



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

**Case Reference** : **CAM/31UB/LIS/2018/0026**

**Property** : **27,29, 43 and 55 Loughland Close,  
Blaby, Leicester LE8 4PB**

**Applicant** : **Loughland Close RTM Co 2011 Ltd**  
**Representative** : **Wards**

**Respondent** : **Ajay Datta Bhalla, Flats 27, 29, 43 and 55**

**Date of Application** : **14<sup>th</sup> September 2018**

**Type of Application** : **to determine the reasonableness and  
payability of the Service Charges (section  
27A Landlord and tenant Act 1985) and  
Administration Charges (Schedule 11  
Commonhold & Leasehold Reform Act  
2002)**

**Date of Hearing** : **7<sup>th</sup> January 2019**

**Tribunal** : **Judge J R Morris  
Mr D S Brown FRICS  
Mrs M Hardman IRRV (Hons) FRICS**

**Date of Decision** : **31<sup>st</sup> January 2019**

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**DECISION**

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## **Decision**

1. The Tribunal found that the area of grass beyond the buildings on the South and East side of the development that had been fenced off by the Applicant was not a part of the Estate.
2. The Tribunal determines that for the years in issue the apportionment of the service charge is reasonable.
3. The Tribunal determines that the Service Charge for each of the years in issue is reasonable.
4. The Tribunal determines that the actual costs of the Service Charge for the years in issue are payable within 28 days of an amended Service Charge account for each year, showing the actual costs payable and any debit balance or surplus being carried forward from year to year (as set out in paragraph 74 below) being served on the Respondent with a copy to the Tribunal within 21 days of this Decision. The Respondent has leave to refer these amended accounts to the Tribunal within seven days of their receipt if he considers that the amounts shown due for any year are inaccurate.
5. The Tribunal determines that the Management Charge for the years in issue is reasonable.
6. The Tribunal determines that there was no authority in the Lease to levy the Late Payment Fee.
7. The Tribunal determines that the charge for County Court Fees and any costs related to the County Court hearing are a matter for that Court and not the Tribunal.

**The Tribunal having determined all matters that are within its jurisdiction, the case is transferred back to the County Court for a decision on any outstanding matters and costs.**

## **Reasons**

### **Introduction**

1. The Application was made on 14<sup>th</sup> September 2018 for a determination of reasonableness and payability of the service charges and administration charges incurred for the years ending 31<sup>st</sup> January 2015, 2016, 2017 and 2018. The application was made by way of transfer from Leicester County Court of claims numbered: E15YJ690, E15YJ692, E15YJ694 and E15YJ697 relating to non-payment of service charges and administration charges in respect of Flats 27, 29, 43 and 55.
2. The claim was made on 19<sup>th</sup> January 2018 and served on 14<sup>th</sup> February 2018. Following unsigned defences being filed, signed defences were filed (copies of which were provided) and Notice given of a defended matter on 17<sup>th</sup> April 2018. Following the receipt of the Directions Questionnaire on 29<sup>th</sup> May 2018,

on 2<sup>nd</sup> August 2018 the matter was transferred from the County Court Money Claim Centre at Leicester to the County Court sitting at Leicester. On 4<sup>th</sup> September District Judge Severn transferred the matter to the First-tier Tribunal to determine the reasonableness and payability of the service charges and administration charges.

3. Directions were issued on 1<sup>st</sup> October 2018 and amended on 6<sup>th</sup> November 2018.
4. The Tribunal is bound by the Upper Tribunal in *Staunton v Taylor* [2010] UKUT 270 (LC) LT Case Number: LRX/87/2009 at paragraph 21 “the UT has no power to permit the pleadings to be amended and thus to widen the scope of the questions that it is required to determine under the transferred proceedings.” Therefore, the Respondent is limited to the issues raised in the Defence. By the same token the Applicant is restricted in its response to those issues in the case summary lodged with the County Court.

