FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00FF/LSC/2018/0045**
Property	**:**	**Flat 2, 40a Micklegate, York YO1 6LF**
Applicant	**:**	**Ms Tarryn Eia**
Representative	**:**	**(unrepresented)**
Respondent	**:**	**The Ground Rent Trust Limited**
Representative	**:**	**Moreland Estate Management (Counsel: Miss L Moses)**
Type of Application	**:**	**Section 27A (&20C) Landlord and Tenant Act 1985 Paragraph 5A, Schedule 11, Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Mr S Moorhouse - Tribunal Judge Mr N Walsh - Deputy Regional Valuer**
Date and venue of Hearing	**:**	**19 March 2019, York Magistrates Court**
Date of Decision	**:**	**24 May 2019**

DECISION

DECISION

(i) The actual service charges for the part year 2016 and for 2017 are not reasonable and are not payable in full. The Applicant's contribution is reduced by £18.57 for the part year 2016 and by £230.76 for 2017.

(ii) The estimated service charges for 2018 and 2019 are not reasonable and the Applicant's contribution to the estimated charges is reduced by £134.50 for 2018 and £138.53 for 2019.

(iii) The administration charge of £350 for a LPE1 management pack was reasonable and payable.

(iv) The tribunal makes orders pursuant to section 20(c) of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that any costs incurred by the Respondent in relation to these proceedings shall not be included in the amount of any service charge payable by the Applicant or recoverable from the Applicant by way of an administration charge.

REASONS

The Applications

1. The Applications are made by Ms Tarryn Eia ('the Applicant') pursuant to Section 27A and 20C of the Landlord and Tenant Act 1985, and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Applicant is the leaseholder of Flat 2, Micklegate, York YO1 6LF ('the Property') under a lease ('the Lease') dated 23 January 2015 for a term of 125 years calculated from 1 January 2014.

2. The freeholder is The Ground Rent Trust Limited ('the Respondent'). The Respondent is represented by its management company, Moreland Estate Management ('the Managing Agent'). Miss Lia Moses is appointed as Counsel for the Respondent.

Inspection

3. The tribunal conducted an inspection on 19 March 2019, immediately prior to the hearing. The Applicant and Miss Moses were present, together with most of the leaseholders who were supportive of the Applications but not parties to the proceedings.

4. The tribunal noted that the Property forms part of a terraced block of 6 flats of various sizes, with commercial premises beneath at ground floor level, together known as 40a Micklegate (the residential flats and associated communal parts being referred to within these Reasons as the 'Residential Premises'). The flats are accessed through a ground floor archway beside the commercial premises and passing beneath 3 of the flats. Through the archway, there is a car parking and bin area, including 2 car parking spaces belonging to 2 of the flats. A metal stair case leads from the car parking and bin area to the communal lobby for the flats, at 1st floor level. The flats are on 3 levels (1st, 2nd and 3rd floors of the block), with communal landings at 2nd and 3rd floor levels.

5. The tribunal noted that a cellar beneath the ground floor commercial premises is potentially accessible from the car park and bin area down a set of steps, or from the 1st floor lobby down a staircase. The former access requires 3 combination padlocks to be unlocked, the final one being on the outside of the external cellar door. The tribunal noted that using this access residents would need to negotiate pooled water, dirt and rubbish outside the cellar door and there appeared to be issues around the availability of the padlock code(s). The latter access was blocked with fixed railing within the 1st floor lobby. The cellar contains meters which need to be accessed by residents to maintain or manage power supplies.

Preliminary Matters

6. The hearing was convened following the inspection, attended by the Applicant and Miss Moses. Most of the other leaseholders were present to observe the hearing but did not participate. The Applicant did not have her papers with her, and one of the other leaseholders was able to supply a copy of some of these. Miss Moses did not have some parts of the Applicant's submissions but acknowledged that the Respondent may have received these. The tribunal provided copy papers to the extent that this was practical and on this basis both parties confirmed to the tribunal that they wished the hearing to proceed.

