FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	**BIR/00CS/LIS/2018/0011**
Property:	**Flat 14 Oak Close, Gospel Oak, Tipton, DY4 0AY**
Applicant:	**David, Paula, Alan & Steven Mattey**
Representative:	**Mr. A. Beaumont instructed by Blue Property Management UK Limited**
Respondent:	**T Price**
Representative:	**Mr. S. J. Bradshaw, Direct Access Counsel.**
Type of Application:	**Application for a determination of liability to pay and reasonableness of service charges pursuant to s27A Landlord & Tenant Act 1985; and an application that the Applicant is prevented from recovering its costs pursuant to s20C of the Act of 1985.**
Date & Venue of Hearing:	**10-11 September 2019. The Tribunal reconvened on 2 further occasions, namely 18 October and 5 November 2019. This decision follows the application by the Respondent for permission to appeal.**
Date of decision:	**17 June 2020**
Tribunal Members:	**Judge A McNamara** **Mr R P Cammidge FRICS**

REVIEW DECISION

Introduction

1. This decision is a review in the light of the Respondent's Application for Permission to Appeal dated 9 April 2020, drafted by Mr. Bradshaw; the Respondent's accompanying additional document sent under cover of a letter also dated 9 April 2020; and the Applicant's submissions dated 18 May 2020. This decision should be read in conjunction with the decision dated 14 February 2020.
2. This review is designed to correct arithmetical errors between the decision/Scott Schedule dated 14 February 2020 and to rectify and explain apparent inconsistencies between the reasoning and the Schedule.
3. At the hearing; in the light of a substantial number of concessions from the Applicant; and the Tribunal having formed the view that numerous components of the Applicant's service charge 'demands' (the presence of quotation marks is meant only to convey their continuing disputed status) were unreasonable, it was the intention of the Tribunal, in the round, to reduce the liability of the Applicant. A further application of that logic was that the Tribunal chose to round figures down rather than up.
4. To provide clarity and transparency as to the Tribunal's approach we confirm that, having been presented with a fee for a particular service, the Tribunal has reviewed that fee or charge and compared it with what, in its view, was considered a reasonable fee or charge for the service. Where the fee or charge was less or the same as what was considered reasonable such figures have not been amended but where they were considered unreasonable amendments have been made.

5. Although implicit, one significant qualification was absent from the decision. That is that credit must be given for sums already paid to the Applicant to the Respondent.

Permission to appeal

6. Given the procedural history of this case, and that the Tribunal was 'troubled' by the issue in relation to the validity of service charge demands, permission to appeal is granted as set out in the short accompanying decision of even date.

Review

Buildings insurance

7. The Tribunal's assessment of this aspect of the case was set out at paragraphs 76-79.
8. In the light of the application for permission to appeal, the Tribunal has revisited this element and now concludes as follows:
    a. In order to establish if a charge is reasonable the Tribunal must take an holistic view of the charges in the marketplace for providing the same or a similar service within an appropriate geographical area. The Tribunal has reviewed the information provided by both parties.
    b. The Respondent offered some comparable evidence in relation to properties in Elizabeth Walk which originally formed part of the development and should therefore, due to the similarities of location and construction, be reflected in the Tribunal's decision. The Respondent also provided a note from one of the owners of the block that had been subject to a right to manage scheme indicating an insurance premium for their block to which the above comments equally apply.

c. However there are a number of factors which need to be taken into account and would be reflected in the underwriting process to produce a premium. Supportive of the Respondent's position is that the buildings are adjacent and of a similar construction. However no evidence was produced as to the nature of the policy on a range of factors including: the claims history; levels of cover for individual specified items; confirmation of re-instatement figures; and, for example, if additional cover was included within the premiums for subletting.

d. The Respondent also produced a letter from Flat Living Insurance forming a quotation for flat 12 Oak Close in the sum of either £473.00 or £561.66 depending on the Insurer. However, the building's declared value is £600,000.00 which would indicate that this would cover a number of flats although this is not specified in the quotation. Thus it was unclear from the document produced the extent of the premises covered. Further, it is equally unclear as to the basis of the quotation by reference to the crucial factors set out above.

e. The Tribunal had many of the same issues of lack of details in relation to the premium figure provided by the RTM Director of the adjacent block 18-24. The Tribunal would have found it of greater assistance if the more formal of the quotations had been clear in relation to the property covered and the information upon which any quotation was based.