### **The Law**

5. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
6. Section 18 Landlord and Tenant Act 1985
  - (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, improvement 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 of which the service charge is payable.*
  - (3) *for this purpose*
    - (a) *costs include 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 period*
7. Section 19 Landlord and Tenant Act 1985
  - (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.*

8. Section 27A Landlord and Tenant Act 1985
  - (1) *An application may be made to a leasehold valuation 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 a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
    - (a) *the person by whom it would be payable,*
    - (b) *the person to whom it would be payable,*
    - (c) *the amount which would be payable,*
    - (d) *the date at or by which it would be payable, and*
    - (e) *the manner in which it would be payable.*
  - (4) *No application under subsection (1) or (3) may be made in respect of a matter which –*
    - (a) *has been agreed or admitted by the tenant,*
    - (b) *has been or is to be referred to arbitration pursuant to a post arbitration agreement to which the tenant was a party*
    - (c) *has been the subject of a determination by a court*
  - (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*
9. Schedule 11 Commonhold and Leasehold Reform Act 2002
  1. *Meaning of “administration charge”*
    - (1) *In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—*
      - (a) ...
      - (b) ...
      - (c) *in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,*
      - (d) ...

## **The Lease**

10. Copies of the Leases were provided and the terms were found to be the same in respect of the Service Charge for each flat.
11. Under Clause 3 of the Lease the Tenants covenant to pay the Service Charge in accordance with the Fourth Schedule. This specifies that an advance payment

based on an estimate of the costs likely to be incurred for the Maintenance Year for purposes mentioned in the Fifth Schedule must be made and that at the end of the Maintenance Year the Tenant will be allowed any amount by which the estimated service charge exceeds the actual costs or required to pay any amount by which the estimated charge falls short of the actual costs.

12. The Fifth Schedule is divided into two parts. Part 1 relates to services attributable to the Block and Part 2 services attributable to the Estate. Only the Tenants in the Block of flats contribute to Part 1 costs but all Tenants on the Estate contribute to Part 2 equally. There are 31 Tenants on the Estate each contributes equally to the costs incurred specifically for the Estate. There are 21 Tenants in the Blocks of flats although their contribution varies depending on the size of the flat.

The Respondent's Flats have the following contributions specified in the Lease: Flat 27 is 5.12%, Flats 29 and 43 are 4.88% each and Flat 55 is 4.54% although it was noted that this had been revised by the Landlord during the period when the previous agent was employed as follows: Flat 27 is now 5.12%, Flats 29 and 43 are now 4.88% and Flat 55 is 4.54%. The Applicant applied these revised proportions.

13. The Respondent raised the issue of the amount that was contributed for each of the flats.

### **Inspection**

14. The Tribunal made its inspection in the presence of the Applicant's Representatives, Mr Jonathan Hubbard (Company Secretary of the Applicant), Mrs Jane Wade (the Managing Agents Accounts Manager), Mrs Trudy Pickard (the Property Manager) and the Respondent, Mr AD Bhalla. Also, in attendance was Mr Anthony Spence, a leaseholder.
15. The Estate comprises three detached blocks of flats containing 21 units (the Blocks) and six pairs of semi-detached houses and maisonettes (the maisonettes), together with two bin stores and a bicycle store, ranged around a central parking area, in which each residential unit has one allocated parking space and the remainder are for visitors.
16. The Tribunal found that externally the Blocks were modern and in generally fair to good condition. The grounds were in fair condition for the time of year and the grass and shrubs appeared to have been cut during the previous season. The hard landscaping was in good condition as was the car park which was free of litter.
17. The Respondent pointed out that the lines setting out the parking spaces needed repainting and the numbered metal plates identifying the spaces required re-setting. He also said that light bulbs for lighting the internal and external common parts were not replaced although he was not able to give evidence of this.

