FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	**LON/00AU/LSC/2019/0246**
Property:	**THE VARIOUS FLATS OWNED ON (SHARED OWNERSHIP) LEASEHOLD BY THE APPLICANTS AND KNOWN AS FABLE APARTMENTS 261c CITY ROAD, LONDON, EC1V 1AP**
Applicants:	**THE VARIOUS LEASEHOLDERS IDENTIFIED IN THE SCHEDULE ATTACHED TO THE APPLICATION**
Representatives:	**Ms Byroni Kleopa, of Counsel** **JPC LAW, Solicitors**
Respondents:	**(1) CLARION HOUSING ASSOCIATION LIMITED** **(2) AVON GROUND RENTS LIMITED**
Representatives:	**(1) Ms Elodie Gibbons, of Counsel Trowers and Hamlins Solicitors** **(2) Mr Tim Hammond, of Counsel Scott Cohen Solicitors**
Type of Application:	**An application for the liability to pay and reasonableness of service charges**
Tribunal Members:	**Judge Shaw** **Mr S Mason BSc FRICS** **Mr L Packer**
Venue of Hearing:	**10 Alfred Place, London WC1E 7LR**
Date of Directions:	**10th July 2019**
Date of Hearing:	**11th and 12th November 2019**

Date of Decision: **16th January 2020**

DECISION

INTRODUCTION

1. This case involves an Application dated 8th July 2019 ("the Application") for a determination of the liability to pay, and the reasonableness of, certain service charges, pursuant to the provisions of section 27A of the Landlord and Tenant Act 1985 ("the Act").

2. The Application is made by the various leaseholders identified in the schedule to the Application ("the Applicants"). The Applicants are all leaseholders pursuant to the provisions of separate Shared Ownership Leases granted in early 2016 by Affinity Sutton Homes Limited, whose interest is now owned by Clarion Housing Association ("the First Respondent"). The immediate landlord of the First Respondent is Avon Ground Rents Limited ("the Second Respondent"), which holds a lease from City Road Basin Limited. City Road Basin Limited was in turn granted a lease by Canal and River Trust Limited. The slightly convoluted chain of title of Freeholder, Lessee, Under-lessee, sub-Under-lessee, and Shared Ownership lessees (effectively sub-sub-Under-lessees) is helpfully set out in a flowchart at paragraph 16 of the Applicants' Skeleton Argument, and at paragraphs 3-9 of the Second Respondent's Skeleton Argument. For present purposes, perhaps it can be simplified by saying that the Second Respondent is the landlord of the First Respondent, and the First Respondent is the landlord of the Applicants.

3. The Application concerns an Estate on the north side of City Road, and north-east side of Graham Street and 261 City Road, London WC1V 1AP. The Estate comprises three blocks of flats known as Book House, Chronicle Tower and

Fable Apartments. The dispute concerns Fable Apartments ("the Property") which comprises 107 flats, 70 of which are held on Shared Ownership leases, and the remaining 37 flats are used by the First Respondent for the provision of social housing.

4. The Tribunal has been asked to make determinations in respect of four issues. Three of those issues effectively concern the Second Respondent only. The remaining issue affects the First Respondent only. The parties were represented before the Tribunal by counsel, as set out above, and the Tribunal also heard evidence from three witnesses, as will be noted below. The hearing took place over two full days on 11th and 12th November 2019.

5. By way of further background, the Applicants are challenging parts of their service charges for the years 2016-2019 inclusive. Save for the year 2016, the Applicants have been presented to date only with estimated budgets. Although the First Respondent is the immediate landlord of the Applicants, the so-called "hard services" (cleaning, maintenance etc.) are actually provided by the Second Respondent, through its appointed agent, namely Y & Y Management Limited. The Tribunal heard from Mr Adam Azoulay of Y&Y, who explained that the Second Respondent purchased the Estate from the original developers, and that the hand-over of certain accounting and other documentary material has still not been completed, although he hoped that completion was imminent. All parties confirmed to the Tribunal, that they were content for the Tribunal to make findings on the four contentious issues, and the parties themselves would calculate the adjustments, if any, to those charges already levied, or yet to be finalised, consequent upon those findings.