f. Accordingly, the Tribunal was put in a position that, despite the efforts of the Respondent to produce the information requested, it was

insufficiently comprehensive to form a view. In other words there were too many variables.

g. Having reviewed all of the information provided by the Parties, the Tribunal formed the view that some weight could be applied to the Respondent's evidence but, due to the nature of the variables that had not been addressed, it was necessary to utilise the experience of the Tribunal to come to a conclusion. That conclusion was that the premiums sought by the Applicant were excessive and could not be justified and instead adopts the following figures as reasonable representing a premium per unit inclusive of IPT.

Year	Tribunal's figure in decision £	1/31 of cost in accounts £	Tribunal's award £
2009	110	87.93	87.93
2010	81.41	63.03	63.03
2011	115	109.38	109.38
2012	122	127.45	122
2013	130	154.61	130
2014	137	182.87	137
2015	145	190.19	145
2016	154	199.83	154
2017	163	192.23	163
Total	1157.41	1307.52	1111.34

h. For the sake of clarity the Tribunal's view (first column) is typical of charges in the market including tax. The second column is the amount that would be charged if the sums in the accounts were viewed as reasonable based on 1/31 per leaseholder as required under the lease. The third column is the Tribunal decision as to the amount to be charged. Thus, in the years 2009- 2011 it is the Tribunal's view that the charges are reasonable. However from 2012 – 2017 the charges are unreasonable.

i. The Tribunal's interpretation of the lease is that the Respondent is liable for 1/31 of the total cost and this does create an anomaly as, for the period of the claim, there were only 24 flats. Although it could be argued that this creates an artificially low figure for the Respondent, that is the requirement under the lease and those are the proportions that must be applied.

Management fees

9. This was dealt with at paragraphs 99-104. As is evident from the decision the Tribunal took the view that Management Fees were too high. However, the Schedule did not reflect that finding. The following also seeks to correct an arithmetical error in relation to changes in the prevailing rate of VAT.
10. The Tribunal adds the following:
    a. In order to establish if a charge is reasonable the Tribunal must take a similarly holistic view of the charges in the marketplace for providing the same or a similar service within an appropriate geographical area. The Tribunal reviewed the information provided by both parties and is also mindful that the Applicant does not need to accept the lowest available fee in the marketplace but the fee they charge must be reasonable.
    b. In relation to the level of management fees, the Applicant confirmed that these were assessed on the basis of splitting the country into the North, the Midlands and the South. They were considered to be homogeneous throughout these large regions but the Tribunal is of the view that fees should be of a more nuanced nature reflecting market conditions in the area in which the property is located. In the view of the Tribunal, this is a major factor in establishing an appropriate level

of management fee. Accordingly, the Tribunal placed no weight upon the comparator evidence provided by the Applicant, since, in the absence of expert evidence, one would struggle to compare a listed building in Melton Mowbray with a mid-century modern development such as Oak Close.

c. The Respondent referred to the Elizabeth Walk properties and the fees being charged to manage them. Those properties are located adjacent to the subject property and are directly comparable in terms of age and construction. Indeed it would appear that Elizabeth Walk may formerly have formed part of the estate. Whilst the Respondent had endeavoured to provide the information as requested, this was far from comprehensive: the Tribunal was therefore unable to establish the extent of the services provided under the contract, or even confirm the source of the fees that had been indicated other than being represented in a budget which of course may or may not be the actual cost to appear in the final accounts. The Tribunal would have been assisted to a much greater extent if a formal quotation from the managing agent of Elizabeth Walk had been obtained outlining the level of services and the fee required to provide such services.

d. That said, the Tribunal did take into account the fact that the figures put forward by the Respondent indicated that the fees being charged by the Applicant appeared to be out of line with fees available from one source in the marketplace.

e. Thus, whilst some weight was applied to the Respondent's evidence, due to the locality and similarity of buildings, this had to be viewed in the context of typical charges for a service within this overall locality

and region for developments of a similar nature. Therefore, the Tribunal also needed to use its experience of fees for management services.

f. In the light of that the Tribunal finds that the management costs were higher than is justified. Accordingly, the Tribunal substitutes the figures set out below. For the sake of clarity these are considered to be realistic figures for the management function per unit inclusive of the prevailing rate of VAT. This, in part, also rectifies a calculation error shown in the Scott Schedule in relation to the changing rate of VAT over the period 2009-2017:

