicant referred to *Freeholders of 69 Marina, St Leonards on Sea – v- Oram [2011] EWCA Civ 1258* and submitted that service charges are not actually rents and therefore S19 of the Limitation Act 1980 does not apply. Instead S8 applies and the limitation period is 12 years.

28. In any event, the Applicant submitted, the Respondent had made a payment on 13th April 2012 and that a part payment of a debt (other than rent) restarted the limitation period – S29(5) of the Limitation Act 1980. Therefore, if the tribunal determined that the payments made on 13th April 2012 were a payment of rent then the running account rules applied. The Applicant thus submitted that if the Tribunal found against them on the above points, the only sums which were statute barred were the charges of 1st January 2010 (£474 .00) and 1st July 2010 (£474 .00) in respect of each property.

29. The Tribunal considered that this was an important issue as a large number of the invoices referred to in the Scott Schedule were noted by the Respondent as being 'Statute Barred'.

30. The Tribunal does not however agree with the Applicant's Counsel that *Freeholders of 69 Marina, St Leonards on Sea* above assists in determining the appropriate limitation period for the recovery of service charges reserved as rent. That case deals with the situation where a landlord has sought to forfeit the lease by serving a notice under Section 146 of the Law of Property Act 1925 which is not the case here. Thus, if forfeiture is the remedy the landlord seeks, *Freeholders of 69 Marina St Leonards on Sea* above requires that a final determination under Section 81(1) Housing Act 1996 is required before a Section 146 notice can be served and acted upon.

31. Guidance from the Upper Tribunal on the limitation period applicable where service charge is deemed to be or reserved by way of rent or further rent, is obtained from the case of *Graham Peter Wrigley v Landchance Property Management Limited (2013) UKUT 0376 (LC)* which, as stated above, the Tribunal referred to the parties for comment. In that case Judge Huskinson had to consider what limitation period was applicable where service charge was expressly reserved by way of further rent.

32. Taking guidance from that case (which is of course binding on them), the Tribunal interpret the lease in this present case and the words:

"AND YIELDING AND PAYING by way of further rent such sums as are payable in accordance with the Fifth Schedule hereto" as reserving service charge as further rent since the Fifth Schedule of the Leases contains its service charge provisions.

33. At paragraph 19 of *Graham Peter Wrigley v Landchance Property Management Limited (2013) UKUT 0376 (LC)* Judge Huskinson stated as follows:

"I deal first with the question of limitation. I agree that, for the reasons given by Mr Morrell, the point would seem to be only of academic interest for the purposes of the present case. However, the LVT has given a decision in paragraph 13(1) that the service charges referred to as Maintenance Contributions are not reserved as rent and are therefore not limited to a six-year limitation period, but are instead subject to a twelve year limitation period. With respect to the LVT it appears that it may not have had drawn to its attention the provisions in the reddendum clause which reserve the Maintenance Contributions as further rent. I conclude the service charge which is payable in accordance with the provisions of Clause 3 of the lease must be treated as a rent and is therefore subject to a six year limitation period".

34. The Tribunal find similar provisions apply in this case and thus determine that the limitation period applicable to the recovery of service charge in this case is six years from the date on which the arrears became due (Section 19 Limitation Act 1980).

35. The service charge payments claimed in this case are excess balancing charges for the years concerned. So it is necessary to look at the Leases, in this case, to determine when contractually the Respondent was obliged to pay those charges; that is to say when the arrears became due.

36. In the Leases the service charge is divided into two parts: the Block Service Charge and the Internal Common Parts Service Charge. The reconciliation provisions for both are similar and in this respect, clause 5 of Part I of the Fifth Schedule of the Leases requires as under:

"Within 14 days of service on him of a Block Service Charge Statement the Tenant shall pay the Landlord any Block Service Charge deficit shown thereon."

37. For the internal Common Parts Service Charge, similarly clause 5 of Part II of the Fifth Schedule requires the as under:

"Within 14 days of service on him of an Internal Common Parts Service Charge Statement the Tenant shall pay to the Landlord any Internal Common Parts Service Charge Deficit shown thereon".