6. It is proposed to deal with the three issues concerning the Second Respondent first, and to conclude with the issue concerning the First Respondent.

INSURANCE PREMIUMS

7. Points were initially taken on behalf of the Applicants that the Building Insurance Premiums for the years in question were excessive and brought about

by double-counting of Estate and Block costs as defined in the leases. A further point was taken that there may have been inflation of the premiums by excessive landlord's commission taken by the Second Respondent. Both these points were extensively scrutinised on behalf of the Applicants in cross-examination, and detailed and clear responses given by Mr Azoulay in evidence. He explained how there was no double-counting, and that no landlord's commission was taken. There was also a Witness Statement to similar effect from Mr Moscovitz, a director of the Second Respondent (although the Applicants argued that little or no weight should be attached to that statement as Mr Moscovitz had not attended). In the event, after this evidence, the Applicants did not seriously pursue these points. The Tribunal was satisfied on the evidence before it, that neither point was well-founded and rejects the challenges on those grounds.

8. The Applicants further argued, that in any event the premiums had to have been reasonably incurred under the Act, and that they were excessive. To support this contention, they relied upon the evidence of Mr Christopher Carter, one of the lead Applicants and a shared-ownership leaseholder of Flat 98. Mr Carter informed the Tribunal that he worked for a property fund (he is in fact a surveyor) and had been present at a presentation given to that fund by a man called Chris Brown. He spoke briefly to Chris Brown after the lecture and then sent him an e-mail supplying details of the property and the current insurance cover and costs. Chris Brown replied in an e-mail dated 24th June 2019. As observed by the Second Respondent, the e-mail is brief, heavily qualified, and suggests that cover might be obtained for £22,000 per annum (excluding tax). The actual cover that year was £36,741.04 (excluding tax). Chris Brown did not make a witness statement, did not attend the hearing, and his precise credentials or qualifications were not supplied to the Tribunal. No quotation from an alternative insurer was supplied.

9. On this basis, the Applicants invited the Tribunal to reduce the payable part of the service charge related to insurance by 30%.

10. Mr Azoulay, for the Second Respondent, gave evidence, both by Witness Statement and in person, that the insurance cover for the Property was placed

with well-established and known dedicated Insurance Brokers, Reich Group of Companies, to test the market and obtain the best cover at the best cost available. He produced an e-mail from Rob Morrison, a Senior account Manager at Reich, and who carries a Certificate of the Chartered Institute of Insurers. He confirms that the current insurers are A rated and offered the best terms for the comprehensive cover requested. In six specific bullet points he sets out with clarity why the Second Respondent opted for the current insurers. It is true that he did not make a witness statement, nor attend the hearing. However, in so far as the Tribunal has to make a judgment between the material supplied by the Applicants and that of the Second Respondents, it is in no doubt that the Second Respondent's evidence is to be preferred. Both Mr Azoulay and Mr Moscovitz gave clear evidence in witness statements that the insurance was placed through reputable brokers, and the itemised and detailed Insurance Certificates were produced. Mr Morrison explained fully why the current cover is reasonable, and that the market was tested. Mr Brown, whose e-mail was relied upon by the Applicants, was vague and "broad-brush" (as contended for by the Second Respondent), his qualifications are unclear and he supplied no firm alternative quotation documents.

11. This first challenge by the Applicants is rejected, and on the evidence before it, the Tribunal holds that both the actual and estimated insurance costs are reasonable.

