



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

Case Reference : **BIR/37UB/LIS/2019/0009**

Subject Properties : **Flats 1-3, 6-8
Master Hosiers House
85 Albert Street
Hucknall
Nottingham NG15 7BJ**

Applicants : **(1) Monica Grafton (flat 2)
(2) Roberto Milanesi (flats 3 and 8)
(3) Paul Stevens (flats 6 and 7)
(4) Tony Stevens (flat 1)**

Representative : **A J Forman**

Respondents : **(1) Blue Property Investment UK Ltd
(2) Brigante Properties Ltd**

Representative : **Blue Property Management UK Ltd**

Type of Application : **(1) Application under section 27A of
the Landlord and Tenant Act 1985 for
the determination of the payability and
reasonableness of service charges in
respect of the subject properties

(2) Application under section 20C of the
Landlord and Tenant Act 1985 for an order
for the limitation of costs

(3) Application under paragraph 5A of
Schedule 11 to the Commonhold and
Leasehold Reform Act 2002 for an order
reducing or extinguishing liability to pay
litigation costs**

Dates of Hearing : **2 and 3 July 2019**

Tribunal Members : **Deputy Regional Judge Nigel Gravells
Graham Freckelton FRICS**

Date of Decision : **19 July 2019**

DECISION

Introduction

- 1 This is a decision on three applications by the Applicants, the leaseholders of six flats at Master Hosiers House, 85 Albert Street, Hucknall, Nottingham NG15 7BJ ('the subject properties'). The applications are: first, under section 27A of the Landlord and Tenant Act 1985 for the determination of the payability and reasonableness of services charges in respect of the subject properties ('the section 27A application'); second, under section 20C of the Landlord and Tenant Act 1985 for an order for the limitation of costs ('the section 20C application'); and third, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing the Applicants' liability to pay an administration charge in respect of the Respondents' litigation costs ('the paragraph 5A application').
- 2 The Respondents are Blue Property Investment UK Ltd, freeholders of the subject properties until 16 September 2016, and Brigante Properties Ltd, freeholders of the subject properties since that date. At all material times, Blue Property Management UK Ltd has been the managing agent.
- 3 The applications, dated 13 February 2019, were received by the Tribunal on 15 February 2019 and the Tribunal issued Directions on 20 March 2019.
- 4 On 2 July 2019 the Tribunal inspected the internal and external common parts of the subject properties. Present at the inspection were (i) Ms Grafton, the leaseholder of flat 2, Mr P Stevens, the leaseholder of flats 6 and 7, and Mr Forman, who was representing all the Applicants and (ii) representing the Respondents, Mr S Marlow (Area Property Manager) and Mr M Phillips (Service Charge Collection Manager), both of Blue Property Management UK Ltd, and Miss R Ackerley, of Counsel.
- 5 A two-day hearing was held at Nottingham Justice Centre on 2 and 3 July 2019. The same persons who were present at the inspection were also present at the hearing together with Ms I Lazinskaite, Head of Accounts at Blue Accounting UK Ltd.
- 6 Although hearings of the First-tier Tribunal seek to avoid undue formality, in the view of the Tribunal Mr Marlow's forms of address were sometimes inappropriate and verging on the disrespectful. It is usual for the Tribunal to be addressed as 'the Tribunal' and for individual members to be addressed as 'Sir' or 'Madam' as appropriate.

Facts

- 7 The subject properties are six flats in a converted listed building in the Hucknall area of Nottingham. The building, which is part two storey and part three storey, comprises a total of eight flats. There is a small paved yard to the rear of the building and a detached bin store.
- 8 The Tribunal understands that the relevant terms of the leases of the subject properties are identical. The service charge year runs from 1 October to 30 September in the following year. By clause 4.1 of, and Schedule 4 to, the leases, the Respondents covenant with the Applicant leaseholders to provide a standard range of services. By clause 3.1 of, and Schedule 4 to, the leases, each of the Applicant leaseholders covenants with the Respondents to pay

12.5 per cent of the service charge expenditure ('Annual Maintenance Provision'). Payment is made (i) by two interim payments in advance on 1 October and 1 March and (ii) by a balancing payment (or credit) ('Maintenance Adjustment') following the preparation of the accounts for the relevant service charge year.

- 9 In summary, in the section 27A application the Applicants seek a determination that many elements in the service charges demands for the service charge years 2007/2008 to 2018/2019 are unreasonable. The detailed challenges are set out below.

Determination of the Tribunal

Section 27A application

Statutory framework

- 10 Section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'), so far as material, provides –

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

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

- 11 Sections 18 and 19 of the 1985 Act provide –

18(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose—

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

19(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the 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.

Service charge costs

- 12 The service charge costs included in the accounts for 2007/2008 to 2017/2018 are set out in column 2 of the table below. In fact, it appears from the summary of invoices for each service charge year that there are a number of (minor) arithmetical errors in the service charge accounts. (This is just one example of the lack of rigour that seems to characterise the systems operated by the Blue Property organisation.) The corrected figures are indicated in column 3.

Service charge year	Total costs included in service charge accounts	Corrected total costs
2007/2008	4,137.00	4,137.00
2008/2009	6,240.00	8,211.00
2009/2010	6,614.00	6,623.00
2010/2011	7,198.00	7,199.00
2011/2012	9,691.00	9,691.00
2012/2013	12,547.00	12,546.00
2013/2014	13,789.00	13,742.00
2014/2015	10,860.00	10,860.00
2015/2016	12,333.00	12,170.00
2016/2017	9,996.00	9,998.00
2017/2018	11,040.00	11,001.00

- 13 The budget for 2018/2019 was set at £13,570.00.

