FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/LSC/2019/0004**
Property	**:**	**Flats at 483-485 Liverpool Road, London N7 8PG**
Applicants	**:**	**(1) Mr A & Mrs J Banham (FFF, 485 Liverpool Road)** **(2) Mr N Quintana Da Silva & Ms M Keller (SFF, 485 Liverpool Road)** **(3) Ms J Rutherford & Ms S Smith (FFF, 483 Liverpool Road)** **(4) Mr R Bellamy & Ms L Dominian (SFF, 483 Liverpool Road)**
Representative	**:**	**Ms Rutherford & Mr Quintana Da Silva**
Respondent	**:**	**Ms G Waldman (1)** **Ms M Guest (2)**
Representative	**:**	**Ms A Omar (Counsel) – instructed by Benchmark Solicitors LLP**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Mr Jeremy Donegan (Tribunal Judge)** **Mr Trevor Sennett MA FCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**21 & 22 May 2019**
Date of decision	**:**	**18 June 2019**

DECISION

Decision of the Tribunal

(A) The Tribunal makes the determinations set out at paragraphs 28, 31 and 48 of this decision.

(B) The respondents shall pay the sum of £300 to the applicants by 16 July 2019, in reimbursement of the Tribunal fees.

Background

(1) This application concerns the service charges at 483/485 Liverpool Road ('the Property'), which comprises two adjoining, terraced buildings ('483' and '485'). There is a commercial unit spanning the ground floor and basement of the Property with two flats in the upper parts of 483 and two in the upper parts of 485. 483 is on the corner of Liverpool Road and Crossley Street and these flats are accessed by a communal entrance in Crossley Street. There is a separate communal entrance in Liverpool Road for the 485 flats.

(2) The applicants are the leaseholders of the four flats and the respondents are the joint freeholders of the Property. The Property is managed by the first respondent, Ms Waldman, who is a retired architect. Prior to her retirement, she practised from the commercial unit on the ground and basement floors.

(3) The applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 ('1985 Act'), as to their liability to pay service charges for their flats. They also seek orders for the limitation of the respondents' costs in these proceedings under section 20C of that Act and paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'). The relevant legal provisions can be found in the appendix to this decision.

(4) There are separate service charge regimes at 483 and 485 and some variations in the leases. The relevant lease provisions are set out at paragraphs 6-13, below.

(5) The section 27A applications (one per flat) were submitted on 14 December 2018 and directions were issued on 22 January 2019. Direction 7 required the parties to file and serve witness statements "*if so advised*". However, this was not compulsory.

The leases

(6) The hearing bundles included two specimen leases; one for 483 (FFF) and one for 485 (SFF). The Tribunal assumes that both 483 leases are in the same form, as are the 485 leases. The service charge proportions vary slightly at 483 with the FFF paying 35% and the SFF paying 30%. Both flats at 485 pay 33.33% (one third).

(7) The sample 483 lease was granted by the respondents ("*the Lessor*") to the third applicants ("*the Lessee*") for a term of 189 years from 29 September 1985. Clause 1 defines "*the Building*" as "*483 Liverpool Road, London N7 8PG, the boundaries of which are edged red on the plan marked 'B' and annexed hereto*".

(8) The third schedule lists various items of service charge expenditure, including:

> "*(ii) The reasonable fees charged by any Managing Agent employed by the Lessor*
>
> *(iii) In respect of any period during which the Lessor does not employ Managing Agents the Lessor's reasonable fees which fees shall be equivalent to 60% of the fees charged by reputable Managing Agent managing a property similar to the Building*
>
> *...*
>
> *(vii) All other expenses (if any) reasonably incurred by the Lessor in carrying out works or otherwise reasonably incurred in the maintenance management and running of the Building and the Flat whether or not the Lessor has covenanted herein to incur such expenditure or provide such services facilities or carry out such works*".