CLEANING COSTS

12. The Applicants challenged the cleaning costs element of the service charges for each of the relevant years, not so much for reasons relating to the level of cost or quality of the cleaning (about which there was no complaint), but upon the apportionment of the costs throughout the Estate. Their case both in their Statement of Case, and as expanded by Mr Carter in evidence, was essentially that there are four cleaners assigned to the Estate. Only one of those cleaners is allocated to Fable Apartments. Accordingly, the leaseholders of Fable Apartments should only be paying 25% of the overall costs.

13. The Second Respondent's case, as set out in the Statement of Case and expanded upon by Mr Azoulay in evidence, was well summarised by their counsel in closing submissions. It was that:

- The Second Respondent under its own lease (the sub-Underlease) is obliged to pay in respect of services relating to the inside common parts of Fable Apartments, 100% of the sums spent, and in respect of other services a "fair and reasonable proportion" – which is defined by reference to gross internal areas. The Second Respondents (through Y&Y) have adopted the same methodology in apportioning the Applicants' respective contributions. This methodology is logical and widely used.
- The Applicants' argument ignores the fact that there are four cleaners during the week, and one cleaner on Saturday and another on Sunday. There is not a constant rigid rota of one cleaner alone giving attention to this block.
- The change proposed by the Applicants would present a significant disadvantage to the lessees of Book House on the Estate, which has a significantly smaller gross internal area compared to Fable Apartments, and equality between the blocks is manifestly unreasonable. Indeed Brook House would end up paying double its current contribution.
- The nub of the Applicants' complaint seemed to be, especially so far as Mr Carter was concerned, that he was not able to use the Spa and Pool on the Estate (unless at extra charge) and he saw no reason therefore why he should be paying for their upkeep. However, the Applicants' liability is governed by their leases, and the extent to which a particular service is used by individual lessees is not a proper basis for fixing apportionment.
- The annual cost for Estate and Block Cleaning in the case of Mr Carter (who has a penthouse bigger than most of the apartments) computes to £317 per annum, which objectively is perfectly reasonable, and compares favourably with the alternative cleaning company contacted by Y&Y for comparative purposes.

14. The arguments put forward on behalf of the Second Respondent seem to the Tribunal to be cogent and compelling, and are adopted by the Tribunal for the reasons contained in the bullet points above. The challenge to the cleaning costs by the Applicants is rejected, and no change is made to the actual or estimated costs, which seem to the Tribunal to have been reasonably incurred.

THE SECOND RESPONDENT'S MANAGEMENT FEE

15. The third and final point taken by the Applicants against the Second Respondent concerned its management fee. By virtue of paragraph 16 of Schedule 3 to the Sub-Underlease (in respect of which the Second Respond is entitled to be indemnified by the Applicants) the Second Respondent is entitled to recover the cost of

    "*Engaging a managing agent or, if the Landlord does not engage an independent managing agent, a sum payable to the Landlord equal to a maximum of 10% of the Service Cost (excluding this item).*"

    There was no dispute by the Applicants that the Second Respondent was entitled to recover Y&Y's management costs as part of the service charge. The Applicants' case however was that Y&Y was not "*independent*" within the meaning of the clause, and was therefore subject to the contractual 10% cap.

16. The thrust of the Applicants' argument was that while they accepted that Y&Y Limited was a separate legal entity, Mr Moskovitz was, and is, a shareholder of Y&Y noted at Companies House as a Person with Significant Control, his shareholding being more than 25% but less than 50%. Because principally of this shareholding, they argued that Y&Y could not be regarded as an independent agent.

17. Unsurprisingly, the matter is covered by authority, to which the Tribunal was taken by the Second Respondent. In *Skiller v Charles [1991] 24 HLR 412 (CA),*

Parker LJ held that: *"I can see no reason why in such circumstances the landlord should not employ a company and charge therefor, even if he owned that company, provided that it was not a complete sham."*

18. Further, in *Country Trade Limited v Noakes [2011] UKUT 407 (LC)* HH Judge Gerald held that:

"Unless, which is not the case here, it is asserted that the management arrangements were a complete "sham" i.e. an arrangement which disguised the true relationship or agreement between the parties, there is nothing in principle objectionable to a management company such as the Appellant employing a company it owns or is involved in to provide services."