7. Having regard to its overriding objective to deal with cases fairly and justly, the tribunal proceeded with the hearing to avoid the long delay that would arise in trying to reconvene on a mutually convenient date. However, further directions were also issued to allow further representations in writing to be made prior to the tribunal reaching its decision. In particular, this enabled the parties to raise any matters they would otherwise have raised at the hearing had they had the complete set of papers in front of them.

8. The Applications related to the service charge years 2016 (part), 2017, 2018 and 2019. It was common ground that the service charge years ran from 1 January to 31 December each year, that service charges were based on estimated sums and that there was a balancing payment to be made, or credit given, if upon preparation of the service charge accounts after the year end the actual service charge differed from the estimate.

9. The Respondent had not finalised service charge accounts for the service charge year 2018. The tribunal considered that it would be unreasonable to expect the 2018 accounts to be complete less than 3 months from the year end. The service charges in issue were therefore the actual charges for 2016 (part) and 2017, together with the estimated charges for 2018 and 2019.

10. It was clarified at the outset of the hearing that the Applicant's case, insofar as it related to service charges, concerned the reasonableness of the sums and/or whether the costs had been reasonably incurred. The issues did not relate to the interpretation of the Lease nor the Respondent's entitlement in principle to raise charges in the areas in question.

11. The Applicant's written submissions make various references to consultation requirements. Section 20 of the Landlord and Tenant Act 1985 makes provision for consultation in relation to qualifying long term agreements and qualifying works.

12. There were no contentions of failure to consult on a qualifying long term agreement where the charge to the Applicant exceeded £100 in any service charge year. The

tribunal did not address therefore whether any agreement came within the definition of a qualifying long term agreement, or if it did whether the consultation requirements had been met, since any capping that might follow would not affect the service charge payable by the Applicant.

13. The issue of consultation with regard to qualifying works was touched upon in relation to fire safety works and is referred to later in that context.

14. The Applications rely on the legislation related to service charges, as set out in the Landlord and Tenant Act 1985, and the legislation related to administration charges set out in the Commonhold and Leasehold Reform Act 2002. Relevant extracts from both are included in the Schedule.

15. At the hearing the issues raised by the Applicant in her submission (in reply to the Respondent's response) dated 29 December 2018 were addressed in turn, followed by a number of additional issues the tribunal noted had been raised by the Applicant elsewhere. These are taken below in the order in which they were addressed in the hearing.

General Cleaning

Submissions

16. The Applicant referred to approximately 11 visits by the cleaning company Molly Maids York, each visit totalling £65 (inc VAT) with 1 visit in December 2016 of £85 and 1 visit in March 2017 of £27.08 (exc VAT). The Applicant submitted that this appeared to be the only cleaning which had occurred in the time Moreland managed the Residential Premises, with the exception of 1 visit from a London based company. The Applicant submitted that £1682.50 of actual spend on the budget 2016-2018 had been paid, suggesting an overspend of over £1000.

17. The Respondent acknowledged that in February 2017 there was some disruption to the cleaning service and that Molly Maids did not carry out any cleaning services after March 2018. It was also acknowledged that the cleaning that was carried out was internal only and stated that the leaseholders had not been charged for any external cleaning. The Respondent submitted that the invoices and service charges in 2016 and 2017 correlate, the actual charges being £150 in total for 2016 (part year) and £682.50 (against a budget of £850) for 2017. The Applicant's contribution came to £11.73 in 2016 (part year) and £53.36 in 2017.

18. The Respondent clarified in the hearing that in 2018 the cleaning had moved to a quarterly cycle with visits by Marylebone Maintenance at the end of March 2018, end of June 2018 and end of September 2018. The provisional total cost for 2018 was £845, which tallied with the £850 budget figure, although this might not be the final figure.

Findings

19. The tribunal considered that the charges for 2016 (part) and 2017 were reasonable. Where there was a disruption in service the Applicant was not charged. The tribunal accepted that the charges were for internal cleaning and therefore issues with the state of the external common parts were not relevant to the reasonableness of these charges.

20. The service charge years 2018 and 2019 were estimated. Monthly cleans were replaced by quarterly cleans in 2018 however the budget figure remained consistent with 2017

at £850 per annum. Taking into account the level of charges by Molly Maids the tribunal considered a reasonable estimate of annual internal cleaning cost for the communal parts of the Residential premises, based on the new quarterly cleaning cycle, to be £300 per annum (i.e. 4 charges of £75 inc. VAT).