(9) Detailed service charge provisions are to be found in the fifth schedule, including:

> "*1. The Service Charge shall be 35 per cent of the expenditure more particularly defined in the THIRD SCHEDULE*
>
> *2. The amount of the Service Charge shall be ascertained and certified annually by a certificate (hereinafter called "the Certificate") signed by the Lessor's Auditors or Accountants so soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned*
>
> *3. The expression "the Lessor's financial year" shall mean the period from the 25th day of December to the 24th day of December in every year or such other annual period as the Lessor may in its discretion from time to time determine as being that in respect of which the account of the Lessor either generally or relating to the Building shall be made up*
>
> *4. The certificate shall contain a summary of the Lessor's said expenses and outgoings in respect of the Building incurred during the Lessor's financial year to which it relates and the Certificate (or a copy thereof duly certified by the person by whom the same was given) shall be conclusive evidence for the purposes hereof of the matters which it purports to certify save in the case of manifest error*
>
> *5. On the 25th day of December and the 25th day of June (or in the event of an alteration in the period of the Lessor's financial*

year at such six monthly intervals as shall correspond with such financial year) of every year during the said term the Lessee shall pay to the Lessor such sums (herein referred to as "the Interim Charge") in advance and on account of the Service Charge for the Lessor's current financial year as the Lessor or his agents shall from time to time specify in writing at their discretion to be fair and reasonable PROVIDED THAT subject and without prejudice to the foregoing provisions the amount of the Interim Charge for the Lessor's financial year current at the date of the grant hereof shall be deemed to be the sum of £1000 (one thousand pounds) of which the Lessee shall pay on the signing hereof and a due proportion from the date hereof to the 25th day of December 2007".

(10) The sample 485 lease was granted by Chesterill Investments Limited ("*Lessor*") to Christopher Anthony Anderson ("*Lessee*") on 13 December 1985 for a term of 125 years from 29 September 1985. The format is different to the 483 lease. "*The Building*" is defined in the Particulars as "*The Building known as 485 Liverpool Road, Islington, comprised in the Lessor's Title Registered at H.M. Land Registry with Title Absolute under Title Number LN 122716*".

(11) Again, detailed service charge provisions are in the fifth schedule, with the Lessee covenanting:

"*2.(a) To pay and contribute to the Lessor by way of further rent a service charge equal to the Service Charge Percentage being one-third of: -*

...

(iii) the cost of maintaining repairing and redecorating and (if necessary) renewing:

...

(dd) the cost of maintaining repairing and (if necessary) renewing all the Landlord's fixtures fittings and other items (if any) from time to time in or about the Building or the common parts thereof and used for or in connection with the provision of services or amenities for the benefit of the Lessees in the Building

...

(vi) the cost of all other services which the Lessor may at its absolute discretion provided or install in the Building for the comfort and convenience of the Lessees

(vii) the fees of the Lessor's Managing Agents for the collection of the rents for the Flats and the general management of the Building and the fees of the Lessor's Auditors for the auditing of the Service Charge accounts and the costs of the Certificate (as hereinafter defined)

…

(x) Notwithstanding anything herein to the contrary the Lessee shall pay and contribute to the Lessor by way of further rent one half of the total expenditure incurred by the lessor of maintaining repairing and redecorating and (if any) renewing the entrance hall and stairs leading to the Top Floor and First Floor Flats in the building".

(12) Paragraph 2(a)(x) was varied by a deed dated 02 October 1989 so that the new paragraph reads:

> "*to pay and contribute to the Lessor by way of further rent a further Service Charge equal to one half of the total expenditure incurred by the Lessor in cleaning lighting heating maintaining repairing renewing and re-decorating the entrance hall landings and stairs leading to the second and first floor flats in the building*".

(13) Paragraph 2(b) of the 485 lease includes the following provisions:

"*(i) The amount of the service charge and other charges hereinbefore covenanted to be paid shall be ascertained and certified by a certificate (hereinafter called "the Certificate") signed by the Lessor's Auditors or Accountants or Managing Agents (at the discretion of the Lessor) acting as experts and not as arbitrators annually and soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned*

…

(v) The Lessee shall on the signing hereof and thereafter with every half-yearly payment of rent reserved hereunder pay to the Lessor such sum (hereinafter referred to as "the Interim Service Charge") as the Lessor or its Managing Agents shall reasonably determine and demand on account of the Service Charge".