18. The Respondent took the Tribunal to a large area of grass beyond the buildings on the South and East side which had been fenced off. He expressed concern as to why this had been segregated and the difficulty in accessing this area through the gate in the fence particularly for persons with mobility difficulties.
19. The Respondent, identified French doors from his ground floor flat, which had been installed by the Applicant as they comprised part of the common parts, which he said were not compliant with planning and building regulations.
20. The Respondent also identified guttering above one of his flats which he said had been leaking. He said that this had caused the space between the panes of glass of the double-glazed window units of his flat to fill with water. As a result, he said he had to replace these windows but had not been able to claim from the buildings insurance which he felt he was entitled to do.
21. He added that there had been a leak for many years in the bathroom of 27 Loughland Close which he believed to be a latent defect, the repair for which he felt he was entitled to claim on the insurance but was not provided with any details in order for him to do so.
22. The Tribunal inspected the internal common areas of the Block.
23. In the common hallway, stairs and landing to the entrance to Blocks 25 to 35 The Respondent pointed out that there was damage to the walls and marks which went beyond fair wear and tear. He said that the common parts had been used by the Leaseholders as storage. In the area under the stairs in the hall there was a fixing which appeared to have been for the securing of a bike.
24. In the common hallway, stairs and landing to the entrance to Blocks 37 to 53 again The Respondent pointed out that there was damage to the walls and marks which went beyond fair wear and tear. He said that for a long time the door entry system to his flat did not operate although this had now been repaired.
25. In the common hallway, stairs and landing to the entrance to Blocks 55 to 65 The Respondent said that the common parts need re-decoration.
26. The Tribunal noted the need for re-decoration and the Applicants' Representatives conceded that this was needed and was planned.

## **Hearing**

### ***Attendance at the Hearing***

27. Those present were the Applicant's Representatives, Mr Jonathan Hubbard (Company Secretary of the Applicant), Mrs Jane Wade (the Managing Agents Accounts Manager), Mrs Trudy Pickard (the Property Manager) and the Respondent, Mr AD Bhalla.

## ***Applicant's Written Statement***

28. The Applicant in its written statement of case stated that it was a Right to Manage Company which administered the communal areas relating to properties 2-10 even numbers only of Harrop Close which are maisonettes, 15 to 23 odd numbers only which are also maisonettes and 25 - 65 odd numbers only of Loughland Close which are apartments (the Development). The owners of 17, 19, 21 and 23 Loughland Close are two separate blocks of maisonettes which are not a part of the Right to Manage Company.
29. The Right to Manage Company (RTM Company) was set up because the Leaseholders were not satisfied with the previous management by Solitaire and employed Wards Surveyors to replace them. Wards officially commenced management of the Development as from 18<sup>th</sup> February 2018. However, from 2014 the Applicant produced a budget on the advice of Wards which was payable in quarterly instalments against the actual costs incurred in managing the communal areas for which the Applicant was responsible.
30. These estimated charges varied slightly to what Leaseholders had been advised, as numbers 17 and 23 Loughland Close, chose not to participate in the RTM Company.
31. The Applicant then set out the heads of the costs under each Schedule identifying the related paragraph of the Fifth Schedule.
32. The Applicant stated that the Service Charge apportionment of the Estate Charges for those that participate in the Applicant RTM Company is 1/27<sup>th</sup> there being 27 properties which the Applicant manages. It was stated that the previous managing agents had, under the Fourth Schedule Part I, adjusted the percentages specified in the Lease (referred to above) and recalculated them as follows for the subject properties:  
Flat 27 - 5.12%,  
Flat 29 - 4.88%  
Flat 43 - 4.88%  
Flat 55 - 4.54%
33. These revised percentages had never been queried and so had been applied by the Applicant.
34. The Applicant said that it had charged the estimated service charge as a flat rate since 2014 that amount in respect of the Respondent's properties had been as follows:  
27 Loughland Close £219.34  
29 Loughland Close £213.00  
43 Loughland Close £213.00  
55 Loughland Close £204.01
35. This amount had gone up in the year 2018 as follows:  
27 Loughland Close £233.85  
29 Loughland Close £226.82  
43 Loughland Close £226.82