21. The Applicant raised additional concerns as to the quality of the service following the discontinuance of the contract with Molly Maids, however these are not noted or addressed here since they are not relevant to the reasonableness of the budget for cleaning costs.

Skylight

Submissions

22. The Applicant challenged the reasonableness of a charge dated 31 October 2017 of £595 in relation to a site attendance by 'Alin' on 16 September 2017. The charge was noted in an invoice by the Managing Agent which states 'went and saw roof above hallway as water came in due to heavy rain / affixed light bulb'. It was common ground that the roof above the hallway is the one in which a skylight is situated and which the tribunal was able to view (from the hallway and from the roof) at inspection.

23. It was clarified by the Respondent that Alin was employed by the Managing Agent as a coordinator but that he also did jobs as a contractor, and that his work was charged at a fixed rate with no adjustment for distance travelled.

24. The Respondent clarified that the works in question involved cleaning up the water and redecoration. The Applicant raised wider concerns concerning the drainage from a roof area and issues of damp affecting Flat 6 adjoining the area in question. The Respondent submitted that these wider issues were irrelevant to the reasonableness of the sum in question. The Applicant maintained that there had been no redecoration, no cleaning had been done and that the light bulb supplied by Alin did not work.

Findings

25. The Applicant had purchased a flat situated in an old building with the existing roof, cast iron gutters and drainage. That said, the tribunal noted that whilst the timber frames in the skylight needed repainting, they did not appear to be rotten yet and the roof coverings and flashings appeared to be in generally good condition. There was little sign of water penetration internally and if the drain hole to the flat roof in which the skylight was situated was kept unblocked, it might be sufficient to take the water away without causing problems.

26. There was a lack of clarity as to precisely what Alin had done. However the tribunal considered that the charge of £595 to clear the water penetration and redecorate in the area of the skylight was excessive, even allowing for clearing the drain and replacing the internal light fitting or bulb. Based on the tribunal's knowledge and experience a charge of £150 (including any VAT) would be reasonable for this visit and associated tasks.

Electricity Bills

Submissions

27. The Applicant submitted that late payments to the electric provider had resulted in fines and that it was unreasonable to pass these on to the leaseholders. The Applicant also submitted that the Residential Premises had not been assessed by the Managing Agent to find the most reasonable tariff and that a lot of monies had been spent recklessly.

28. It appeared at the hearing that there had been 2 fines of £40 but one had been refunded. In response to further directions following the hearing the Respondent clarified that there had been a duplicate energy statement in the Respondent's earlier submission and that there had only been one fine, which had been refunded.

Findings

29. No compelling evidence was put before the tribunal to establish that the electricity tariff was excessive. The tribunal accepted that the fine levied by the electricity provider had been refunded and that the service charge had not therefore been affected by any late payment.

Management Fee

Submissions

30. The Applicant submitted that there had been a lack of service on the part of the Managing Agent and poor communication. The Applicant cited late fees incurred, disputable maintenance charges and poor decisions regarding services or the lack of these. The applicant further submitted that the Application had been necessitated by the lack of response by the Managing Agent to 2 formal requests for a summary of expenses and that the charges did not represent the service received.

31. The management fees in issue were £612.50 (2016-part), £1470 (2017), £1470 (2018-estimate) and £1521.45 (2019-estimate).

32. The Respondent submitted that the management fee was reasonable and that the Applicant's claims lacked particularity for the Respondent to properly respond - to the extent that the Applicant relied on any other items in issue the Respondent relied on its responses to those items.

Findings

33. The tribunal considered that the management fees were excessive having regard to the service provided. The tribunal took into account the age of the building, there being no lift, and the limited extent of the internal and external common parts. Additionally the tribunal took into account its observations and its overall findings (above and below) including the poor standard of cleanliness of the common areas, the issues with refuse collection, the decision to issue forfeiture proceedings later settled on terms favourable to the Applicant and the lack of responsiveness to the issues raised by the Applicant evidenced in the submissions.