(14) In summary the service charge accounts for 483 must be certified by the respondents' auditors or accountants. The accounts for 485 must be certified by the respondents' auditors, accountants or managing agents. In both cases, the accounts should relate to the "*Building*", as a whole. In breach of these requirements, Miss Waldman produced individual accounts for the flats, which have not been certified by anyone. During the course of the hearing, the Tribunal explained that no service charges are payable until lease compliant accounts are served on the applicants. The parties subsequently agreed the disputed items for 2016/17 and 2017/18, so this issue no longer arises. However, the respondents should ensure that all future service charge accounts comply with the leases.

(15) Bizarrely, Ms Waldman has demanded the same advance charges for both flats at 483 for 2018/19 (save for her management fee for the

proposed repairs). This is clearly wrong, given that the flats have different service charge proportions (35% for FFF and 30% for SFF). The applicants are only liable to pay the proportions specified in their leases.

(16) The Property is managed by Ms Waldman, rather than independent managing agents. Her reasonable fees can be billed to the service charge account for 483, pursuant to paragraph 1(iii) of the third schedule to these leases. However, she can only recover 60% of the fees that would be charged by reputable agents managing a similar building. There is no corresponding provision in the 485 lease. Arguably, this means her fees cannot be recovered, as there are no "*Managing Agents*" for this building. However, this was not a point taken by the applicants and was not the subject of legal argument.

The issues

(17) The background section in the directions identified the following issues:

Year ended 05 April 2017

Management charges

Repairs

Years ended 05 April 2018 and 2019

Buildings insurance

Management charges

Repairs

Cost of waterproofing wall at 2 Crossley Street ('2CS')

Contingency

Overpayment to leaseholders.

The disputed sums for 2016/17 and 2017/18 represent actual service charge expenditure. The disputed sums for 2018/19 are budgeted figures, based on anticipated expenditure for the year.

(18) By the time of the hearing, the applicants had agreed the sums claimed for buildings insurance, the 2016/17 and 2017/18 repairs and the "*Overpayment to leaseholders*". Further, the respondents had withdrawn three items for each service charge year ("*Peripherals*", "*B/B & mobile*" and "*Which? Legal*"). With some encouragement from the Tribunal, the following additional items were sensibly agreed by the end of the hearing:

Year ended 05 April 2017	483	485
Management charges	£300 per flat	£300 per flat

These sums cover Ms Waldman's fees for general management, preparing the annual accounts and management for cyclical repairs.

Year ended 05 April 2018	483	485
Management charges	£300 per flat	£300 per flat

These sums cover Ms Waldman's fees for general management, preparing the annual accounts, management for cyclical repairs, buildings insurance renewal and dealing with the stopcock failure.

Year ended 05 April 2019	483	485
Fire risk assessment	£105 (FFF)/£90 (SFF)	£100 per flat
Surveyor's fees	£772 per flat	N/A
Waterproofing 2CS wall	£0	N/A
External repairs	£3,500	N/A
Contingency	£0	£0

(19) This means the Tribunal is only required to determine the disputed service charges for the year ended 05 April 2019. Ms Waldman had not produced proper budgets for 483 or 485. Rather she relied on demands for each flat, showing their contributions to the anticipated expenditure for their half of the Property. Based on these demands, the disputed items are:

Year ended 05 April 2019	483 (FFF)	483 (SFF)
Fire alarm	£200	£200
Emergency lighting checks	£100	£100
Fire extinguisher checks & maint.	£150	£150
General management	£200	£200
Preparing annual accounts	£200	£200
Obtaining professionals' quotes	£200	£200
Section 20 notices	£300	£300
Management for building repairs	£1,750	£1,500
Dealing with queries	£300	£300

Year ended 05 April 2019	485 (FFF)	485 (SFF)
Fire alarm	£200	£200
Emergency lighting checks	£200	£200
Fire extinguisher checks & maint.	£60	£60
Works in connection with windows		
Surveyor's fees	-	£500*
Building costs	-	£2,000*
Contingency	-	£1,000*

Management		
General	£250	£250
Accounts	£150	£150
Building works	£1,500	£1,500
Works to windows	-	£300*
Surveyor	£200	£200
Obtaining professionals' quotes	£200	£200
Section 20 notices	£300	£300
Dealing with queries	£300	£300

(20) The four items marked with an asterisk relate to the proposed replacement of windows in the second floor flat at 485. The leaseholders of this flat have agreed to pay for this work, to be undertaken when external repairs are undertaken to the Property. At the hearing, Mr Quintana Da Silva explained that he would be solely responsible for the cost of this work and would instruct the contractor direct. Given this explanation, it is clear these items are not service charge expenses and the Tribunal has no jurisdiction to determine them.