Year	Initial decision £	1/31 of costs in accounts £	Review £
2009	175	181.93	168
2010	175	181.93	171
2011	180	186.77	180
2012	180	186.77	180
2013	185	185.80	185
2014	185	185.80	185
2015	190	185.80	185.80
2016	190	185.80	185.80
2017	195	185.80	185.80

g. This reflects the Tribunal's view that the adoption of a virtually static fee gave rise to the obvious inference that, in the period 2009 – 14, the fees were excessive; and, thereafter, appeared to become more reasonable due only to the effluxion of time.

Caretaking

11. This was dealt with at paragraphs 80-90.

12. Having revisited this aspect of the decision the Tribunal adds the following and the figures in the revised table are substituted:

a. For the avoidance of doubt, it is the Tribunal's view that cleaning does not amount to the same thing as caretaking, since the latter conveys a degree of on-site presence and the fulfilment of tasks other than cleaning. Accordingly, the Respondent was clearly getting something less than caretaking and limited to cleaning but being charged for notional caretaking.

b. The Tribunal utilized its experience to establish the net cost for providing a cleaning service and then added VAT at the prevailing rate. The Tribunal is of the view that although the hourly rate for a cleaning service would have increased from 2009 to 2017, the sums sought by the Applicant were unreasonable because they reflected only a cleaning role rather than the broader notion of caretaking as alleged.

c. Accordingly the Tribunal has used its experience in establishing the length of time it would take to carry out the cleaning function and has utilised an hourly rate of £14.00/hr for the period 2009 to 2011; £16.00/hr for the period 2012 to 2014; and £20.00/hr for the period 2015 to 2017. The Tribunal allows i.e. 1.5 hours per week as per the table below.

d. The revised figures are set out in the table below and include VAT at the prevailing rate:

Year	Amount in Accounts	Cost for the development	Award decision Flat 14
2009	£2070	£1255.80	£52.32
2010	£2291	£1283.10	£53.46
2011	£2160	£1310.40	£54.60
2012	£2160	£1497.60	£62.40
2013	£2496	£1497.60	£62.40
2014	£2496	£1497.60	£62.40
2015	£2496	£1872.00	£78.00
2016	£2496	£1872.00	£78.00

2017	£2496	£1872.00	£78.00
Total			£581.58

Window cleaning

13. The Tribunal also accepts that it fell into error in calculating the window cleaning charges and should instead have awarded only 1/24 of the total figure.

14. Further, by way of explanation, in the light of the Tribunal's experience, the £63 per visit figure set out in the decision reflected what the Tribunal considered to be a reasonable figure for the communal window cleaning to all blocks. The table below incorporates the corrected figures:

Year	Awarded (£)	No. visits	Revised award (£)
2009	15.76	2	5.25
2010	15.76	2	5.25
2011	55.16	7	18.38
2012	39.40	5	13.13
2013	47.28	6	15.75
2014	63.04	8	21.00
2015	47.28	6	15.75
2016	47.28	6	15.75
2017	31.52	4	10.50

Banking charges

15. The Tribunal accepts that it fell into error by describing banking charges as a Mansion cost and applying the incorrect share: §75 of the decision should have identified the share as 1/31. The revised figures are set out below:

2009	£10.03
2010	£6.77
2011	£2.56

2012	£2.74
2013	£3.25
2014	£3.96
2015	£3.24
2016	£0.41
2017	£2.74

Revised conclusion

16. In the light of the above, the figures in paragraph 107, at the conclusion of the decision, are revised as follows:

Year	Original decision £	Review £
2009	611.57	500.23
2010	621.76	509.90
2011	620.43	505.50
2012	1184.89	837.58
2013	941.56	818.82
2014	778.88	657.07
2015	947.67	846.99
2016	1037.05	937.19
2017	717.98	623.84
Total	7461.79	**6237.12**

17. For the avoidance of any doubt the Applicant must give credit for any sums received as against the total in paragraph 16 above.

18. The above decision reflects the concessions made by the Applicant in its submissions in relation to arithmetical errors.

Judge Andrew McNamara

Mr. R.P. Cammidge, FRICS.

17 June 2020.