55 Loughland Close £216.90

36. The Management Charges for the Estate part of the Service Charge are £40.00 plus VAT per annum for each of the properties on the Estate.
37. The additional Management Charges payable by each apartment for the part of the Service Charge relating to managing the Block are £50.00 plus VAT per flat. Therefore, the Flats pay a total management fee of £90.00 plus VAT per annum.
38. The Applicant said that whereas it was accepted that the internal areas of the Block required re-decoration it was refuted that the Applicant or its Agent had failed to carry out repairs or provide services or acted without care and attention.
39. The Applicant submitted that it was entitled to claim the County Court costs from the Respondent under paragraph 5(a) of Part I of the Fifth Schedule and paragraph 4(a) of Part II of the Fifth Schedule.
40. The Applicant set out its claim as follows:
- |                                      |          |
|--------------------------------------|----------|
| 27 Loughland Close:                  |          |
| Service Charges (01/07/15- 31/12/18) | £3128.80 |
| Late Payment Fees (x2)               | £300.00  |
| County Court Fee (x2)                | £195.00  |
| 29 Loughland Close:                  |          |
| Service Charges (01/07/15- 31/12/18) | £3037.28 |
| Late Payment Fees (x2)               | £300.00  |
| County Court Fee (x2)                | £195.00  |
| 43 Loughland Close:                  |          |
| Service Charges (01/07/15- 31/12/18) | £3037.28 |
| Late Payment Fees (x2)               | £300.00  |
| County Court Fee (x2)                | £195.00  |
| 55 Loughland Close:                  |          |
| Service Charges (01/07/15- 31/12/18) | £2907.70 |
| Late Payment Fees (x2)               | £300.00  |
| County Court Fee (x2)                | £185.00  |
41. It was added that the late payment fees related to the additional work that was required by the Agent to collect the service charge.

### ***Respondent's Written Statement***

42. The Respondent's Defence referred to background information as follows:
43. The Respondent said that the current Managing Agents were appointed following the setting up of a Right to Manage Company. The Agent was to provide a more competitively priced service using locally sourced trades with



wider development services, more efficiency coupled with service charge reductions compared with the previous Agent.

44. The Respondent stated that the current Agent has not provided the improved services. He alleged that the services have been depleted, the level of works have diminished and the costs have escalated to almost four times the initial cost.
45. He said he had written to request an explanation but had not received any adequate response.
46. He said that the Applicant had made a claim in April 2016 for non-payment of service charges which was to be heard on the 17<sup>th</sup> November 2017 but the Applicant did not attend. The hearing was re-listed for 2<sup>nd</sup> February 2017 but again the Applicant did not attend and the matter was struck out.
47. The Respondent raised the following issues in his County Court Defence with regard to the Service charge:
  1. The service charge in 2005 is almost 4 times the amount specified in the Lease.
  2. The service charge proportions in the service charge accounts do not correspond with those set out in the lease.
  3. The Annual Maintenance Provision is not calculated in accordance with the Fourth Schedule Part II of the Lease.
  4. The service charge does not appear to have been calculated as per the formula prescribed in the Lease.
  5. The administrative and management expenses claimed as remuneration by the Managing Agent are not reasonable as required by the Fourth Schedule Part II paragraph 2 (iii).
  6. The Applicant has failed to meet the obligations set out in the Fifth Schedule Parts I and II of the Lease in spite of being charged for them: the hallways are in a poor condition, blown and missing lights, failed electrical entry systems, loose stair treads and loose carpeting.
  7. The Applicant has failed to properly cultivate the communal gardens.
  8. The common accessways and footpaths parking spaces, fences screens and the communal bin storage are not properly repaired and maintained and lighted. In particular slabs move, the lights are broken, the doors to the bin stores are loose and the locks are missing and there are infestations of vermin.
  9. The Applicant has failed to carry out repairs.
  10. Administrative fees have been charged which are not in accordance with the Lease.