The reference in the Leases to a 'statement' means 'an itemised statement'. Please see the Fifth Schedule Part I clause 1.7 and the Fifth Schedule Part II clause 1.7.

38. Thus, for the purposes of ascertaining from the Leases when excess charges, are due they will become due (subject to any subsequent variation that the parties either expressly or by their conduct may have agreed) 14 days from the date of service of the itemised statement.

39. Additionally, of course, as it is service charge (albeit reserved as rent) which is being claimed under Section 20B of the 1985 Act the Landlord has in any event within 18 months of the relevant costs being incurred, to serve a compliant demand in accordance with the provisions of Section 21B of the 1985 Act otherwise nothing is recoverable anyway. The Tribunal deals with the Section 20B and the application of the "the 18 month rule" below.

SUMMARY OF TENANT'S RIGHTS

40. The Respondent submitted that it was entitled to withhold payment pursuant to section 21B (3) of the Act as the Applicant had not provided a summary of rights and obligations with each demand. The Tribunal noted that on the Scott Schedule provided by the Respondent, the Respondent had noted that they were *'unable to identify whether a summary of rights and obligations was sent and when'.*

41. The Tribunal had before it a written statement from Mrs Lazinskaite of Blue Property Management confirming that copies of the summary rights and obligations were included with each invoice (page 587 of the Applicants bundle). The Statement was dated 3rd November 2016, contained a statement of truth and was signed by Mrs Lazinskaite.

42. The Tribunal determines on the evidence before it that on the balance of probability, a copy of the summary rights and obligations was included with each demand for payment.

43. A further point which should be noted is that even a demand without a summary of rights attached that is to say an unaccompanied demand is in the Tribunal's view " a demand for payment of a service charge" and a notification for the purposes of Section 20B(2). The significance of sending out an unaccompanied demand is that under Section 21B(3) the tenant is entitled to withhold payment until a demand accompanied by a summary of rights is served. The point is academic in this case as the Tribunal finds that the demands were accompanied by a summary of rights and were thus compliant for the purposes of Section 21B(1) and that the Respondent was not entitled to withhold payment in reliance on Section 21B(3).

THE 18 MONTH RULE

44. The Respondent submitted that the Applicant had failed to demand some of the service charges within 18 months from the point at which the cost was incurred by the Applicants in accordance with section 20B of the 1985 Act. The Respondent further submitted that no information had been provided that evidenced when the sums claimed were incurred and that it was clear that some of the sums incurred by the Applicant must fall outside the relevant period. The Respondent also submitted that it had not received any notices pursuant to section 20B(2) of the Act.

45. The Applicant agreed that some of the service charge demands did fall foul of the 18 month rule and that credits had been applied. The Applicant explained the way the calculations had been made and the credits which were applied to the service charge accounts of the Respondent's two flats.

46. The Applicant submitted that the following credits were due and had been applied:

2009 – No Credit
2010 - £409.53
2011 – No credit
2012 - £804.05
2013 - £25.57

47. It was accepted as fact by the Tribunal that the above credits had been applied. A copy of the calculations provided by the Applicant is attached to this Decision. The Tribunal confirmed that the amounts which were stated to have been credited to the Service Charge accounts for the two flats had actually been credited correctly.

48. The balancing charges claimed are:

FLAT	DEMAND DATE	PERIOD FOR WHICH DEMANDED	AMOUNT
10	28/6/11	1/1/09 to 31/12/09	£268.20
13	28/6/11	1/1/09 to 31/12/09	£268.20
10	28/6/11	1/1/10 to 31/12/10	£442.87
13	28/6/11	1/1/10 to 31/12/10	£442.87
10	15/1/13	1/1/11 to 31/12/11	£440.83
13	15/1/13	1/1/11 to 31/12/11	£440.83
10	23/5/14	1/1/12 to 31/12/12	£929.47
13	23/5/14	1/1/12 to 31/12/12	£929.47
10	7/8/14	1/1/13 to 30/6/13	£482.91
13	7/8/14	1/1/13 to 30/6/13	£482.91