Heads of expenditure and challenges

- 14 The heads of expenditure and the service charge years in respect of which the costs are challenged by the Applicants are set out in the table below -

Head of expenditure	Service charge years challenged
Accountant's fees	All years
Bank charges	-
Buildings insurance	-
Cleaning communal areas	All years
Electricity	All years
Emergency lighting testing	2013/2014 to 2017/2018
Fire alarm maintenance	-

Fire risk assessment	All years
Health and safety risk assessment	All years
Insurance excess	2014/2015, 2015/2016, 2016/2017
Management fees	All years
Reinstatement valuation	2018
Repairs and general maintenance	All years
Window cleaning	All years

- 15 At no point did the Applicants argue that the Respondents had included in the service charge accounts costs in respect of services for which there is no provision in the lease. Rather the challenges related solely to the reasonableness of those costs.
- 16 The challenge in relation to the budget for the 2018/2019 service charge year is considered separately: see paragraphs 149-151 below.

Reasonableness of service charges: preliminary observations

- 17 In making its determinations the Tribunal took into account, so far as relevant, all written representations of the parties, together with the oral evidence and arguments advanced at the hearing.
- 18 It is appropriate to note at the outset that the Tribunal was faced with significant difficulties in determining some of the matters in dispute.
- 19 On the one hand, some of the Applicants' challenges were unparticularized and/or unsupported except by anecdotal evidence. Other challenges focussed on minor points of detail, which, even if correct, failed to establish the unreasonableness of the relevant item of expenditure. These latter challenges perhaps support the view of the Tribunal that Mr Forman has rather idealistic expectations of property management, which are generally not delivered or even deliverable in the market place.
- 20 On the other hand, it was apparent that Mr Forman had analysed very closely the service charge accounts and supporting invoices and he raised a significant number of pertinent questions. Many of the invoices included in the Respondents' bundle were incomprehensible or unclear – particularly but not exclusively those from Blue Property Maintenance UK Ltd relating to repairs and maintenance; and it is hard to believe that they would not have been queried if the services had been provided by an unconnected contractor rather than by a closely-related company in the Blue Property organisation. It might be suggested that these invoices from Blue Property Management UK Ltd were deliberately designed to confuse not only the Applicants (and indeed any leaseholder) but also the Tribunal. Even the Blue Property personnel who attended the hearing were unable to answer many of the questions from the Applicants and the Tribunal, although in some cases this was because the relevant matters related to a period when the current personnel were not involved in the management of the development.
- 21 More generally, it is difficult to avoid the conclusion that Blue Property Management UK Ltd seems to take every opportunity to add costs to the service charge; and the internal structure of the Blue Property organisation is such that there is little incentive to minimise those costs.

Reasonableness of service charges: issues for determination

- 22 The Applicants challenged the costs of some heads of expenditure in more than one of the service charge years covered by the present application but on the same grounds: accountant's fees, cleaning, electricity, emergency lighting testing, fire risk assessment, health and safety assessment, insurance excess, management fees and window cleaning. The decision sets out the arguments and the Tribunal's determination on those issues for all the relevant service charge years. Other challenges related to specific items in specific service charge years. The decision sets out the arguments and the Tribunal's determination on those issues individually.

Accountant's fees

- 23 The accountant's fees included in the service charge accounts for the relevant years are set out in the table below.

Service charge year	Blue Property Accounting Ltd fee	Accreditation fee	Other charges
2007/2008	345.00	-	
2008/2009	345.00	-	
2009/2010	345.00	-	
2010/2011	345.00	-	
2011/2012	345.00	150.00	
2012/2013	345.00	150.00	56.40
2013/2014	345.00	150.00	
2014/2015	345.00	108.00	
2015/2016	345.00	151.20	
2016/2017	345.00	126.00*	
2017/2018	345.00	40.40*	

* Overcharge of £37.80 in 2016/2017 credited in 2017/2018

- 24 Mr Forman argued that, if standard day-to-day accounting procedures are operated using common software, the production of the annual service charge accounts is a 'touch of a button' operation. He therefore concluded that the Blue Property Accounting Ltd fee should be disallowed. Although he raised certain issues about the independence of the external accountant's reports for the service charge years up to and including 2014/2015, he accepted that the accreditation fees were reasonably incurred.
- 25 The Respondents disputed Mr Forman's argument as to the work involved in producing the annual service charge accounts, asserting that the work involved the checking and input of data using a software programme different from that used for day-to-day accounting procedures.
- 26 The Tribunal found the arguments of the Respondents more persuasive.
- 27 The Tribunal noted that the statement of management duties expressly excludes the production of service charge accounts, for which an additional accountancy fee is payable. However, the Tribunal is of the view that the fee of £345.00 is excessive. It determines that a reasonable fee would be £200.00 plus VAT.

- 28 The Tribunal disallowed the additional charge of £56.40 included in the service charge accounts for 2012/2013 for ‘accountancy work’ carried out by David Harrison. In the view of the Tribunal, work in relation to the accounts other than the accreditation fee is clearly the responsibility of Blue Property Management UK Ltd and/or Blue Accounting UK Ltd.
- 29 The consequences of those determinations are set out in the table below –

Service charge year	Reasonable Blue Property Accounting Ltd fee inclusive of VAT	Reasonable accreditation fee inclusive of VAT	Reasonable total costs determined by the Tribunal
2007/2008	230.00	-	230.00
2008/2009	240.00	-	240.00
2009/2010	240.00	-	240.00
2010/2011	240.00	-	240.00
2011/2012	240.00	150.00	390.00
2012/2013	240.00	150.00	390.00
2013/2014	240.00	150.00	390.00
2014/2015	240.00	108.00	348.00
2015/2016	240.00	151.20	391.20
2016/2017	240.00	126.00	366.00
2017/2018	240.00	40.40	280.40