11. Late payment fees are charged which are not in accordance with the Lease.
  12. Legal fees have been charged although no solicitors have been employed.
  13. Court fees have been charged but the claims have been struck out.
  14. The Applicant has made no response to complaints.
48. In his written statement in response to the Directions the Respondent itemised the costs in issue for each flat as follows:
49. Total service charge claimed for flats 29 and 43: £3,532.28  
Amounts challenged:
- |          |                  |      |
|----------|------------------|------|
| 23.06.14 | Late Payment Fee | £150 |
| 01.04.16 | Late Payment Fee | £150 |
|          | Court Fee        | £80  |
| 16.01.18 | Late Payment Fee | £150 |
|          | Court Fee        | £115 |
50. Total service charge claimed for flat 27: £3,392.70  
Amounts challenged:
- |          |                  |      |
|----------|------------------|------|
| 23.06.14 | Late Payment Fee | £150 |
|          | Court Fee        | £115 |
| 20.05.16 | Late Payment Fee | £150 |
|          | Court Fee        | £70  |
| 16.01.18 | Late Payment Fee | £150 |
|          | Court Fee        | £115 |
51. Total service charge claimed for flat 55: £3,392.70  
Amounts challenged:
- |          |                  |      |
|----------|------------------|------|
| 26.03.14 | Late Payment Fee | £150 |
|          | Court Fee        | £115 |
| 23.06.14 | Late Payment Fee | £150 |
|          | Court Fee        | £115 |
| 20.05.15 | Late Payment Fee | £150 |
|          | Court Fee        | £70  |
| 16.01.18 | Late Payment Fee | £150 |
|          | Court Fee        | £115 |
52. He went on to state that:
- a) The overall service charge is challenged.
  - b) The late payment fee a) is not defined in the lease, b) is not referred to in the terms of engagement of the Agent and c) there is no evidence of any legal costs.
  - c) Previous cases have been struck out (document provided)
  - d) Dangerous items have been left in the communal hallways and tread missing (photographs provided)

- e) Fencing has been erected without consultation, prevent disabled access and does not conform to planning permission or conveyancing plans. Cost should not be charged to the Leaseholders.
- f) Patio doors installed which were originally windows which pose a security risk and do not conform to building regulations or planning permission.
- g) Demarcation of parking spaces has worn away.
- h) Water ingress through window due to faulty guttering.

### **Discussion & Determinations**

53. At the Hearing the Tribunal identified the main issues to assist the parties in presenting their case and are dealt with in turn below.

#### ***Fenced area***

54. A point that was referred to at the inspection and that was touched on in the Respondent's general complaint regarding the amount of the service charge was the cost of the fencing and the difficulty of access to the area beyond.

#### *Finding as to the fenced area*

55. The Tribunal recalled that there had been some doubt about the boundary of the Estate in another case relating to the Development in 2014. A copy of the Decision that was made on that occasion was included in the Bundle. That Decision noted at paragraph 18 that:

*the Tribunal had been provided with coloured copies of the plan from the Leases which identified the perimeter of the Estate in yellow. The Estate was bounded by the external walls of the blocks of flats and houses and maisonettes on the South and East side. On the North and West sides there were relatively small areas of grass between the buildings and the road. The plan also showed a large area of grass beyond the buildings on the South and East side which was not within the yellow line on the plan and it was agreed that this did not form part of the Estate.*

56. The Tribunal found that the area referred to as not forming part of the Estate was the area that had been fenced off. The Applicant had therefore only marked the boundary of the Estate. The Respondent had not raised any specific objection to the cost of this work, he had only indirectly questioned the standard, as access to the area was difficult. As the Leaseholders had no right of access to the area, the standard was determined to be reasonable.

#### ***Apportionment***

57. In the Respondent's County Court Defence items 2, 3 and 4 related to the apportionment of the service charge.

#### *Determination as to the apportionment*

58. The Tribunal found that there were provisions in the Lease to enable the apportionment to be altered. There was no evidence to indicate that this had not been done equitably and in accordance with the Fourth Schedule Part I.
59. The Tribunal therefore determined it to be reasonable.

***Failure to carry out repairs and provide services and the reasonableness and payability of the Service Charge***

60. In the Respondent's County Court Defence items 1, 6, 7, 8 and 9 related to the failure by the Applicant to carry out repairs and provide services.
61. In response to the Tribunal's questions the Respondent stated that he challenged the service charge because he believed that he had paid for work that had not been done.
62. He explained that each year he had been required to pay quarterly a set service charge for the maintenance of the Estate and the Block. However, maintenance work had not been carried out. He had said in written representations that: the internal decoration had not been done, the demarcation of the car park had not been painted, the car park space markers had come away and not been re-affixed, there was a loose paving slab on the paths, the guttering was faulty which had resulted in damage to the windows of one of his flats, the patio doors of one of his flats had not been installed in accordance with Building and Planning regulations. Light bulbs had failed and not been replaced, blown and missing lights, failed electrical entry systems, the doors to the bin stores were not properly secured and the restrictors to prevent the doors from opening too far and being damaged had broken and not been replaced, the bin stores had been infested with vermin, the entry phone to one of his flats had not worked for some time (although now repaired), a stair tread had become loose causing him injury (although now repaired). The Respondent submitted that he had been charged for this work but it had not been done.
63. In reply the Applicant's Representatives conceded that they had not carried out the internal decoration but no charge had been made for doing so. They added that as repairs were reported so the work had been carried out and a charge levied for it. However, at no time was a charge made for work that had not been carried out. The Tribunal noted that for each year charges had been made for a range of repairs and maintenance.