(21) The Tribunal is only required to determine advance service charges for the year ended 05 April 2019, as the end of year accounts are yet to be produced. Advance charges are only payable to the extent they are reasonable, by virtue of section 19(2) of the 1985 Act.

The hearing

(22) The hearing took place on 21 and 22 May 2019. The applicants were represented by Ms Rutherford and Mr Quintana Da Silva, who were accompanied by Mr Banham and Ms Rutherford's partner, Mr Roy Weller. The respondents were represented by Ms Omar, who was accompanied by Ms Waldman.

(23) The applicants produced hearing bundles (two volumes) in accordance with the directions. These were voluminous, running to 1,398 sides and included detailed statements of case. However, they did not include any witness statements and the Tribunal did not hear any witness evidence. Rather, the representatives made oral submissions on the disputed items. The Tribunal also heard representations from Mr Banham, Mr Weller and Ms Waldman.

(24) At the request of the Tribunal, the applicants provided photographs of the Property on the second morning of the hearing. On the same day, Ms Omar produced a helpful note on the disputed repair items in the 2018/19 budget. This summarised the respondents' submissions and assisted the parties in agreeing these items.

(25) Having heard the submissions and representations from the parties and considered the documents provided, the Tribunal has made the following determinations.

Fire alarm and emergency lighting

(26) It is convenient to take these two items together. There is a fire alarm and emergency lighting system at the Property with the main panel in the commercial unit and replicator panels in both buildings (483 and 485). The respondents have demanded advance charges of £200 per flat for fire alarm testing and a further £100 per flat for the emergency lighting. The system is inspected on a regular basis but there are no maintenance/service contracts.

(27) The applicants accepted that testing and maintenance costs are recoverable but disputed quantum. They proposed £50 per flat for fire alarm testing and £100 per flat for the emergency lighting, based on actual expenditure in previous years. Ms Waldman accepted that £50 would be appropriate for the fire alarm, if no repairs or spares were required. However, she had erred on the side of caution when calculating the advance charges. The system is getting older and she had included a contingency for any unforeseen expenses. She had also taken account of a battery problem with the emergency lighting in the commercial unit.

The Tribunal's decision

(28) The Tribunal determines that the following combined, advance service charges are payable for the testing and maintenance of the fire alarm and emergency lighting system for 2018/19:

483	£400 (£140 for FFF and £120 for SFF)
485	£400 (£133.33 per flat)

Reasons for the Tribunal's decision

(29) It is reasonable and sensible to base the budget figures on expenditure in previous year with an uplift for inflation and a small contingency, unless there is evidence that substantial, additional expenditure is required. No such evidence was produced. The contributions demanded for fire alarm testing in 2017/18 varied between £34.89 and £37.17 per flat and the contributions to the emergency lighting varied between £29.26 and £58.57, per flat. Based on these figures and allowing for inflation and a contingency, the Tribunal arrived at global figure of £800 (including VAT) for the Property, which it split equally between the two buildings.

Fire extinguishers

(30) This item relates to the maintenance of the fire extinguishers by Chubb Limited. There are two fire extinguishers in each building. Ms Waldman has demanded £150 from each flat at 483 and £100 from

each flat at 485. The applicants accepted that each flat is liable to pay 50% of these maintenance costs, under the leases but disputed quantum. They proposed £30 per flat, based on actual expenditure in previous years. Ms Waldman explained that she had factored in the potential cost of replacing the extinguishers, when demanding the advance contributions.