Cleaning communal areas

- 30 The costs for cleaning the communal areas included in the service charge accounts were as follows –
- | | |
|------------|---------|
| 2007/2008: | 1024.00 |
| 2008/2009: | 1177.00 |
| 2009/2010: | 1195.00 |
| 2010/2011: | 1218.00 |
| 2011/2012: | 1224.00 |
| 2012/2013: | 1224.00 |
| 2013/2014: | 1224.00 |
| 2014/2015: | 1224.00 |
| 2015/2016: | 2160.00 |
| 2016/2017: | 2374.00 |
| 2017/2018: | 2520.00 |
- 31 The increases in costs between 2007/2008 and 2014/2015 largely reflect changes in the rate of VAT. The subsequent increases reflect an increase in hours from 4.25 to 8 per month and (from July 2018) an increase in the hourly rate from £20.00 to £25.00.
- 32 Mr Forman argued, on the basis of an email quotation from Dust and Polish Cleaners, a local firm, that two two-hour visits per month would provide more than adequate time to clean the small communal areas and that £12.50 would be a reasonable hourly rate.
- 33 The Respondents argued that the services under this head of expenditure included cleaning the paved yard to the rear of the building (and, since 2015/2016, the application of weedkiller) and a number of minor caretaking

functions. They further argued that Dust and Polish Cleaners would have lower overheads than Blue Property Maintenance UK Ltd.

- 34 The Tribunal finds that there was no justification for the increase in hours in 2015/2016 (and none was offered by the Respondents). It determines that two two-hour visits per month would be sufficient for the cleaning and other caretaking functions. The Tribunal also determines that a reasonable hourly rate over the relevant period would be £15.00, increasing to £20.00 in July 2018.
- 35 The Tribunal therefore determines that the reasonable costs (including VAT) for cleaning the internal and external communal areas (including the minor caretaking functions) are as follows –

2007/2008:	776.00
2008/2009:	831.00
2009/2010:	842.00
2010/2011:	860.00
2011/2012:	864.00
2012/2013:	864.00
2013/2014:	864.00
2014/2015:	864.00
2015/2016:	900.00
2016/2017:	900.00
2017/2018:	972.00

Electricity

- 36 The cost for electricity included in the service charge accounts were as follows –

2007/2008:	00.00
2008/2009:	462.00
2009/2010:	540.00
2010/2011:	324.00
2011/2012:	128.00
2012/2013:	173.00
2013/2014:	360.00
2014/2015:	46.00
2015/2016:	738.00
2016/2017:	758.00
2017/2018:	43.00

- 37 The electricity costs relate to lighting in the internal and external common areas, emergency lighting and storage heaters.
- 38 Although Mr Forman did argue that the costs for electricity were high, his principal concern was the lack of transparency and lack of explanation for the significant variation in the costs from year to year.
- 39 It appears to the Tribunal that the variation in the costs from year to year is the consequence of two factors. First, like many electricity suppliers, E.ON vary direct debit payments with unnecessary frequency and can be slow in producing definitive invoices. Second, Blue Property Accounting Ltd has not been consistent in its method of charging, oscillating between charging

on the basis of direct debit payments and on the basis of invoices and credit notes. In doing so, Blue Property Accounting Ltd seems to have taken the easy approach. Rather, it should seek to adopt a more transparent and consistent method of charging based on actual electricity usage.

- 40 However, the charges set out in paragraph 36 above show average costs over the relevant period of £325.00 per year. Although Blue Property Management UK Ltd appears not to have sought the potential benefits of switching supplier, the Applicants have not shown that those costs are unreasonable.
- 41 The Tribunal therefore determines that the electricity costs set out in paragraph 36 were reasonably incurred and are payable by the Applicants.

Emergency lighting testing

- 42 The Applicants challenged the inclusion in the service charge accounts since 2014 of the costs emergency light testing. These costs relate to bi-annual drop tests, which are a legal requirement. The Tribunal determines that the costs were reasonably incurred and are payable by the Applicants.

Fire risk assessment and health and safety risk assessment

- 43 It is appropriate to consider these two heads of expenditure together.
- 44 The costs of an annual fire risk assessment and an annual health and safety risk assessment included in the service charge accounts are set out in the table below -

Service charge year	Cost of fire risk assessment included in service charge	Cost of health and safety risk assessment included in service charge
2007/2008	00.00	00.00
2008/2009	240.00	240.00
2009/2010	240.00	240.00
2010/2011	240.00	240.00
2011/2012	240.00	240.00
2012/2013	240.00	240.00
2013/2014	240.00	240.00
2014/2015	240.00	240.00
2015/2016	240.00	240.00
2016/2017	240.00	240.00
2017/2018	240.00	240.00

- 45 Mr Forman questioned the need for such risk assessments to be carried out every year. He also questioned whether there was more than minimal work involved in the assessment and the production of a report.
- 46 On the first point, the Tribunal notes the relevant part of the RICS Service Charge Residential Management Code (3rd edition). Paragraph 8.3 provides –
- You should ensure that periodic risk assessments are carried out by competent persons at every scheme with common parts. The frequency of formal review should form part of the risk assessment process but should be carried out

whenever there are significant changes at the scheme. ... First-tier Tribunals have been critical of some managers incurring costs on a regular basis by frequently procuring new risk assessments. Regular reviews do not necessarily entail producing a completely new risk assessment document. The extent of any review should be proportional to the risks identified and the complexity of the installations at each scheme.