19. In this case, the Applicants specifically eschewed any allegation of sham, which really on the evidence, they were obliged to. The management company was incorporated two years before the Second Respondent existed, and managed the Estate for the previous owners, City Road Limited. There are no shared directors, and Y&Y are professional agents governed by ARMA and the Property Ombudsman, and with its own entirely separate property portfolio. On the facts and authorities, the Tribunal is satisfied that it is an *"independent agent"* for the purposes of the lease and not subject to the 10% cap. The Tribunal would add that it was told that its total fixed fee per unit totals £340+ VAT, which in the experience of the Tribunal is well within the reasonable range for an Estate of this size and complexity. In all the circumstances this third challenge of the Applicants is also rejected and the fees claimed are recoverable as charged.

THE CASE AGAINST THE FIRST RESPONDENT

20. The challenge by the Applicants against the First Respondent, was in respect of its management fee. By virtue of Clause 7.4 of the shared ownership lease, it is provided that:

"The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair, management, maintenance and provision of services for the Building and shall include (without prejudice to the generality of the foregoing):

(a) the costs of and incidental to the performance of the Landlord's covenants contained in Clause 5.2 (Insure) and Clause 5.3 (repair redecorate renew Common parts) and Clause 5.4 (Lighting and cleaning of Common Parts);

(b) .....

(c) all reasonable fees, charges and expenses payable to the Authorised Person any solicitor, accountant, surveyor, valuer, architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection of rent (but not including fees, charges or expenses in connection with the letting or sale of any premises) including the cost of preparation of the account of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work;"

21. It is plain therefore that the First Respondent is entitled to charge a management fee, and indeed such entitlement is not in issue. It is the methodology for calculating the fee, and the resultant quantum, which is challenged. The First Respondent calculates its fee by applying a blanket 15% of the cost of managing its entire residential portfolio. Clarion is a significant housing association, and as at the end of March 2019, managed 119,046 homes. It was not seriously contested that Y&Y Ltd., the managing agent of the Second Respondent, supplied most or all of the services. As set out in First Respondent's Skeleton Argument: *"R1 is an intermediate leasehold owner pursuant to the Fable Underlease and R2 is the landlord under the lease. R2 incurs the cost of providing the services to Fable. Those costs are passed on to R1 pursuant to the Fable Underlease. In turn R1 passes a proportion of those costs to its lessees pursuant to the Shared-Ownership Leases and in addition recovers a management charge in relation to its own costs equivalent to 15% of*

all other costs." In effect, the First Respondent receives invoices from the Second Respondent (through Y&Y) makes adjustments for its own differently constituted service charge year, and splits the costs between the individual flats at the Property – it then adds on its 15% management fee, calculated as set out above. The result of this is that, in the sample case of the Applicant Mr Carter, the First Respondent has charged him an annual management fee of £575.9 (2016) rising to £721.74 (2019) The Second Respondent's agents, Y&Y, who it will have been observed, actually arrange for and supply the services, charge a fixed fee of £340 + VAT for each unit, which is then apportioned by Clarion according to the service charge percentage for each flat and in Mr Carter's case this results in Y & Y plus Knight Frank (Basin management charge) of £760.86 (2016) rising to £785.86 (2019).