The Tribunal's decision

(31) The Tribunal determines that the following advance service charges are payable for fire extinguisher maintenance for 2018/19:

483	£150 (£75 per flat)
485	£150 (£75 per flat)

Reasons for the Tribunal's decision

(32) Again, it is reasonable and sensible to base the budget on expenditure in previous year with an uplift for inflation and a small contingency, unless there is evidence that substantial, additional expenditure is required. Again; no such evidence was produced. The contributions demanded in 2017/18 varied between £17.18 and £28.54 per flat. Based on these figures and allowing for inflation and a contingency, the Tribunal adopted a global figure for the Property of £200 (including VAT). It then added a further sum of £100 (including VAT) to cover the potential cost of replacing extinguishers to arrive at a total of £300 (including VAT), which it split equally between the buildings. The figures should be the same for both buildings, given they each have two extinguishers.

Management fees

(33) It is convenient to deal with all management fees (general, accounts, building works, obtaining professionals' quotes, section 20 notices and dealing with queries) together. They are advance charges for Ms Waldman's fees and total £12,350 for the four flats. As explained at paragraph 2, above, Ms Waldman manages the Property and is a retired architect. She is not a professional managing agent. During the course of the hearing, she acknowledged she had no written management contract.

(34) The management fees for building works, obtaining professionals' quotes and section 20 notices require a brief explanation. There is longstanding disrepair at the Property, including damp in the party wall with 2CS and damp in the commercial unit. All parties accepted that major works are required to remedy this disrepair. Ms Waldman has obtained advice from Brittain Hadley Chartered Surveyors and served notices of intention under section 20 of the 1985 Act. However, the scope of the remedial works is not agreed and Ms Waldman has now sought quotes from alternative surveyors. Once the scope of the works is agreed, further notices will need to be served.

(35) The applicants disputed Ms Waldman's fees on various grounds, including:

(a) The fees are much higher than those charged by professional managing agents;

(b) In the case of 483, Ms Waldman's fee should be limited to 60% of that charged by professional agents, pursuant to paragraph 1(iii) of the third schedule to the lease;

(c) The fees are much higher than those charged in previous years;

(d) The service provided by Ms Waldman is substandard; and

(e) Preparing accounts, obtaining quotes, serving section 20 notices and dealing with queries should be part of the general management fee.

(36) In relation to point (a), the applicants relied on various alternative quotes from independent agents. The basic management fees varied from £200 to £460 per flat, per annum. The applicants attached particular weight to a quote from Prime Management (PS) Limited ('PML') dated 04 April 2019. A draft management agreement was attached to this quote, which included a long list of services covered by the basic fee and a menu of charges for additional services. PML quoted a basic fee of £1,200 per annum (including VAT) for managing the Property. This covers various services, including preparing and distributing service charge budgets, accounting for service charges, provision of year end income and expenditure summaries and providing information to accountants for the preparation of accounts. It does not cover service of section 20 notices, for which there is an additional charge of £10 per notice, per flat with a minimum charge of £100.

(37) The alternative quotes also detailed the sums charged for arranging major works. Most agents charge a percentage of the contract sum, varying from 2% to 15% depending on the extent of their involvement. The lower rates apply where surveyors are also instructed. PML do not charge a percentage basis. Rather, they operate a sliding scale of fees linked to the cost of the works. These vary from £100 to £12,500 and their fees double if a surveyor is not involved and they are required to act as contract administrators.

(38) In relation to the quality of Ms Waldman's service, the applicants raised a number of issues, including flaws in the section 20 notices, the absence of proper service charge accounts and demands, excessive advance charges, a breakdown in relations with third-party suppliers and a lack of clarity from Ms Waldman.

(39) The applicants proposed £600 to cover all management fees for the Property, representing 60% of £1,000 (£250 per flat). The first and second applicants offered an additional sum of £66 for management of the proposed building works, which was said to be 60% of 2% of "*the cyclical works budget*". The Tribunal has been unable to reconcile the

latter figure, as the advance charges for building costs were £2,000 (FFF) and £1,500 (SFF). Further, it is a mystery why differing sums have been demanded for these flats, given they both pay 1/3rd of the service charges.

(40) The applicants submitted that no additional management fees should be payable for section 20 notices, as these had not been charged in previous years and there were flaws in the notices. Alternatively, the fees should be limited to £60 for the Property (60% of PML's minimum charge of £100).