49. Demands for balance charges made after the service charge year end relate to costs which have already been incurred (see Holding & Management (Solitaire) Ltd v Sherwin (2010) UKUT 412 (LC)). Balancing charges in this case represent the actual amount by which estimated expenditure (contained in the relevant service charge budget for the year in question) fell short of the actual expenditure incurred during the year in question. They represent the costs incurred after the advance payments received from tenants had been spent or fully utilised.

50. A tenant is not liable to pay any balancing charge which infringes the overall six year limitation period and neither is a tenant liable to pay any such charge which has been incurred 18 months before a compliant demand for that charge was served on the tenant or a notification given.

51. In determining, therefore, whether a balancing payment is recoverable it will be necessary for the Tribunal to ascertain the date on which the advance payments were exhausted and thus, when the costs which constitute the balancing payment began to be incurred.

52. Section 19 of the 1980 Act refers to "the expiration of six years from the date on which the arrears became due". The Leases in this case requires the tenant to make a balancing payment within 14 days of an itemised statement being served on him. In the Tribunal's view the demands themselves are not itemised statements. There is nothing itemised about the demands – they just refer to "Excess Charges" but do not say how those charges are made up.

53. The Tribunal finds that it is the year-end service charge accounts which make up the itemised statements in this case because it is only from a scrutiny of those accounts that the tenant can ascertain how the excess charge was made up. The Leases require the accounts to be prepared by an independent accountant. From 2010 onwards that requirement was satisfied by the accounts having been prepared by "DWS Harrison Chartered Accountant of Nottingham" but the 2009 accounts were prepared by Blue Accounting Ltd and contain neither certificate nor date (none of the accounts contain a date of preparation).

54. However, the Tribunal do not find that the fact that Blue Accounting Ltd prepared the 2009 accounts means that (subject to limitation issues) nothing is technically payable for 2009 by the Respondent tenant. Construing the Leases as best it can, the Tribunal finds that the fact that the accounts for 2009 (which constitute the itemised statement for that year) have not been prepared by an independent chartered accountant does not (a) affect advance payments made for that year and (b) mean that no balancing charge is payable (subject to limitation issues).

55. In practice, as the Applicant maintains, the cost of an independent chartered accountant preparing the accounts and certifying them would have been added to the service charge thus increasing it, and the Leases give the tenant (see for example Fifth Schedule Part 1 clause 7) the contractual right to require the landlord to supply information about expenditure. So, the tenant is not being required to make a balancing charge blind (as it were) in sole reliance on the statement or accounts provided – he or she has the contractual right to require information which would enable it to challenge any payment requested.

56. Moreover, again construing the Leases as best it can, the Tribunal does not (because of the tenant's contractual right to require the supply of information) consider certification is in this case, a condition precedent to payment of the service charge. Looking at the 2009 figures, on the evidence before it of other years, the Tribunal does not find that there is anything particularly different in the 2009 accounts which would not have been there had an independent accountant prepared and certified them.

57. In considering certification by a Chartered Accountant the Applicant states that this was not a point raised by the Respondent and warns the Tribunal about confining itself to the issues before it (Birmingham City Council v Keddie (2012) UKUT 323. However the issue is raised in clause 4 of the letter dated 20th January 2017 from S A Law LLP, the Respondents Solicitors and the Tribunal must deal with it.