- 47 The Tribunal determines that the circumstances at Master Hosiers House are such that there is no necessity for annual risk assessments and that new assessments every third year would be more appropriate.
- 48 On Mr Forman’s second point, the fees charged by Blue Risk Management Ltd are consistent with the Tribunal’s experience of such charges and cannot be regarded as unreasonable.
- 49 The Tribunal therefore determines that the costs for fire risk assessment and health and safety risk assessment included in the service charge accounts for 2008/2009, 2011/2012, 2014/2015 and 2017/2018 were reasonably incurred and are payable by the Applicants. However, the Tribunal determines that the corresponding costs included in the service charge accounts for 2009/2010, 2010/2011, 2012/2013, 2013/2014, 2015/2016 and 2016/2017 were not reasonably incurred and are not payable by the Applicants.
- 50 The consequences of those determinations are set out below –

Service charge year	Reasonable cost of fire risk assessment included in service charge	Reasonable cost of health and safety risk assessment included in service charge
2007/2008	00.00	00.00
2008/2009	240.00	240.00
2009/2010	00.00	00.00
2010/2011	00.00	00.00
2011/2012	240.00	240.00
2012/2013	00.00	00.00
2013/2014	00.00	00.00
2014/2015	240.00	240.00
2015/2016	00.00	00.00
2016/2017	00.00	00.00
2017/2018	240.00	240.00

Insurance excess

- 51 Although Mr Forman did not pursue any challenge to the premiums for buildings insurance included in the service charge accounts, he did question the costs under ‘insurance excess’ set out below –

2013/2014: 660.00
 2014/2015: 250.00
 2015/2016: 650.00
 2016/2017: 300.00

- 52 However, the basis of Mr Forman’s challenge appeared to be misconceived. He seemed to argue that those costs represented the amounts of claims disallowed by the insurer because the claims were inflated. In fact, those

costs represent the excesses normally payable under the terms of almost all insurance policies when the insured makes a claim.

- 53 The Tribunal therefore determines that the costs set out in paragraph 51 above were reasonably incurred and are payable by the Applicants.

Management fees

- 54 The management fees included in the service charge accounts were as follows -

2007/2008:	2154.00
2008/2009:	2350.00
2009/2010:	2350.00
2010/2011:	2350.00
2011/2012:	2400.00
2012/2013:	2400.00
2013/2014:	1920.00
2014/2015:	1920.00
2015/2016:	1920.00
2016/2017:	1920.00
2017/2018:	2160.00

- 55 The figures up to and including 2012/2013 are largely based on a management fee per flat of £250.00 plus VAT. (In fact, when VAT rates were changing between 2008 and 2011, the base fee was adjusted so that, with the addition of VAT at the prevailing rate, the total cost remained unchanged.) From 2013/2014 to 2016/2017, the fee per flat was reduced to £200.00 plus VAT. In 2017/2018, the fee per flat was increased to £225.00 plus VAT. The budget for 2018/2019 increases the fee per flat to £250.00 plus VAT.
- 56 Mr Forman made a series of criticisms of the management provided by Blue Property Management Ltd. In particular, he submitted that Blue Property –
- (a) failed to negotiate the management fee with the leaseholders;
 - (b) used connected companies for the provision of almost all services, resulting in a ‘double benefit’ for Blue Property but an abrogation of its management duties owed to the Applicants;
 - (c) failed to follow rigorous, transparent and reliable accounting procedures;
 - (d) failed to respond to issues raised by leaseholders.
- 57 Surprisingly, Mr Forman provided no alternative quotations for the management Master Hosiers House.
- 58 In relation to the specific issues raised by Mr Forman, it was argued on behalf of the Respondents –
- (a) that it was not normal practice for a management company to negotiate its management fee with the leaseholders;
 - (b) that, although provision of the substantive services was delegated to other companies in the Blue Property organisation, Blue Property

Management UK Ltd continued to manage the provision of those services in accordance with the statement of management duties;

(c) that, although some of the invoices issue by Blue Property Maintenance Ltd were not fully transparent, the accounting procedures were operated properly;

(d) that the Respondents had responded appropriately to issues raised by Mr Forman and the leaseholders.

59 More generally, the Respondents argued that the management fee was commensurate with the work involved and was reasonable given the nature of the development and the services undertaken. Mr Marlow referred to Portland Place, a development similar to Master Hosiers House, for which Encore Estates Management Ltd currently charges a management fee of £250.00 plus VAT per flat.

60 However, as noted in paragraph 55 above, the Respondents were apparently content to charge a lower management fee of £200.00 plus VAT per flat from 2013/2014 to 2017/2018.

61 Using its general knowledge and experience, the Tribunal determines that (averaged over the period covered by the present application) a reasonable annual management fee for each flat in Master Hosiers House would be £200.00 plus VAT.

62 However, the Tribunal is of the view that the management provided by Blue Property Management UK Ltd has not always been of an appropriate standard. Although it agrees that management fees are rarely negotiated with the leaseholders, it accepts that there is evidence of the other failings identified by the Applicants and set out in paragraph 56 above. However, in determining the appropriate reduction to reflect the shortcomings in the management, the Tribunal finds (what the Applicants appeared not to acknowledge) that Blue Property Management UK Ltd has carried out most of its management functions. In the circumstances the Tribunal determines that an appropriate reduction would be 20 per cent.

63 The Tribunal therefore determines that a reasonable management fee would be £160.00 plus VAT per flat.

64 The Tribunal determines that the total management fees (including VAT) are as follows –

2007/2008:	1379.00
2008/2009:	1477.00
2009/2010:	1496.00
2010/2011:	1528.00
2011/2012:	1536.00
2012/2013:	1536.00
2013/2014:	1536.00
2014/2015:	1536.00
2015/2016:	1536.00
2016/2017:	1536.00
2017/2018:	1536.00

Repairs and general maintenance

- 65 The total costs for repairs and general maintenance included in the service charge accounts are set out in column 2 of the table below. However, as noted (see paragraph 12 above), those figures require to be corrected for arithmetical errors. The corrected figures are indicated in column 3.