(41) In their statement of case, the respondents outlined the services covered by Ms Waldman's basic fee. These include arranging insurance and maintenance/testing of the fire extinguishers and fire alarm system, paying invoices and accounting for routine service charge expenses. There are additional charges at an "*agreed rate*" of £100 per hour for obtaining quotes, issuing section 20 notices, commissioning works, apportioning tender costs and accounting for repair expenses. Although this rate was said to be agreed; this was disputed by the applicants.

(42) Ms Waldman sought to justify her management fees based on the volume of work undertaken in previous years. She relied on 'invoices' dated 27 September 2017 and 04 April 2018 for £28,800 and £27,300, respectively. They gave a breakdown of her time charged at £100 per hour, save for a fixed charge of £50 for each email sent and received. Although the documents were described as invoices, they do not reconcile with the sums actually charged to the leaseholders in 2017 or 2018, which were much lower. Further, they do not identify the periods covered by the time breakdowns.

(43) Ms Waldman also highlighted the nature of the Property, which is in the Barnsbury Conservation Area and the rents achieved for the two flats in 485, both of which are sublet.

(44) The respondents did not produce any alternative quotes but did rely on a decision of the First-tier Tribunal ('F-tT') relating to flats at ***321 Upper Street (reference LON/00AU/LSC/2017/0115).*** That case concerned a terraced house that had been converted into three flats and a commercial unit on the ground floor. The F-tT allowed a management fee of £300 plus VAT per flat, per annum for 2009/11 and increasing by £10 each year to take account of inflation. The respondents also referred to advice from their solicitor to the effect that fees up to £1,000 per flat are reasonable.

(45) Ms Waldman suggested that an additional fee for preparing accounts was justified, given the work involved. Her 'invoice' dated 04 April 2018 included 30 hours for preparing accounts and invoices for leaseholders. The additional fee for professional quotes was to cover her work in obtaining quotes from alternative surveyors.

(46) Ms Waldman stated that she had based her section 20 notices on those issued by previous managing agents for the Property, Salter Rex. At the start of the financial year, she had anticipated serving consultation notices for the new surveyors and for the major works required at the Property. At the request of Ms Omar the Tribunal identified the following defects in sample notice of intention dated 06 July 2017:

- Notice incorrectly gives the respondents' address as 483 Liverpool Road;
- The notice gave details of one quote that had already been obtained and stated that the respondents intended to accept that quote;
- The notice did not specify an address to which observations should be sent; and
- The notice did not allow 30 days for observations and nominations. The specified deadline of 04 August was only 29 days after the date of this notice.

In addition, the notice related to the proposed appointment of surveyors (Brittain Hadley) and did not relate to 'qualifying works' under section 20.

(47) Ms Waldman explained that her additional fee for dealing with enquiries (£300 per flat), represented 3 hours anticipated work at £100 per hour. However, she acknowledged this was guesswork and described her methodology as a "*finger in the air*".

The Tribunal's decision

(48) The Tribunal determines that the following advance service charges are payable for management fees for 2018/19:

<u>General</u>

483	£540 (£189 for FFF and £162 for SFF)
485	£540 (£180 per flat)

<u>Accounts</u>

483	£0
485	£0

<u>Building repairs/works</u>

483	£100 (£35 for FFF and £30 for SFF)
485	£100 (£33.33 per flat)

<u>Professionals' quotes</u>

483	£0
485	£0

Section 20 notices

483	£0
485	£0

Queries

483	£0
485	£0

Reasons for the Tribunal's decision

(49) The Tribunal reminded itself that advance service charges are only payable to the extent they are reasonable. Further, it is appropriate to assess reasonableness in the light of the respondents' knowledge at start of the service charge year; rather than now.

(50) In the Tribunal's experience most professional agents charge fixed, basic management fees which covers routine services. Typically these range from £200 to £500 per flat, per annum, which is in line with the applicants' alternative quotes. Further fees are then payable for additional services and most management contracts include a 'menu', listing these fees.