58. Although the accounts themselves were undated the Applicant has provided copies of the letters sending the same out. The letters are dated and signed and the Tribunal accepts them as evidence that the accounts were indeed sent out and enclosed with those letters on the dates of the letters concerned. The position is as under:

Accounts for the year ended 2009 were sent out on 17th June 2010
Accounts for the year ended 2010 were sent out on 24th May 2011
Accounts for the year ended 2011 were sent out on 28th June 2012
Accounts for the year ended 2012 were sent out on 15th July 2013
Accounts for the year ended 2014 were sent out on 23rd June 2014

59. The service charge year ran from 1st January to 31st December in each year as shown by the accounts.

60. The letter sending out the accounts state that "An excess service charge invoice will shortly follow together with certified year end accounts". Thus, the Tribunal finds that the liability to pay the excess charge was by implication varied from the provision in the lease (which requires it to be paid within 14 days of statement) to the provisions contained in the relevant balancing charge invoice which requires payment to be made within one month of the invoice in question. So, for the purposes of considering limitation (a) the year end accounts (certified or not) amount to the itemised statement and (b) payment becomes due one month from the date of the invoice.

61. Working through the years in question, for year ended 2009 two excess balance service charge invoices were sent dated 28th June 2011. The Application in this case, as stated above is dated 8th August 2016 so only any invoices for excess balancing charges prior to 8th August 2010 would infringe the 6 year limitation period. For year ended 2009, the excess balancing charges i.e. arrears only became due from 28th July 2011 (one month after date of invoice) and thus, were issued within the six year period. For that period to have application excess balancing charges must have become due before 8th August 2010.

62. Therefore, the six year limitation period does not impact on the recoverability of the balancing charges in dispute in this case. They fall to be considered by reference to the 18month rule and, where that rule is not infringed, as to the general test of reasonability under the 1985 Act.

63. The advance service charges for 2009 were exhausted after 31st December 2009. Thus, adding 18 months on to that date is 30th June 2011. The invoices issued on 28th June 2011 were therefore, within 18 months and the excess balancing charge for 2009 does not infringe Section 20 B(1).

64. The excess balance charges for 2010 were the subject of two demands dated 28th June 2012. The advance payments for 2010 were exhausted on 2nd July 2010. Thus the demands related to costs for the period not covered by the advance payments namely from 2nd July 2010 to 31st December 2010. Going back 18 months from the date of the demands produces a date of 28th January 2010 i.e. before the date the advance payments were exhausted. Thus, the 2010 excess balancing charges do not infringe the 18 month rule.

65. The excess balancing charges for 2011 were the subject of two demands dated 15th January 2013. The advance payments for 2011 were exhausted on 4th August 2011. Thus the demands relate to costs from 4th August 2011 to 31st December 2011. Going back 18 months from 15th January 2013 produces 15th July 2011 and thus the 2011 excess balancing charges do not infringe the 18 month rule.

66. The excess balancing charges for 2012 were subject to two demands dated 23rd May 2014. The advance payments were exhausted on 21st March 2012 and thus the demands relate to costs from 21st March 2012 to 31st December 2012. Eighteen months back from 23rd May 2014 produces 23rd November 2012 so any charges before that date infringe the 18 month rule: that is to say the charges from 21st March 2012 to 23rd November 2012 are barred. The Tribunal noted that pages 427, 428 and 429 of the bundle confirmed that the Applicant accepted these dates and had already credited the Respondent accordingly.

67. The excess balancing charges for 2013 were subject to two demands dated 7th August 2014. The advance payments for the year were exhausted on 28th January 2013 and thus the demands relate to costs from 28th January 2013 to 31st December 2013. 18 months back from 7th August 2014 produces 7th February 2013 so the charges from 28th January 2013 to 7th February 2013 are barred. The Tribunal noted that page 528 of the bundle confirmed that the Applicant accepted these dates and had already credited the Respondent accordingly.

MANAGEMENT FEES

68. The Respondent submitted that the Management Fee charged by the Applicant was unreasonable and almost double the usual 15% charge. There was, in the opinion of the Respondent, no exceptional reason why the management fee should be any higher. In addition the Respondent submitted that the Applicant had failed to respond promptly to reasonable requests for information which was contrary to the provisions of the RICS Service Charge Residential Management Code.