Service charge year	Total costs for repairs and general maintenance included in service charge accounts	Corrected total costs for repairs and general maintenance
2007/2008	19.00	19.00
2008/2009	340.00	311.00
2009/2010	358.00	370.00
2010/2011	701.00	702.00
2011/2012	2,948.00	2,948.00
2012/2013	5,656.00	5,656.00
2013/2014	6,653.00	6,653.00
2014/2015	4,434.00	4,434.00
2015/2016	3,717.00	3,716.00
2016/2017	1,283.00	1,283.00
2017/2018	2,234.00	2,234.00

- 66 Mr Forman had analysed the documentation relating to repairs and maintenance in minute detail. His principal argument was that the costs of materials and labour charges included in the majority of invoices issued by Blue Property Maintenance UK Ltd were excessive and unreasonable. He provided a series of 'worked examples' in which he sought to establish a pattern of overcharging (to the extent of three times the reasonable charges) by Blue Property Maintenance UK Ltd. Those worked examples and the conclusions that Mr Forman invited the Tribunal to draw were to a considerable extent based on the opinions of Mr Howard Smith, a director of Smiths Builders Ltd, a company based near Hereford. It is unfortunate that Mr Forman did not call Mr Smith to give oral evidence before the Tribunal and to be questioned by the Applicants and the Tribunal. However, that does not mean that the Tribunal attaches no weight to Mr Smith's opinion, which in many instances underlined what was obvious to the Tribunal.
- 67 The Respondents submit that their costs are reasonable in the particular circumstances. They acknowledge that they add a 'profit margin' to the cost of materials. They argue that health and safety regulations sometimes require the presence (and consequent costs) of a second person to carry out work that would in earlier times have been carried out by one person alone. They argue that the Applicants are unrealistic (i) in expecting non-recurrent (and/or emergency) work to be carried out on fully scheduled days and (ii) in arguing that alternative contractors would only charge for the small fractions of a hour/day.
- 68 The Tribunal accepts some of the Respondents' arguments but it nonetheless determines that there are some invoices which include excessive and unreasonable charges for materials and labour. The Tribunal has

disallowed those charges to the extent that the Tribunal determines that they are unreasonable.

- 69 In the context of the repairs and general maintenance head of expenditure there is a related issue. There are a significant number of invoices from Blue Property Maintenance UK Ltd for dealing with 'out of hours' telephone calls. Many of these impose high charges for simply taking the calls as well as 'out of hours' labour rates for carrying out the actual work. In the view of the Tribunal, this practice results in excessive and unreasonable costs. Where the actual work is the subject of separate charging, the Tribunal has disallowed the charge for taking the telephone call.
- 70 The Tribunal determines that some costs included in the service charge accounts are covered by the management fee and therefore are not properly included as additional service charge costs.
- 71 The Applicants challenged the inclusion in the service charge accounts of the costs of Blue Property Maintenance UK Ltd attending Master Hosiers House to investigate and deal with activations of the fire alarm. They argued that a number of the tenants could be trained to carry out this work. The Tribunal accepts the response of the Respondents that it would be inappropriate to rely on a changing group of short term tenants to carry out this safety-related work. In principle, therefore, the Tribunal has allowed those costs, although it determines that they have sometimes been excessive and unreasonable.
- 72 The Applicants challenged the inclusion in the service charge accounts of the costs of jet-washing the refuse bins on the ground that this constituted a service to the occupying tenants and not to the subject properties and the leaseholders. The Tribunal accepts the response of the Respondents that the jet-washing of the bins cannot sensibly be separated from the jet-washing of the bin store and that the total costs are properly included in the service charge. The Tribunal therefore determines that those costs are reasonably incurred and are payable by the Applicants.
- 73 Paragraphs 76-135 below list (i) those invoices where the Tribunal determines that the relevant costs are unreasonable, (ii) the reasonable costs as determined by the Tribunal and (iii) the costs disallowed. (References to invoice numbers are to the black folders provided by J B Leitch.)
- 74 Where an invoice has been challenged by the Applicants but is not referred to in paragraphs 75-135, the Tribunal determines that the costs are reasonable and payable by the Applicants.
- 75 The reasonable costs as determined by the Tribunal and the costs disallowed reflect the determination of the Tribunal *on the challenges made by the Applicants*. The Tribunal has treated unchallenged costs as agreed by the Applicants.

2008/2009

- 76 Invoice 333: Unreasonable mark-up on materials; unreasonable labour charge. Materials £101.00, labour £60.00, VAT 17.5% = £189.18. Disallow £92.82.

77 The total costs disallowed in 2008/2009 are £92.82.

2009/2010

78 Invoice 397: Unreasonable labour charge. Labour £100.00, VAT 17.5% = £117.50. Disallow £64.04.

79 The total costs disallowed in 2009/2010 are £64.04.

2010/2011

80 Invoice 464: Invoice also relates to other properties. Labour £45.00, VAT 20% = £54.00. Disallow £252.00.

81 Invoice 465: Unreasonable labour charge. Labour £100.00, VAT 20% = £120.00. Disallow £42.00.

82 The total costs disallowed in 2010/2011 are £294.00.

2011/2012

83 Invoice 545: Part of management duties. Disallow £228.25.

84 Invoice 546: According to Respondents, preliminary/preparatory work for subsequent decoration of internal common parts: see paragraph 103 below. Disallow £996.00.

85 Invoice 547: Unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £42.00.

86 Invoice 548: Duplicated and unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £103.41.

87 Invoices 549/550: Duplicated work. Materials and labour £200.00, VAT 20% = £240.00. Disallow £158.50.

88 Invoice 552: Unreasonable labour charge. Ladder hire £50.00, labour £140.00, VAT 20% = £228.00. Disallow £84.00.

89 The total costs disallowed in 2011/2012 are £1,612.16.

2012/2013

90 Invoice 635: Charge to tenant. Disallow £90.00.

91 Invoice 638: See paragraph 69 above. Disallow £96.00.

92 Invoice 639: Unreasonable labour charge. Labour £100.00, VAT 20% = £120.00. Disallow £96.00.

93 Invoice 640: Unreasonable labour charge. Materials and labour £100.00, VAT 20% = £120.00. Disallow £312.00.

94 Invoice 641: Duplicates previous invoices. Disallow £1422.00.

95 Invoice 642: Unreasonable labour charge. Labour £100.00, VAT 20% = £120.00. Disallow £235.20.

96 Invoice 643: Inappropriate lights, unreasonable labour charge. Materials and labour £200.00, VAT 20% = £240.00. Disallow £199.20.