(51) Having regard to the alternative quotes and the Tribunal members' knowledge, gained from professional experience and hearing similar cases, a reasonable basic fee for professional agents would be £1,800. This is the figure for the Property as a whole and is based on £300 per flat with an additional charge of £600 for the commercial unit. The latter reflects the much larger size of this unit, which spans the entire Property. This Tribunal notes that the PML's quote of £1,200 was incorrectly based on 4 units (2 commercial and 2 residential), which equates to £300 per unit.

(52) The Tribunal is not bound by other F-tT decisions and attached little weight to the ***321 Upper Street*** decision, as this is just one case of the thousands that have been decided by the F-tT. The Tribunal attached no weight to the advice from the respondents' solicitor, as there was no evidence from this solicitor (either written or oral) or information about his expertise in leasehold management.

(53) The Tribunal apportioned half the £1,800 fee to each building. It then applied the 60% rate to 483, pursuant to paragraph 1(iii) of the third schedule to these leases. This reduced the basic fee to £540, which is the sum allowed for general management at 483. There was no suggestion that Ms Waldman is VAT registered so no VAT has been allowed.

(54) The 485 leases do not specify the management fees payable, if any, where there are no agents. It is not reasonable for Ms Waldman to charge at the same rate as professional agents. Although she has considerable knowledge and experience in the building field, she is not

a professional managing agent. This was apparent from the flaws in her section 20 notices, the confusing service charge accounts (which were not lease-compliant) and her failure to use the correct service charge proportions at 483. During the hearing she accepted that a number of service charge demands had not been accompanied by summaries of rights and obligations (contrary to section 153 of the 2002 Act). The service provided by Ms Waldman fell below that expected of professional agents. Further, she is not regulated and is is unlikely to have professional indemnity insurance. Having regard to all of these factors, the Tribunal also applied the 60% rate to 485 so the same general management fee (£540) applies to this building.

(55) The Tribunal agrees with the applicants that preparing accounts, obtaining professionals' quotes and dealing with enquiries should be part of the basic management fee. No additional fees are allowed for these items. The Tribunal accepts that the preparation and service of section 20 notices is outside the scope of the basic fees and can attract an additional fee. However, nothing is allowed for this item due to the flaws in the sample notice (see paragraph 46, above). It is only reasonable to charge an additional fee where notices are served in the correct form. The Tribunal has no confidence in Ms Waldman's ability to serve valid notices.

(56) The Tribunal also accepts that management of building works can attract an additional fee. At the start of the service charge year, Ms Waldman intended to instruct a surveyor to identify the repairs required and then arrange these works. No doubt she would have had some input but it was the surveyor who would undertake the investigations, prepare the specification, obtain tenders and then administer the works. Ms Waldman's role should have been very limited and the Tribunal allows a total fixed fee of £200 for the Property. Again, this has been split equally between the two buildings.

(57) Finally, the Tribunal wishes to comment on Ms Waldman's invoices dated 28 September 2017 and 04 April 2018. The time claimed in each invoice was excessive (as were the charges of £50 for each email sent and received). That is not to say the Tribunal disputes Ms Waldman's time records. Rather the management should have taken a fraction of the time claimed. It is clear that Ms Waldman micromanages the Property and has generated a great deal of unnecessary work.

Costs

(58) The Tribunal considered the section 20C and paragraph 5A applications at the end of the hearing. Ms Omar stated that the respondents would not be passing on any of their costs through the service charge accounts or to the applicants, whatever the outcome of the case. In the light of this concession, the Tribunal makes no orders on these applications.

(59) The applicants also sought a refund of the Tribunal fees they had paid[1], totalling £300. This was opposed by Ms Omar, who submitted that that the respondents had acted reasonably and tried to compromise.

(60) Having regard to the outcome of the case, with the applicants obtaining substantial reductions in the disputed service charges, it is appropriate that the respondents refund the Tribunal fees. The sum of £300 is to be paid to the applicants within 28 days.

The next steps

(61) During the course of the hearing, the Tribunal suggested that the respondents might wish to appoint professional managing agents. It repeats this suggestion here. The Property is not being effectively managed at present. The Tribunal has no doubt that Ms Waldman has tried her best but she lacks the objectivity and relevant expertise to manage properly. Further, the role must be extremely time consuming and draining for her. Appointing independent agents would relieve her of this burden and would benefit all parties.