34. Nevertheless there was evidence of the Managing Agents addressing issues. This was not always to the leaseholders requirements but the tribunal did find that some of the Applicant's concerns were without merit.

35. Overall the tribunal considered the Managing Agent's fees to be on the high side, even assuming a good service. In the light of its findings in the preceding paragraphs the

tribunal considered that a reasonable charge for 2017 would have been £900 (an average of £150 per flat) and that (applying a pro-rata reduction) a reasonable charge for 2016 (part) would have been £375. A reasonable budget sum for 2018 and 2019 would have been £900 each year.

Parking

Submissions

36. The Applicant raised the issue of parking fines that appeared to be recharged to leaseholders at a cost of £38.40 in 2017. The Respondent submitted that the figure did not represent a fine, rather it represented the cost of 'scratchcard' parking permits for short stays. The Applicant submitted that if the cost related to permits, the Managing agent could have used permits purchased by leaseholders.

Findings

37. The cost clearly related to the purchase by the Managing Agent of parking permits for occasional use and was reasonable.

Legal Fees

Submissions

38. The service charge accounts for 2017 included an actual cost of £1200 in respect of legal fees. It was common ground that these fees related to forfeiture proceedings brought by the Respondent against the Applicant that had been settled by consent. The Respondent provided, pursuant to further directions, a copy consent order setting aside a previous judgment and ordering that the Respondent pay the Applicant's costs of £500.

39. It was acknowledged by the Respondent at the hearing that the fees of £1200 were not chargeable as service charge. Miss Moses expressed a view that they would be recoverable from the leaseholders as administration charges pursuant to the broad provisions for recovery contained in the leases but made no specific submission to support this view.

Findings

40. The tribunal finds that the amount of £1,200 included in the 2017 service charge in relation to legal fees is not payable as service charge. The Lease makes no provision for the recovery through service charge of fees of this nature.

41. The Respondent has not sought recovery of the legal fees in question from the Applicant or any other leaseholder by way of an administration charge or indicated an intention to do so, nor was the issue of recovery as an administration charge raised within the Applications. In those circumstance the tribunal makes no determination as to whether an administration charge related to such fees would be reasonable and/or payable under the terms of the Commonhold and Leasehold Reform Act 2002.

Management Pack

Submissions

42. The Applicant submitted that she had been charged £350 for an LPE 1 management pack which had never been commissioned by her or on her behalf. The LPE 1 pack would be required in connection with a sale of the Property, however whilst her solicitor had asked what the LPE 1 charge would be, the pack had not been requested.

43. It is common ground that the Applicant has paid £350 for a LPE1, but whether the funds were taken via the service charge account is in dispute. The Respondent submitted that the pack was commissioned by the Applicant's solicitor. The Applicant also stated that it had been brought to her attention that a new leaseholder had been charged £150 for a LPE 1.

Findings

44. The issue before the tribunal was whether an administration charge of £350 had been reasonable and payable pursuant to the Commonhold and Leasehold Reform Act 2002.

45. The Applicant provided various copy emails and letters in support of her contention that she had been improperly charged £350. The correspondence indicated that £350 was being taken by the Managing Agent from the Applicant's 'suspense account' to pay for a management pack. The Applicant's solicitor confirmed in writing to her on 6 July 2018 that having written out to the management company no notice or demand or price was received. The solicitor would have expected to have notification of the cost of provision, and would then have asked the Applicant for sufficient funds before receiving the pack.

46. A letter from the Managing Agent to the Applicant's solicitor dated 26 January 2018 suggested that the request received could be attended to upon receipt of a remittance of £350 but went on to state that the Applicant was in credit on her expense account and that the money would be taken from that if there was no objection within 5 working days.

47. The tribunal considered that the Managing Agent's letter referred to above suggested that the Applicant's solicitor had 'requested' a management pack. The solicitor's letter of 6 July 2018 confirmed that the communication to the Managing Agent had been in writing. If this written communication constituted evidence that the solicitor had not requested a pack, or had asked that the price be clarified before the request was actioned, it would have been logical for a copy of the written communication to have been supplied by the solicitor when writing to the Applicant in July 2018 and for a copy to have been submitted to the tribunal.