*Determination as to reasonableness of the Service Charge*

64. The Tribunal stated that if the Respondent considered the Applicant was in breach of the terms of the Lease it was for him to make a claim in the County Court. The Tribunal was not able to enforce the Lease, it was only able to determine the reasonableness of the service charge. The Respondent must identify specific work for which he had been charged and yet had not been done or had not been done to a reasonable standard. If work had not been done and no charge had been made in the service charge then there could be no issue of reasonableness for the Tribunal to determine.

65. The Tribunal considered the items that the Respondent had referred to. It had been conceded that the internal decoration and the demarcation of the car park had not been carried out and no charge had been made. The windows and patio doors were part of the common parts and therefore for the Applicant to repair or replace. It appeared from the inspection that the seals in the windows had failed causing condensation to form between the panes of glass in the double-glazed unit. This was a matter for the Applicant to repair not the Respondent. It was for the Applicant to make a claim on insurance if appropriate (taking into account any excess payable) not the Respondent. With regard to the alleged breach of Planning and Building Regulations this is a matter for the local authority to enforce and that evidence needs to be adduced if it is claimed that a charge was made for work incorrectly carried out.
66. The Respondent did not adduce evidence that the cost of replacing light bulbs or other repairs were unreasonable. The accounts for the year ending 31<sup>st</sup> January 2016 show a charge for repairing the stair treads and carpets and on its inspection the Tribunal found that this had been done. It was found that the restrictors on the bin store doors were broken, nevertheless the doors were operative and could be secured by locks and there was evidence of repair work.
67. If a service charge includes costs for work that is not carried out either at all or to a reasonable standard then it is open to the leaseholder to apply to a tribunal for a determination. However, withholding the payment of the service charge by a leaseholder for the alleged failure by a landlord or management company to carry out repairs is not an appropriate remedy and unlikely to be a satisfactory defence of itself.
68. In the absence of evidence to the contrary the tribunal determined that the service charge costs as set out in Applicant's operating accounts were reasonable.

*Determination as to payability of the Service Charge*

69. Following some discussion, it became apparent that the Applicant had charged the Leaseholders the estimated amount of the service charge year on year and had at the end of the year prepared company accounts which showed the amount of the estimate that should have been paid and the service charge costs incurred item by item. There was also an overall balance which showed that if all the leaseholders had paid the estimated charge as demanded the account would be in credit for each year as follows:  
Year ending 31<sup>st</sup> January 2015 £5,750  
Year ending 31<sup>st</sup> January 2016 £4,261  
Year ending 31<sup>st</sup> January 2017 £2,328  
Year ending 31<sup>st</sup> January 2018 £3,325  
And the 2018 accounts show a total reserve of £15,574
70. Although the overall credit was shown, the Leaseholders were not informed at the end of the year what their individual service charge credit was. The

Respondent seemed to be under the impression that he was paying a form of fixed service charge which covered all the services and works necessary. In fact, he was paying a variable service charge.