69. The Applicant submitted that it did not charge its management fee based on a percentage of expenditure but on a fixed price per unit. The Tribunal asked Mr Evans to confirm the actual amount of the annual management fee for the various years and this was confirmed as follows:-

2009 - £251.00 per unit including VAT
2010 – £290.00 per unit including VAT
2011 - £290.00 per unit including VAT
2012 - £290.00 per unit including VAT
2013 - £145.47 per unit including VAT (For the period 01/01/2013 – 30/06/2013)

70. The Applicant confirmed that although there were a total of 20 residential units in the property there was also a single commercial unit which contributed towards part of the service charge and for which a management fee was also charged.

71. The Tribunal considered the level of management fee and agreed that it was generally accepted that fees were charged on a 'per unit' basis rather than as a percentage of total expenditure which could distort the fee charged. However, the Tribunal were of the opinion that the management fees charged by the Applicant were unreasonable. In arriving at this determination the Tribunal had regard to the property which did not present any significant management difficulties and using its own knowledge and experience determined that these should be fixed as follows:-

2009 - £170.00 per unit including VAT
2010 - £175.00 per unit including VAT
2011 - £180.00 per unit including VAT
2012 - £180.00 per unit including VAT
2013 - £90.00 per unit including VAT (For the period 01/01/2013 – 30/06/2013)

72. This results in a credit in respect of Management Fees in the sum of £471.47 for each flat owned by the Respondent.

INTEREST CHARGES AND ADMINISTRATION FEES

73. The Respondent submitted that the Administration fee was not reasonable and disputed the level of interest claimed as there were different sums claimed in respect of the two flats owned by the Respondent. It was further submitted that interest could only run from the date the sum was properly demanded and it was disputed that charges had been properly incurred and due.

74. The Applicant submitted that a corrected interest calculation had been included with the Applicant's written submission. This was the same in respect of both flats and up to and including the date of the hearing amounted to £1056.66 per flat.

75. The Applicant further submitted that interest had been charged in accordance with clause 5.2 of the Leases and was 4% above the base rate of Barclays Bank plc. The Tribunal questioned the Applicant as to whether interest was part of the service charge or was an Administration Charge. The Applicant submitted that interest was part of the service charge as an Administration Charge was not separately defined in the Leases and as such no Administration Charges had been applied for in the Applicants claim.

76. The Applicant informed the Tribunal that in its opinion, the two charges of £50 each noted in the Scott Schedule were in respect of letters chasing the unpaid service charges and as such were variable administration charges which the Respondent had objected to. The Applicant submitted that these are costs provided for in clause 2.8 of the Leases and in particular clause 2.8.1 which permitted the Applicant to recover costs in connection with the recovery of rent. This was accepted by the Tribunal and the costs were allowed.

77. In principle, the Tribunal accepts that Interest Charges are payable as set out in the updated calculation provided to the Tribunal at the hearing. However, as the Tribunal has amended the amount of service charges payable by the Respondent, the interest charge will need to be recalculated to reflect these changes.

78. The Applicant is therefore directed to provide to the Tribunal and to the Respondent a revised interest calculation within 14 days of the date of the Tribunal's decision in respect of this application. If the Respondent has any comments to make in respect of the revised interest calculation it shall submit same to the Tribunal with a copy to the Applicant within 7 days of receipt of the revised interest calculation from the Applicant. No further submissions in respect of the interest calculation will be accepted from either party. The Tribunal will then determine whether or not the interest calculation is acceptable and should be included in the Applicants claim.

79. The Applicant is directed that the credits in respect of the various annual management fees and should be applied to the individual service charge accounts for the two flats at the correct relevant time periods to ensure that the interest calculation correctly reflects the balance outstanding at that time.

THE TRIBUNAL DETERMINATION

80. The Tribunal had been presented with an identical Statement of Account in respect of each flat and determined that it would be simpler for the parties if it adjusted that Statement rather than set out individual charges for each year. The Statement was determined to be correct with only minor deductions in respect of management fees and interest charges (which require re-calculation). No other service charges had been disputed by the Respondent.