48. The tribunal found on the evidence that a pack had been requested, although the manner in which this had been dealt with by the Managing Agent might be considered unorthodox. There was no compelling evidence from the Applicant to suggest that an administration charge of £350 was an unreasonable amount. In these circumstances, the tribunal considered that the administration charge of £350 was reasonable and payable.

Accountancy Fees

Submissions

49. The Applicant challenges the accountancy fees of £287.50 in 2016, £450 in 2017 and estimated fees of £350 in 2018 and £450 in 2019. The Applicant criticised the inclusion of legal fees in the 2017 accounts with no invoice and the lack of receipts and invoices generally. The amount of the fee was not in issue, the quality of the service was.

50. The Respondent submitted that the work was of satisfactory quality and that there is insufficient particularity in the Applicant's claims under this item to respond. The Respondent referred also to the introductory wording in the accounts specifying the standard the accountant was required to meet.

Findings

51. The tribunal considered that the basis of the accountant's instructions was clear in the papers. The accountant had not undertaken a forensic auditing exercise verifying the veracity of every invoice and item of expenditure. This was not required under the terms of the lease nor was the approach taken an unreasonable one. The accountant's instructions were clearly set out and within normal expectations. The amount of the fee was not unreasonable and was payable.

Bins

Submissions

52. Rubbish at the Residential Premises is removed via a contract for the provision of Paladin bins. Two bins are located in the external communal area, the second having being added in January 2017.

53. The Applicant submitted that the addition of the second bin had been the result of poor management. There had been issues with fly tipping and nearby businesses using the bin. York City Council had advised that the single bin would have sufficient capacity for the 6 residents and were prepared to provide 6 individual bins if necessary. A padlock on the existing bin would have represented a reasonable management response. Instead the Managing Agent's response had been to add another Paladin bin to the contract, doubling the cost yet not dealing with the problem as fly tipping simply increased.

54. The Respondent suggested that a padlock to the bin would not have been a satisfactory solution and that the addition of an additional bin had been a reasonable response to a tenant complaint that there was insufficient room in the existing bin.

Findings

55. The tribunal noted that the cost of bin hire and emptying rose from £850 (actual) in 2017 to an estimated £1200 for 2018 and 2019.

56. The tribunal considered that the additional bin encouraged increased fly tipping and misuse by commercial neighbours. It did not bring a perceivable benefit to the residents and the additional service charge was unreasonable. The cost to the Applicant came to £78.70 in 2017 and was estimated to be £93.82 in 2018 and 2019. The tribunal found therefore that the cost should be limited to the cost of one bin and, in the absence of any evidence as to the cost per bin, reduced the charge to £425 (or £39.35 as the charge to the Applicant) in 2017 and the estimated charge to £600 for the later years.

Fire Alarms

Submissions

57. The Applicant submitted that the charges for a fire alarm system in 2017 were unreasonable and queried various charges. There was no comparative information submitted to suggest that the same works and services could have been provided more cost effectively by another party.

58. The Applicant challenged in particular a charge of £300 for Alin supplying and fitting new smoke alarms and a charge of £395 for Alin to meet with a fire assessor. The Applicant submitted that new smoke alarms were not fitted and pointed out that it could be observed at inspection that the smoke alarms were not new. The Applicant submitted further that there had been no consultation with regard to the contract for the new fire system.

59. In the Respondent's submission the smoke alarms were new and had been fitted, and it was necessary to have someone on site to meet the fire risk assessor - £395 was a reasonable sum for doing so. Overall the Respondent submitted that the total costs in the order of £7,000 incurred in 2017 in relation to fire safety were reasonably incurred in order to bring the building up to standard concerning fire safety.

60. The Respondent submitted that the amounts incurred in 2017 in relation to the fire alarm system were in respect of several discrete pieces of work - therefore it was not appropriate to attribute the whole amount to one specific item of major works and there was no requirement to consult pursuant to section 20 of the Landlord & Tenant Act 1985. The Respondent pointed out that even if the fire safety system were viewed as a single contract for major works, the Applicant's contribution of £251.21 would be reduced only by £1.21 to reach the cap of £250. The Respondent was prepared to concede the £1.21 reduction but did not accept that consultation requirements applied.