Name: Tribunal Judge Donegan **Date:** 18 June 2019

RIGHTS OF APPEAL

1. If a party wishes to appeal this 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.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18 Meaning of "service charge" and "relevant costs"

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

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19 Limitation of service charges: reasonableness

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

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions 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.

Section 20 Limitation of service charges: consultation requirements

(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) the appropriate 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 or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.

(2) In section 20 and this section –

(a) "qualifying works" means works on a building or any other premises, and

(b) "qualifying long term agreement" means (subject to subsection (3)) and agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

...

Section 20C Limitation of service charges: costs of proceedings

(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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Section 21 Regular statements of account

(1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred –

(a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the day of the request, or

(b) if the accounts are not so made up, in the period of twelve months ending with the date of the request,

and which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period.

(2) If the tenant is represented by a recognised tenants' association and he consents, the request may be made by the secretary of the association instead of by the tenant and may then be for the supply of the summary to the Secretary.

(3) A request is duly served on the landlord if it is served on –

(a) an agent of the landlord named as such in the rent book, or similar document, or

(b) the person who receives the rent on behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection (1)(a) or (b) whichever is the later.

(5) The summary shall state whether any of the costs relate to works in respect of which a grant has been given or is to be paid under section 523 of the Housing Act 1985 (assistance for provision of separate service pipe for water supply) or any provision of Part I of the Housing Grants, Construction and Regeneration Act 1996 (grants, &c for renewal of private sector housing) or any corresponding earlier enactment and set out the costs in a way showing how they have been or will be reflected in demands for service charges and, in addition, shall summarise each of the following items, namely –

(a) an any of the costs in respect of which no demand for payment was received by the landlord within the period referred to in subsection (1)(a) or (b),

(b) any of the costs in respect of which –

(i) a demand for payment was so received, but

(ii) no payment was made by the landlord within that period,

(c) any of the costs in respect of which –

(i) a demand for payment was so received, but

(ii) payment was made by the landlord within that period,

and specify the aggregate of any amounts received by the landlord down to the end of that period on account of service charges in respect of relevant dwellings and still standing to the credit of the tenants of those dwellings at the end of that period.

(5A) In subsection (5) "relevant dwelling" means a dwelling whose tenant is either –

(a) the person by or with the consent of whom the request was made, or

(b) a person whose obligations under the terms of his lease as regards contributing to relevant costs relate to the same costs as the corresponding obligations of the person mentioned in paragraph (a) above relate to.

(5B) The summary shall state whether any of the costs relate to works which are included in the external works specified in a group repair scheme, within the meaning of Chapter II of Part I of the Housing Grants, Construction and Regeneration Act 1996 or any corresponding earlier enactment in which the landlord participated or is participating as an assisted participant.

(6) If the service charges in relation to which the costs are relevant costs as mentioned in subsection (1) are payable by the tenants or more than four dwellings, the summary shall be certified by a qualified accountant as –

(a) in his opinion a fair summary complying with the requirements of subsection (5), and

(b) being sufficiently supported by accounts, receipts and other documents which have been produced to him.

Section 27A Liability to pay service charges: jurisdiction

(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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Commonhold and Leasehold Reform Act 2002

Schedule 11

Part 1

Reasonableness of Administration Charges

Meaning of "administration charges"

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 otherwise 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 (c. 42) 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 administration 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.

Reasonableness of administration charges

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

...

Liability to pay administration charges

5(1) An application may be made to the appropriate 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 the appropriate 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 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).

Limitation of administration charges: costs of proceedings

5A(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.

(3) In this paragraph –

(a) "litigation costs means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.

Service Charges (Consultation etc) (England) Regulations 2003

SCHEDULE 4

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREMENTS TO WHICH REGULATION 7(3) APPLIES

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2. Interpretation

(1) In these Regulations –

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"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice;

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PART 2

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FROM WHICH PUBLIC NOTICE IS NOT REQUIRED

Notice of intention

8. (1) The landlord shall give notice in writing of his intention to carry out qualifying works –

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall –

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify –

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

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