22. The First Respondent's case was supported by evidence from Mr Haroon Bashir, its Head of Rents and Service Charges. In a Witness Statement expanded in oral evidence, Mr Bashir explained that the First Respondent manages its housing stock on a *"tenure neutral basis."* In other words, the First Respondent does not retain a designated leaseholder department. The service charge team manages both socially tenanted and leasehold owned or shared-owned stock. The expression *"tenant neutral"* seemed to be invoked as a virtue. However, of the 119,046 homes managed by the First Respondent, 18,538 are leasehold properties – i.e. about 15.5%. The management costs of the remaining 84.5% of the stock are included in the figure used by the Respondent to calculate its fee. Mr Bashir confirms in his Witness Statement that the First Respondent applies its 15% fee across the board, regardless of whether the services are supplied or arranged by the First Respondent or a Third Party. Specifically, he stated that *"Where a third party provides the day to day services, we recharge the invoiced costs to residents plus the 15% management fee. The reason for doing so is that irrespective of how many hard services are directly provided at any one scheme, the overall management costs and time spent are broadly equivalent."* There was no particular evidence produced to support this assertion. For example, there was no evidence of any kind of analysis of a portion of a cross-section of the stock, demonstrating this generalised proposition. He similarly asserted that *"it would be very difficult and costly to*

calculate a fixed management fee for each scheme individually, because if costs were incurred on an actual time spent basis the figures would constantly change…"

23. He then went on to set out 10 heads of cost that he had determined were relevant to be included in the fee charged to the Applicants. These can be found at paragraphs 15-22 of his statement, which the Tribunal has considered carefully together with his oral evidence. He also referred the Tribunal to some spreadsheets which showed some enquiries from leaseholders at the Property (generally about their accounts) and which he argued justified the First Respondent's fee.

24. Counsel on behalf of the First Respondent referred the Tribunal to 2 authorities. In the first, *Palley v London Borough of Camden [2010] UKUT 469 (LC) Upper Tribunal*, HH Judge Mole QC upheld the LVT in a case in which the principal issue, as understood by the Tribunal, had been the issue of double-counting and duplication in the calculation of the service charge. The LVT upheld the charge, having been persuaded that there was no double-counting, whilst in terms holding: *"Our decision is not intended to give the landlord carte blanche to charge overheads on top of services. In each case, it will be open to tenants to challenge the amount of overheads…"* Judge Mole QC, in turn upheld the LVT, but again added: " *…..while* ***each lease needed to be construed according to its own facts and circumstances and there must be clear terms in the provisions of the lease that are said to entitle a landlord to recover money from his tenant by way of service charge****, there is nothing in principle to confine a service charge to the cost of the actual service, to the exclusion of any management costs included in its provisions."* (Emphasis added).

25. The learned judge also held that: "*It may well make business sense to centralise some aspects of management with the result that it is difficult or impossible to attribute the costs of that management to a particular building or estate with any precision. In such a case, the practical solution might well be for the Landlord and the Tenant to agree a reasonable sum to be calculated by*

the sort of formula that is found in the leases in this case........the circumstances of landlords may be enormously different and what is reasonable in the case may not be reasonable in the case of another."

26. It does not seem to this Tribunal that Judge Mole QC was seeking to set down any fixed principle in that case; indeed, he was at pains to emphasise (as was the LVT below) that each case and lease will need to be considered on its own facts and evidence. He recognised the difficulties sometimes in reaching precision, and suggested a solution that might consensually be sought. That case was of course different from the instant case, in at least two important respects: first, there was express provision in the service charge provision in the lease for the charging of a 10% fee. Secondly, to the extent that charges were being included in the fee in respect of a building other than that in which the flat in question was situate, they referred to *"the Estate"* (as defined in the lease) of which it was part – not, as in this case, the thousands of other properties within the portfolio of the London Borough of Camden.