Findings

61. The tribunal considered that in absence of any clear evidence to the contrary the sum of £300 for Alin to supply and fit smoke alarms had been incurred. The tribunal did not consider the sum of £395 for meeting the fire assessor to be reasonable. Based on the tribunal's own knowledge and experience a sum of no more than £100 would be reasonable. As to the main elements of the fire safety related charges, in the absence of comparative information suggesting that the amounts were unreasonable the tribunal finds the charges to be reasonable and payable. For reasons of materiality the £1.21 concession was noted and included later in the decision but the tribunal did not go on to consider whether the requirement for statutory consultation arose in relation to the fire safety system.

Asbestos Survey

Submissions

62. The budget for 2017 included the sum of £350 for an asbestos survey however the service charge accounts indicate that this was not incurred in 2017. The budget for 2018 also included an estimate of £350 for an asbestos survey.

63. The Applicant submitted that such a survey is unnecessary and a certificate was provided to her when she purchased the Property in 2014 to evidence the 100%

removal of all asbestos in the building. In response to further directions the Applicant has provided copies of the relevant report from Asbestos Management Consultancy Limited dated 28 November 2014.

Findings

64. In the absence of clear evidence that the Respondent knew the status of the Residential Premises in relation to asbestos the tribunal considered it reasonable for the Respondent to include a budget figure for an asbestos survey within the 2018 service charge estimate. It was not argued that the sum of £350 was an inappropriate amount and the tribunal considered this to be a reasonable estimated cost.

65. Through the present proceedings and submissions the Respondent received a copy of the 2014 report and the receipt of this information might therefore be of relevance should any subsequent expenditure be proposed.

Entry Phone System

Submissions

66. A budget amount of £250 was included in 2017 in relation to the entry phone system but no actual cost was incurred. In 2018 the same budget amount was included.

67. The Applicant challenged the inclusion of this budget sum on the basis that no maintenance was required and given the type of system the sum of £250 was unreasonable. The Respondent indicated at the hearing that on the information available no costs had been incurred, but that it was reasonable to include a budget amount even if it were a simple system.

Findings

68. The tribunal considered that it was reasonable to include a budget for repair and maintenance and £250 was a reasonable sum in this regard.

Window Cleaning

Submissions

69. The Applicant submitted that external window cleaning had not been taking place. She submitted that 2 years previously window cleaners had come round on one occasion.

70. The Respondent submitted that the costs for window cleaning were evidenced by invoices dated 8 January 2017 and 1 August 2017 (both £180) from Wilkinson's Cleaning Contractors of York. It was submitted that there had been no costs incurred in the part-year 2016 and that whilst there was a budget sum for 2018 and 2019 (£380 each year) these were estimates only, although copy invoices were submitted to evidence expenditure on 2 occasions in 2018 at a total cost of £360.

Findings

71. The tribunal considered that the window cleaning costs charged in 2017 had been incurred, accepting the evidence submitted by the Respondent in the form of invoices. In the absence of any comparative quotes the tribunal considered the amount incurred in 2017, and the budget sums for 2018 and 2019, to be reasonable.

Bank Charges

Submissions

72. The 2019 service charge budget included the sum of £35 for banking fees. The Applicant challenged these. The Respondent clarified that they were charges incurred with a bank in relation to direct debits, cheques and electronic payments. No evidence was presented by the Applicant as to why these were unreasonable.

Findings

73. The tribunal considered it reasonable to include an estimate of these charges potentially to be incurred with a third party related to the management of the Residential Premises.

Sinking Fund

Submissions

74. The Applicant raised issues concerning the sinking fund. In particular the applicant stated that she had had to pay an additional £197.04 in September 2018 related to a deficit in 2017 and stated that a sinking fund balance of £5000 had been reduced to £0.

75. The 2019 service charge estimate included a sum of £1250 by way of sinking fund contribution. The Respondent clarified that this was to pay for cyclical works that would be required under the terms of the leases - internal works in 2020 and external works in 2021.