81. The Tribunal calculated the amount of the Service Charge due in respect of each flat as follows:-

Total due as per Statement		5793.79
Less:		
Interest charge as per Statement	1033.87	
Credit in respect of overcharged Management Fee	471.47	
Total deductions		£1505.34
Total due (plus interest to be Determined)		£4288.45

82. The Tribunal therefore determines that the amount payable for each flat is £4288.45 plus interest less any amounts paid by the Respondent on account.

SECTION 20C APPLICATION

83. The Tribunal then considered the Application under Section 20C of the Act which was made by the Respondent.

84. On balance, the Tribunal considers that it would not be just and equitable to make an order under Section 20C preventing the Applicant from recovering its costs of these proceedings through the service charge in this case.

85. In reaching its decision on Section 20C, the Tribunal had regard to the fact that the Respondent has not succeeded in persuading the Tribunal of the merits of its arguments on the majority of items in this case and that subject to minor alteration, the majority of the amount claimed by the Applicant was determined by the Tribunal to be due, particularly when the re-calculated interest is added. In addition, the Applicant has applied credits in the course of negotiations.

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, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Graham Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)

Flat 10 27 Woolpack Lane, The Mill, 27 Woolpack Lane, Nottingham, NG1 1GA					
The following table shows the original total amount requested for each year (inc excess charges), the total credit raised for the out of time invoices, and the remaining balance due, after the credit.					
	Service Charge Demanded	Excess Charge Demanded	Total Service Charges for the period	Credit Raised	Total due after the credits
01/01/2009-31/12/2009	£840	£268.20	£1,108.20	£0.00	£1,108
01/01/2010-31/12/2010	£946	£442.87	£1,390.87	-£409.53	£981
01/01/2011-31/12/2011	£996	£440.83	£1,436.83	£0	[redacted]
01/01/2012-31/12/2012	£996	£929.47	£1,925.47	-£804.05	[redacted]
01/01/2013-30/06/2013	£498	£482.91	£980.91	-£25.57	[redacted]
Totals:	£4,278	£2,564	£6,842.28	£1,239	[redacted]

Flat 13 27 Woolpack Lane, The Mill, 27 Woolpack Lane, Nottingham, NG1 1GA					
The following table shows the the original total amount requested for each year (inc excess charges), the total credit raised for the out of time invoices, and the remaining balance due, after the credit.					
	Service Charge Demanded	Excess Charge Demanded	Total Service Charges for the period	Credit Raised	Total due after the credits
01/01/2009-31/12/2009	£840	£268.20	£1,108.20	£0.00	£1,108
01/01/2010-31/12/2010	£946	£442.87	£1,390.87	-£409.53	£981
01/01/2011-31/12/2011	£996	£440.83	£1,436.83	£0	£1,437
01/01/2012-31/12/2012	£996	£929.47	£1,925.47	-£804.05	£1,121
01/01/2013-30/06/2013	£498	£482.91	£980.91	-£25.57	£955
Totals:	£4,278	£2,564	£6,842.28	-£1,239	£5,603

The Mill					
The following table shows the the original total amount requested for each year (inc excess charges), the total credit raised for the out of time invoices, and the remaining balance due, after the credit.					
	Total Service Charge Demanded	Total Excess Charge Demanded	Total Service Charges for the period	Total Credits Raised	Total due after the credits
01/01/2009-31/12/2009	£18,155	£5,364.00	£23,519.00	£0.00	£23,519
01/01/2010-31/12/2010	£20,015	£9,300.00	£29,315.00	-£8,456.28	£20,859
01/01/2011-31/12/2011	£21,015	£9,536.00	£30,551.00	£0	£30,551
01/01/2012-31/12/2012	£21,015	£20,358.00	£41,373.00	-£17,362.96	£24,010
01/01/2013-30/06/2013	£10,507.50	£10,514.00	£21,021.50	£548.25	£21,570
Totals:	£90,708	£55,072	£145,779.50	-£25,271	£120,509