27. The other case to which reference was made was *South Tyneside Council v Ciarlo [2012] UKUT 247 (LC)*. In that case, the local authority was held to be entitled to recover from its tenants, the due proportion of the reasonably estimated costs incurred in respect of all its housing stock. There were good reasons for such a finding being made. The local authority in question had a housing stock of just 16,000 flats (as compared with nearly 120,000 homes in this case). Notwithstanding its, in relative terms, small portfolio, it had taken the trouble to set up a dedicated Leasehold Team, whose sole responsibility was to deal with the leasehold properties, and then devised a way in which the costs of the Leasehold Team could be identified within the global costs. They then subtracted from those global costs (ie for the whole portfolio) expenses which were not general costs of management of the leasehold properties within the stock. The balance left was divided by 702 (the number of long leasehold properties) resulting in a charge of £141.43 per flat, which the local authority the scaled down further to £125 per flat. This was uplifted each year by an inflationary multiplier (see paragraphs 9 and 10 of the decision).

28. The local authority gave detailed evidence about how it went about isolating the costs which impacted on leaseholders receiving the management service, and those which did not. The second layer of isolation was that even within those heads of costs which were relevant, a percentage (often a very small percentage) of those costs was taken as being referable to the leasehold stock, given the size of the overall portfolio (see paragraphs 16-18 generally). It was urged on behalf of the local authority, as was the case, that management costs had been calculated on the basis of the sum which had actually been incurred to manage the leasehold portfolio, and then an equal split made (because each leaseholder has the same service available, whether they make use of it or not). The local authority had included only in the management fee such costs as were generic and common to all leasehold properties.

29. The Upper Tribunal was satisfied on the evidence that the local authority *"had performed a careful and reasonable apportionment of the global management costs over the entire housing stock, so as to obtain a fair and reasonable assessment…."*

30. In the present case, Mr Bashir informed the Tribunal that the *"First Respondent manages its housing stock on a tenure neutral basis. We do not have a separate leasehold department and our service charge team manages the service charges for both tenanted and leasehold stock….."* He confirmed that a flat fee of 15% upon the cost of service charges was applied, regardless of whether the First Respondent supplied such services or a third party. Where a third party provided the day-to day services (in this case Y&Y) the First Respondent nonetheless charges the invoiced costs to residents and in addition, their 15% fee on top. He said (see para 12 of his statement):

"The reason for doing this is that irrespective of how many hard services are directly provided at any one scheme, the overall management costs and time spent are broadly equivalent. It would be practically very difficult and costly to calculate a fixed management fee for each scheme individually, because if costs were incurred on an actual time spent basis on each scheme for each service charge year, the figures would constantly change and be subject to review.

Applying a 15% management fee is a cost effective method and merely reflects an attempt to recovering (sic) our costs of managing the housing stock."

31. The evidence in support of these assertions seemed to the Tribunal to be thin. The First Respondent has not established a dedicated Leasehold Department (notwithstanding a portfolio of 18,538 leasehold properties) in contrast to the South Tyneside Council in the case to which the Tribunal was referred. Mr Bashir was candid in telling the Tribunal that the 15% flat rate charged was not initially established by reference to the analysis to which the Tribunal will now refer, but was *"our policy."* The *"policy"* now having been challenged he endeavoured to reason backwards, or ex post facto, in order to demonstrate the reasonableness of this policy.

32. At pages 716-718 in the bundle, Mr Bashir set out various heads of management expenditure, and sought to demonstrate (by reference to a spreadsheet and call log) that the costs incurred ultimately justify the 15%, and in fact that this leaves the First Respondent with a shortfall. However, some of the heads of expenditure, although said to relate to leasehold expenditure, seem more applicable to social tenants (for example, under Customer Support "*decants, housing benefit notifications, right to buy or right to acquire enquiries, tenancy reviews, welcome visits…")*. There is none of the reasoned and stage by stage stripping out of irrelevant costs, and thereafter sensible application of a percentage discount so as properly to reflect the minority position of leaseholders as appeared in the South Tyneside case.

33. The Applicants submitted that it was not seriously disputed that the bulk of the services is effectively supplied by the Second Respondent through Y&Y. The First Respondent's function was mainly to carry out the administrative task of making adjustments necessary to allow for the two accounting years, and then split the costs between the individual flats.