Findings

76. There were various issues concerning the sinking fund. It appeared that the payment made by the Applicant in September 2018 was a balancing payment necessitated by the overspend against budget in 2017. The total expenditure was £16,394.70 in 2017 against a budget of £8,420. It seemed reasonable to conclude that the previous sinking fund balance referred to by the Applicant had been applied towards this same deficit.

77. The Lease included provision to set aside amounts to provide reserves or sinking funds towards future expenditure. The tribunal considered it reasonable to include provision within the 2019 budget to contribute to a sinking fund.

Overall Determination

78. The tribunal's findings on the various issues gave rise to the following adjustments to the service charges for 2016 and 2017:

79. In 2016 a reduction of £237.50 for management fees (£612.50 reduced to £375). In 2017 reductions of £445 for Alin's attendance regarding the skylight (£595 reduced to £150), £425 for the bins, £1200 for legal fees, £570 for management fees (£1470 reduced to £900) and £295 for fire safety, giving a total reduction for 2017 of £2935.

80. Based upon the information submitted by the Respondent the Applicant's contributes 7.82% (rounded to 2 decimal places). The reduction in the Applicant's contribution for 2016 therefore comes to £18.57. The reduction in the Applicant's contribution for 2017, including the £1.24 concession related to a fire safety system, comes to £230.76.

81. In relation to the budget sums for 2018 and 2019, the tribunal's findings gave rise to the following adjustments to service charge estimates:

82. In 2018, reductions of £550 for cleaning (£850 reduced to £300), £600 for bins (£1200 reduced to £600) and £570 for management fees (£1470 reduced to £900), giving a total reduction of £1720. In 2019, the same reductions for cleaning and bins, and a reduction of £621.45 for management fees (£1521.45 reduced to £900), giving a total reduction of £1771.45.

83. Applying the Applicant's percentage contribution of 7.82%, the reduction in the Applicant's contribution to estimated service charges for 2018 therefore comes to £134.50 and the reduction for 2019 comes to £138.53.

84. The tribunal additionally determined that the administration charge of £350 for the LPE1 management pack was reasonable and payable.

Section 20C & Section 5A

Submissions

85. The Applicant submitted that the present proceedings could have been avoided had there been greater transparency and had communication by the Respondent been better. The Respondent denied a lack of transparency and submitted that its obligation to allow inspection upon reasonable notice had been complied with. The Respondent submitted that the applicant had made serious allegations and there had been no choice but to defend the proceedings.

Findings

86. Section 20(c)(1) of the Landlord and Tenant Act 1985 enables a tenant to apply for an order that all or any of the costs incurred, or to be incurred, in connection with the proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the tenant or any other person specified in the application. By virtue of section 20(c)(3) the tribunal may then make such order as it considers just and equitable in the circumstances. The Applicant indicated her intention to apply for such an order within her application form but did not specify any other person.

87. Section 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 permits a tenant to apply for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs, including costs in proceedings in the First-tier Tribunal. The tribunal may make whatever order on the application it considers to be just and equitable. The Applicant indicated her intention to apply for such an order within her application form.

88. Whilst the Applicant was not successful in respect of every item in dispute, the tribunal nevertheless determined substantial reductions to the service charge levied across a significant range of items. The tribunal therefore considered it reasonable that the Respondent does not seek to recover the costs incurred in relation to these proceedings from the Applicant either as part of the service charge or as administration charge.

S Moorhouse
Tribunal Judge 23 May 2019

Schedule
(Relevant legislation)

Landlord & Tenant Act 1985

Section 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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

(Subsections (1) and (2):)

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal.

(2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works under the agreement.

Section 20ZA

(Subsection (1))

(1) Where an application is made to a tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 27A

(Subsections (1), (2) and (3))

(1) An application may be made to a 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.

Commonhold & Leasehold Reform Act 2002

Paragraph 1 of Schedule 11

Meaning of "administration charge"

1(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) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(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 other than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administrative charge payable by a tenant which is neither -

(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Paragraph 2 of Schedule 11

Reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 of Schedule 11

Liability to pay administration charges

5.-(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of a determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination -

(a) in a particular manner, or
(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).