- 97 Invoice 645: Unreasonable labour charge. Materials and labour £52.00, VAT 20% = £62.40. Disallow £42.00.
- 98 Invoice 647: Part of management duties. Disallow £21.00 (£42.00 less £21.00 credit).
- 99 Invoice 649: Unreasonable mark-up on materials, unreasonable labour charge. Materials and labour £200.00, VAT 20% = £250.00. Disallow £217.24 (£277.24 less £60.00 credit).
- 100 Invoice 650: Unreasonable mark-up on materials, unreasonable labour charge. Materials and labour £160.00, VAT 20% = £192.00. Disallow £31.50 (£91.50 less £60.00 credit).
- 101 Invoices 654/655: Unreasonable mark-up on materials, unreasonable labour charge. Materials and labour £50.00, VAT 20% = £60.00. Disallow £54.60.
- 102 The total costs disallowed in 2012/2013 are £2,816.74.

2013/2014

- 103 Invoices 737/738/739 and 546 (see paragraph 84 above): Invoices totalling £4,810.31 relate to the same painting job, qualifying works in respect of which the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 were not complied with. Recoverable costs are therefore limited to £2,000.00 (£250.00 per flat). Disallow £1,814.31 (£2,810.31 less £996.00 already disallowed (see paragraph 84 above)).
- 104 Invoice 741: See paragraph 69 above. Unreasonable labour charge. Labour £100.00, VAT 20% = £120.00. Disallow £192.00.
- 105 Invoice 743: Unreasonable labour charge. Materials and labour £150.00, VAT 20% = £180.00. Disallow £93.08.
- 106 Invoice 752: Unreasonable labour charge. Materials £5.60, labour £300.00, VAT 20% = £366.72. Disallow £360.00.
- 107 The total costs disallowed in 2013/2014 are £2,459.39.

2014/2015

- 108 Invoices 830/831: Invoices totalling £1,877.96 relate to the fitting of two new fire doors. Unreasonable mark-up on materials, unreasonable labour charge. Materials £500.00, labour £300.00, VAT 20% = £960.00. Disallow £917.96.
- 109 Invoice 833: Unreasonable mark-up on materials. Materials £65.00, labour £35.00, VAT 20% = £120.00. Disallow £52.57.
- 110 Invoice 835: Part of management duties. Disallow £88.85.
- 111 Invoice 837: Unreasonable labour charge. Materials £30.00, labour £120.00, VAT 20% = £180.00. Disallow £21.00.
- 112 Invoice 838: Unreasonable labour charge. Materials and labour £125.00, VAT 20% = £150.00. Disallow £44.09.

- 113 Invoice 839: Unreasonable inclusion of putty knife. Materials 3.06, labour £105.00, VAT 20% = £129.68. Disallow £9.89.
- 114 Invoice 840: Part of management duties. Disallow £63.00.
- 115 Invoice 842: Conceded by Respondents. Disallow £126.01.
- 116 Invoice 844: Unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £42.00.
- 117 Invoice 847: Unreasonable labour charge. Materials and labour £250.00, VAT 20% = £300.00. Disallow £120.53.
- 118 The total costs disallowed in 2014/2015 are £1,485.90.

2015/2016

- 119 Invoice 931: Unreasonable charge for scaffolding, unreasonable labour charge. Scaffolding £100.00, materials £8.95, labour £300.00, VAT 20% = £490.74. Disallow £234.00.
- 120 Invoice 932: Unreasonable charge for scaffolding. Scaffolding £100.00, materials £8.09, labour £300.00, VAT 20% = £489.71. Disallow £33.00.
- 121 Invoice 935: Unreasonable mark-up on materials, unreasonable labour charge. Materials and labour £100.00, VAT 20% = £120.00. Disallow £62.28.
- 122 Invoice 941: Unreasonable labour charge. Materials £39.88, labour £70.00, VAT 20% = £131.86. Disallow £42.00.
- 123 Invoice 942: Unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £30.00.
- 124 Invoice 943: Unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £42.00.
- 125 Invoice 944: Unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £42.00.
- 126 Invoice 945: See paragraph 69 above. Unreasonable labour charge. Labour £120.00, VAT 20% = £144.00. Disallow £168.00.
- 127 Invoice 946: Unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £42.00.
- 128 The total costs disallowed in 2015/2016 are £695.28.

2016/2017

- 129 Invoice 1067: See paragraph 69 above. Unreasonable labour charge. Materials £20.05, labour £150.00, VAT 20% = £204.06. Disallow £201.00.
- 130 The total costs disallowed in 2016/2017 are £201.00.

2017/2018

- 131 Invoice 1148: See paragraph 69 above. Unreasonable labour charge. Labour £120.00, VAT 20% = £144.00. Disallow £168.00.

- 132 Invoice 1149: Unreasonable labour charge. Labour £35.00, VAT 20% = £42.00. Disallow £30.00.
- 133 Invoice 1153: See paragraph 69 above. Unreasonable labour charge. Labour £120.00, VAT 20% = £144.00. Disallow £168.00.
- 134 Invoice 1155: Insurance excess only = £300.00. Disallow £186.90.
- 135 The total costs disallowed in 2017/2018 are £552.90.