71. The Applicant needed to make the variable nature of the charge clear by reference to a balancing debit or, in this case credit. The services and repairs referred to in the accounts for any year had been carried out at the stated cost which was, in this case, below the estimated cost. It was clear from the company operating accounts that the Management Company was in credit. However, what was not clear, was that this meant the Leaseholders were also in credit.
72. The Lease does not allow the Applicant to merely retain the excess payment from the estimated charge. It must either return it, put it against the next year or identify a specific sum in the accounts (not just the surplus) to create a reserve fund as allowed by the Lease. Such a reserve must be based upon a genuine pre-estimate of the future costs for repairs and re-decoration.
73. The Respondent is only liable to pay the actual costs incurred. It is understood that the amount of the service charge claimed by the Applicant as being in arrears is based on the estimated charge demanded for each year. It should be based on the actual costs for each year. As there is a surplus this figure will be less than that claimed.
74. The Tribunal makes its determination as to the payability of the service charge subject to the following requirement. The Applicant must provide a service charge account for the Respondent for each year in issue. For the first year the account must identify the last payment made by the Respondent. That and the following years must then show the estimated charge demanded, the actual costs incurred and the balancing figure i.e. the difference between the estimate and the actual charge. The account must then show the amount carried over which offsets the estimated demand for the next year, and so on. It should be noted that the option to create a reserve fund on past accounts is not available.
75. The Tribunal determines that the actual costs of the Service Charge are payable within 28 days of a Service Charge account with a copy to the Tribunal within 21 days of this Decision. The County Court will require this as a clear statement of the amount of the claim. It is also hoped that with this clarification a settlement might be reached between the parties.

### ***Management Charges***

76. In the Respondent's County Court Defence items 5 and 14 related to what he considered to be the excessive cost of Management Charges. He said that the Managing Agents had failed to carry out repairs and maintenance and to respond to his complaints.
77. In particular he referred to the damage to the walls of the internal common parts and the failure to prevent the under stairs areas to be used as storage.

*Determination*

78. The Tribunal found that the management was not beyond criticism with regard to the preparation of the service charge accounts as mentioned earlier. The Tribunal had also noted the signs that the under stairs areas had been used for storage, as evidenced by the fixings for securing what was probably a bicycle. Nevertheless, the Managing Agents had acted, since at the inspection the areas were now clear. The Tribunal had found on its inspection that the walls had been damaged in one of the communal areas. This was not reflected in the other areas and therefore did not show an endemic failure by the Agents to manage the Block and these defects would be remedied when the internal communal parts were decorated.
79. Overall the Tribunal found that the condition of the internal and external areas was satisfactory at its inspection and that the Managing Agents' charge of £90 (£40 for the Estate and £50 for the Block) is reasonable.

***Administrative Charges (Late Payment Fee) and Court Fees***

80. In the Respondent's County Court Defence items 10, 11, 12 & 13 related to Administrative Charges and legal and court fees which he considered the Applicant was not eligible to charge.
81. The Respondent submitted that there was no provision within the Lease for the Applicant or its Agent to charge him a Late Payment Fee.
82. The Applicant had stated in its statement of case that the Administration Charges were the Late Payment Fees which were the additional costs incurred by the Agent in seeking to collect the arrears of service charge from the Respondent and were permitted to be charged under paragraph 5(a) of Part I of the Fifth Schedule and paragraph 4(a) of Part II of the Fifth Schedule.

*Determination as to the Late Payment Fee*

83. The Tribunal found that the Fifth Schedule related to the Service Charges only in that:  
Part I paragraph 5 (a) allowed the Management Company to incur costs and expenses:  
*in the running and management of the Block and the costs and expenses (including solicitor costs) incurred in the collection of ...service charges in respect of the flats in the Block and in the enforcement of the covenants and conditions and regulations contained in the leases granted of the flats and parking spaces in the Block*  
and  
Part II paragraph 4 (a) allowed the Management Company to incur costs and expenses:  
*in the running and management of the Estate and the costs and expenses (including solicitor costs) incurred in the collection of service charges in*

*respect of the Estate and in the enforcement of the covenants and conditions and regulations contained in the leases relating to the parking spaces and the Estate*

84. These costs and expenses are then payable by all the Leaseholders under the service charge. The provisions do not enable the Managing Agent (or the Management Company) to make a charge to an individual Leaseholder for costs incurred in the collection of the individual leaseholder's service charge.
85. Therefore, the Tribunal determined that there was no authority in the Lease to levy a Late Payment Fee against an individual Leaseholder.
86. No evidence was adduced by either Party that legal costs had been charged in relation to the application before the Tribunal.

*Determination as to the Court Fees*

87. The Tribunal determined that the charge for County Court Fees and any costs related to the County Court hearing were a matter for that Court and not the Tribunal.

**Judge JR Morris**



## **APPENDIX - RIGHTS OF APPEAL**

1. If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.