34. . They further contended that fixed management fees are now widely recognised as the industry standard – see paragraph 3.3 of the RICS Service Charge Residential Management Code.

35. Yet further, the Applicants supplied the Tribunal with three comparables from other Housing Associations in the London area – (i) Sovereign charges £63 per unit per annum, and is analogous because they too supply the services through an external managing agent (ii) Notting Hill Genesis – a fixed fee of £120, with again services provided by and external agent, and (iii) At Aquarelle House, Peabody Housing Association charge a fixed fee of £160 per unit per annum. Aquarelle House is situated immediately adjacent to the Estate in this case.

36. The Tribunal prefers the evidence and argument of the Applicants to that of the First Respondent, for the reasons given in paragraphs 33-35 above, coupled with the observations made when reviewing the First Respondent's case above. The First Respondent argued that the Tribunal should place little reliance on the comparables since they involve different systems upon which there is little information. However, Mr Bashir confirmed that Peabody is a similar association, and in any event there was no good evidence to the contrary; moreover the estate in question is in the exact same locality. The authorities relied upon by the Second Respondent do not in the view of this Tribunal assist – the first stresses the importance of the facts and evidence in each case, and the second involved a detailed and reasoned analysis of the charges which was not replicated to the Tribunal's satisfaction in this case.

37. There needs also to be, in the view of the Tribunal, after all the analysis has taken place, a "standing back" to consider whether the charge made, is, on the evidence "reasonably incurred." Of course there may be a scenario in which a charge made by one superior landlord which does not supply the services, can justifiably be more than double that of the landlord which does supply those services. But there would have to be compelling evidence to support such a surprising result, and the Tribunal is not satisfied in this case that such evidence has been forthcoming.

38. For these reasons, the Applicants' case against the First Respondent succeeds, and the current charges cannot stand. The Applicants' argued that the Second Respondent should recover a fixed fee of £50 per unit. The Tribunal considers that this is too low. The First Respondent acts as a first filter for leaseholder enquiries, carries out the accounting role referred to above, and levies the demands. The Tribunal agrees that in principle that this should be a fixed fee, and for the purpose of this Application, which involves mainly estimated budgets, fixes that fee at £200 per unit per annum. The Tribunal has taken the Peabody fee as a guide, and has applied an uplift to allow for the "first filter" element and any further accounting service which may exist in this case. The parties were unclear at the hearing whether such a fee attracted VAT, where a Housing Association is involved. If so, it is also recoverable.

Section 20C applications

39. The Applicants asked for a section 20C order to be made against the Second Respondent, on the basis that, win or lose, if the Second Responent had been more forthcoming with disclosure and evidence, then the case against it may have been compromised or shortened. The Second Respondent answered the questions put to it before the hearing, and the Tribunal does not consider it blameworthy in that respect. It has succeeded upon all the points raised against it, and the Tribunal sees no good reason for making such an order, and declines to do so.

40. The Applicants sought a similar order against the First Respondent. They argued that there had been inadequate disclosure. The First Respondent dealt with the inadequate disclosure issue through evidence from Ms Victoria Bateman, and the Tribunal was not persuaded that this alone would justify a section 20C order. However, The Applicants have succeeded in their case against the First Respondent, and it is difficult to see why the First Respondent's costs should be recovered against them by way of subsequent service charge. In the circumstances a section 20C order is made in favour of the Applicants against the First Respondent.

CONCLUSION

41. The Applicants' case against the Second Respondent fails and the cleaning, insurance and management charges shall remain as claimed or estimated. The Application in respect of the First Defendant's claimed or estimated management charges succeeds in respect of the years in question, and a fixed charge of £200 per annum per unit should be substituted for 2016, and the subsequent estimated years, and appropriate apportionments made, in accordance with the percentages and formula referred at paragraph 21 above. Section 20C orders are made as set out at paragraphs 39 and 40 above.

JUDGE SHAW

16th January 2020