Repairs and maintenance: summary

- 136 The total reasonable costs for repairs and general maintenance as determined by the Tribunal are as follows –

Service charge year	Corrected total costs for repairs and general maintenance	Costs disallowed by the Tribunal	Reasonable costs as determined by the Tribunal
2007/2008	19.00	00.00	19.00
2008/2009	311.00	93.00	218.00
2009/2010	370.00	64.00	306.00
2010/2011	702.00	294.00	408.00
2011/2012	2,948.00	1,612.00	1,336.00
2012/2013	5,656.00	2,817.00	2,839.00
2013/2014	6,653.00	2,459.00	4,194.00
2014/2015	4,434.00	1,486.00	2,948.00
2015/2016	3,716.00	695.00	3,021.00
2016/2017	1,283.00	201.00	1,082.00
2017/2018	2,234.00	553.00	1,681.00

Reinstatement valuation

- 137 The service charge accounts for 2017/2018 include the sum of £840.00 under the heading Reinstatement valuation.
- 138 Mr Forman questioned the need for such a valuation when Brigante Properties Ltd acquired the freehold of Master Hosiers House as recently as September 2016.
- 139 The Tribunal notes that the summary of invoices for 2017/2018 refers to those costs as an ‘accrual’ in respect of ‘*provision for reinstatement valuation*’. In the absence of any invoice or valuation documentation, the Tribunal determines that those costs should be disallowed in 2017/2018.
- 140 Moreover, in the view of the Tribunal, the cost of £840.00 would be excessive. The Tribunal would determine the reasonable cost at £450.00 plus VAT.

Window cleaning

- 141 The costs of window cleaning included in the service charge accounts were as follows –

2007/2008:	00.00
2008/2009:	00.00
2009/2010:	282.00

2010/2011:	787.00
2011/2012:	864.00
2012/2013:	864.00
2013/2014:	646.00
2014/2015:	288.00
2015/2016:	288.00
2016/2017:	432.00
2017/2018:	432.00

142 The variation in the costs reflects the frequency of cleaning and the prevailing rate of VAT. However, the cost per clean has remained unchanged at £60.00 plus VAT per clean.

143 Mr Forman argued, on the basis of quotations from Vistech Window Cleaning, a local firm, and from his own window cleaner, that £45.00 plus VAT would be a reasonable charge and that the expectation would be for six cleans per year.

144 The Respondents argued that Vistech Window Cleaning would have lower overheads than Blue Property Maintenance UK Ltd.

145 The Tribunal determines that a reasonable charge would be £50.00 plus VAT per clean and that the reasonable frequency of cleaning would be six cleans per year. The Tribunal determines the reasonable costs on that basis, save that, in respect of the service charge years 2009/2010, 2014/2015 and 2015/2016, it only allows costs for the four cleans that were carried out.

146 The Tribunal therefore determines that the reasonable costs (including VAT) for window cleaning are as follows –

2007/2008:	00.00
2008/2009:	00.00
2009/2010:	235.00
2010/2011:	358.00
2011/2012:	360.00
2012/2013:	360.00
2013/2014:	360.00
2014/2015:	240.00
2015/2016:	240.00
2016/2017:	360.00
2017/2018:	360.00

Summary on service charge years 2007/2008 to 2017/2018

147 The service charges determined by the Tribunal as reasonable and payable by the Applicants in respect of the service charge years 2007/2008 to 2017/2018 are set out in the table below –

Head of expenditure	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011
Accountant's fees	230.00	240.00	240.00	240.00
Bank charges	71.00	113.00	205.00	65.00
Buildings insurance	524.00	973.00	859.00	928.00
Cleaning communal areas	776.00	831.00	842.00	860.00

Electricity	00.00	462.00	540.00	324.00
Emergency lighting testing	00.00	00.00	00.00	00.00
Fire alarm maintenance	00.00	00.00	00.00	00.00
Fire risk assessment	00.00	240.00	00.00	00.00
Health and safety risk assessment	00.00	240.00	00.00	00.00
Insurance excess	00.00	00.00	00.00	00.00
Management fees	1,379.00	1,477.00	1,496.00	1,528.00
Reinstatement valuation	00.00	00.00	00.00	00.00
Repairs and general maintenance	19.00	218.00	306.00	408.00
Window cleaning	00.00	00.00	235.00	358.00

Head of expenditure	2011/ 2012	2012/ 2013	2013/ 2014	2014/ 2015
Accountant's fees	390.00	390.00	390.00	348.00
Bank charges	108.00	71.00	70.00	69.00
Buildings insurance	1,044.00	1,127.00	1,280.00	1,353.00
Cleaning communal areas	864.00	864.00	864.00	864.00
Electricity	128.00	173.00	360.00	46.00
Emergency lighting testing	00.00	00.00	00.00	340.00
Fire alarm maintenance	00.00	00.00	00.00	00.00
Fire risk assessment	240.00	00.00	00.00	240.00
Health and safety risk assessment	240.00	00.00	00.00	240.00
Insurance excess	00.00	00.00	660.00	250.00
Management fees	1,536.00	1,536.00	1,536.00	1,536.00
Reinstatement valuation	00.00	00.00	00.00	00.00
Repairs and general maintenance	1,336.00	2,839.00	4,194.00	2,948.00
Window cleaning	360.00	360.00	360.00	240.00

Head of expenditure	2015/ 2016	2016/ 2017	2017/ 2018	
Accountant's fees	391.00	366.00	280.00	
Bank charges	64.00	(5.00)	00.00	
Buildings insurance	1,437.00	1,502.00	1,575.00	
Cleaning communal areas	900.00	900.00	972.00	
Electricity	738.00	758.00	82.00	
Emergency lighting testing	240.00	240.00	240.00	
Fire alarm maintenance	00.00	240.00	82.00	
Fire risk assessment	00.00	00.00	240.00	
Health and safety risk assessment	00.00	00.00	240.00	
Insurance excess	650.00	300.00	00.00	
Management fees	1,536.00	1,536.00	1,536.00	
Reinstatement valuation	00.00	00.00	00.00	
Repairs and general maintenance	3,021.00	1,082.00	1,681.00	
Window cleaning	240.00	360.00	360.00	

148 The total service charges determined by the Tribunal as reasonable and payable by the Applicants in respect of the service charge years 2007/2008 to 2017/2018 are set out in the table below –

Service charge year	Total reasonable service charge as determined by the Tribunal	Service charge payable by each of the Applicants (12.5%)
2007/2008	2,999.00	374.86
2008/2009	4,794.00	599.25
2009/2010	4,723.00	590.36
2010/2011	4,711.00	588.88
2011/2012	6,246.00	780.75
2012/2013	7,360.00	920.00
2013/2014	9,714.00	1,214.25
2014/2015	8,474.00	1,059.25
2015/2016	9,217.00	1,152.13
2016/2017	7,279.00	909.88
2017/2018	7,288.00	911.00

Interim payment for 2018/2019

- 149 The Applicants' challenge also included the interim service charge for 2018/2019 of £13,570.00.
- 150 In the absence of the final accounts for that year, a similar analysis to that applied to the earlier service charge years is obviously not possible; and there may be a demand for a balancing payment for 2018/2019.
- 151 However, there is a clear pattern in the deductions made in relation to the earlier years and in the view of the Tribunal similar deductions are likely to apply to 2018/2019. On the basis of the figures for the earlier years, the Tribunal determines that a reasonable sum for the total interim service charges payments for 2018/2019 would be £7,500.00. The reasonable sum for each of the Applicants would therefore be £935.50.

Outstanding sums owing

- 152 The outstanding sums owing between the parties as a consequence of the Tribunal's determinations will depend on the sums already paid by each of the Applicants.
- 153 If balancing payments are due from any individual Applicants, they should be demanded by the Respondents as soon as practicable (and in any event within 28 days from the date of this Decision) and paid by the Applicants within 28 days of being demanded. If credit payments are due to any individual Applicants, these payments should be paid by the Respondents within 28 days from the date of this Decision.

Section 20C application

- 154 Section 20C of the 1985 Act provides (so far as material) –

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

...

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.
- 155 In exercising its jurisdiction under section 20C, the Tribunal takes as the starting point in proceedings before the First-tier Tribunal (Property Chamber) that each party pays its own costs; and there is nothing in the circumstances of the present case that persuades the Tribunal to move from that starting point.
- 156 The Applicants did not act unreasonably in challenging the service charge demands and the Respondents did not act unreasonably in defending that challenge.
- 157 Moreover, the determination of the Tribunal on the substantive issues does not constitute a clear ‘win’ for either party. Even though the Applicants successfully challenged many items of expenditure included in the service charge accounts, depending on the amount of the historic service charge payments withheld, some of them may have to make balancing payments.
- 158 In the circumstances, the Tribunal is of the view that this is a case in which it is just and equitable that each party should bear its own costs.
- 159 In order to give effect to that view, the Tribunal makes an order under section 20C that the costs incurred by the Respondents in connection with the present proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants and the other leaseholders of flats at Master Hosiers House.

Paragraph 5A application

- 160 The Applicants also made an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, in anticipation of any demand from the Respondents for administration charges in respect of litigation costs incurred in connection with the present application.
- 161 Paragraph 5A, so far as material, provides –
- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- 162 For the reasons set out above in relation to the section 20C application, and applying the test of what is just and equitable, the Tribunal orders that any liability of the Applicants to pay administration charges in respect of the Respondents’ litigation costs (if demanded) is extinguished.
- 163 The Tribunal recognises that this order may effect an alteration in the parties’ contractual position; but, as Holgate J commented in *Avon Ground Rents Ltd v Child* [2018] UKUT 0204 (at paragraph 58), that is the very purpose of the paragraph 5A jurisdiction.

Summary

164 Under section 27A(1) of the Landlord and Tenant Act 1985 the Tribunal determines that the reasonable service charges payable by each of the Applicants for the charge years 2007/2008 to 2017/2018 are –

2007/2008:	£374.86
2008/2009:	£599.25
2009/2010:	£590.36
2010/2011:	£588.88
2011/2012:	£780.75
2012/2013:	£920.00
2013/2014:	£1,214.25
2014/2015:	£1,059.25
2015/2016:	£1,152.13
2016/2017:	£909.88
2017/2018:	£911.00

165 Under section 27A(3) of the Landlord and Tenant Act 1985 the Tribunal determines that the reasonable interim service charges payable by each of the Applicants for the service charge year 2018/2019 are £935.50.

166 Under section 20C(3) of the Landlord and Tenant Act 1985 the Tribunal orders that the Respondents' costs incurred in connection with the present proceedings should not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants and the other leaseholders of flats at Master Hosiers House.

167 Under paragraph 5A(2) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the Tribunal orders that any liability of the Applicants to pay administration charges in respect of the Respondents' litigation costs (if demanded) is extinguished.

Appeal

168 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Future management of Master Hosiers House

169 During the course of the hearing Mr Forman stated that the Applicants felt 'trapped' by the current management arrangements at Master Hosiers House. While it is not the function of the Tribunal to offer advice to parties, the Tribunal did indicate that it may be possible for the leaseholders to obtain greater control over the management of their properties. It may be possible for the Applicants to achieve such control (i) by applying to the First-tier Tribunal for the appointment of a manager under Part II of the Landlord and Tenant Act 1987 or (ii) by acquiring the right to manage under Chapter 1 of Part II of the Commonhold and Leasehold Reform Act 2002 or (iii) by exercising the right to collective enfranchisement under Chapter I of Part I of the Leasehold Reform, Housing and Urban Development Act 1993.

19 July 2019

Professor Nigel P Gravells
Deputy Regional Judge