



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

Case Reference : BIR/17UF/LIS/2023/0017

Property : Flat 1, Foundry Court, Torr Top Street,
New Mills, High Peak, Derbyshire SK22 4BS

Applicant : Angela Maria de Nobrega Freitas

Respondent : Foundry Yard Limited

Representative : Oakland Residential Management

Type of Application : Application in respect of the liability to pay and
reasonableness of service charges under section 27A
of the Landlord and Tenant Act 1985.

An application for an Order under paragraph 5A of
Schedule 11 of the Commonhold and Leasehold
Reform Act 2002

Tribunal Members : Judge T N Jackson
Mr G Freckelton FRICS

**Date of paper
determination** : 19 April 2024

Date of Decision : 8 May 2024

DECISION

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Decision

We determine that:

- i) the service charge of £80 per month for the service charge year 2023-2024 is reasonable, due and payable; and**
- ii) the Applicant's liability to pay an 'administrative charge in respect of litigation costs' is not extinguished.**

Reasons for decision

Introduction

1. By application dated 31 July 2023, the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') as to whether service charges are payable, due and reasonable.
2. The Applicant's challenge related to service charges for the service charge years 2023 to 2024 and onwards. The Applicant stated that the issue related to service charges which had risen from £78.10 per month to £80 per month from 1 June 2023, and asked the Tribunal to cap the charges at the latter amount.
3. The Applicant also included comments to the effect that the managing agents operate in a 'clique' with two resident Directors of the Respondent company.
4. The Applicant sought an Order under paragraph 5(A) of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 Act which reduces the Applicant's liability to pay an 'administrative charge in respect of litigation costs' i.e . contractual costs in a Lease.
5. The Applicant's application included information that she did not wish to copy to the Respondent company. The Applicant was advised that the Tribunal would not consider such documentation unless it was disclosed to the Respondent company. The Applicant, in an email dated 18 August 2023 confirmed that she did not wish the Tribunal to copy that information to the Respondent company. The Tribunal, therefore, has had no regard to that information.
6. A case management hearing was held by phone on 11 January 2024 attended by the Applicant and Ms Jennifer Dickie and Mr Jed Tucker, both of Oakland Residential Management ('Oakland'), the managing agents representing the Respondent company.
7. The Applicant was advised that the Tribunal could not cap service charges but that its jurisdiction, under an application of this type, was limited to considering whether the charges were allowed under the Lease, had been demanded correctly and were reasonable. The Applicant stated that she wished to challenge specific costs.
8. Directions dated 15 January 2024 were issued and attached the Annual Service Charge Accounts for the period 1 June 2022 to 31 May 2023 and the Annual Service Charge Budget for the period 1 June 2023 to 31 May 2024.

Property

9. Foundry Court consists of 10 flats situated in 2 semi-detached buildings. One building contains 4 flats over 2 floors (Flats 1-4) and the other contains 6 flats over 3 floors (Flats 5-10). Access to Flats 1-6 is from the rear of the development through a courtyard / car park, whilst access to Flats 7-10 can be gained from the main road at the front. The Property, Flat 1, is a ground floor flat which has an allocated parking space. The Tribunal has noted the photographs provided by the Respondent's representative which show the layout of the development and car parking area.

Lease

10. The Freeholder is Foundry Court Limited, a company of which the Applicant is a member. The Applicant is the Leaseholder under a Lease dated 4 August 2000 made between (1) David Pearson (2) Foundry Yard Limited ('the Company') and (3) James Daniel Massey.
11. The Lease is for a term of 835 years from 29 September 1999 at a rent of £5 per annum. The Applicant has registered title under title number DY327677.
12. The Lease defines 'the Development' as the land edged blue on the Site Plan and 'the Building' as the building known as Foundry Court comprising ten flats.
13. Clause 10 of the Third Schedule sets out the Leaseholder's covenant to pay to the Company '*one tenth of the premium paid by the Company to insure the Building in accordance with the requirements of clause 1 (a) of the Fifth Schedule.*'
14. Clause 11 of the Third Schedule sets out the Leaseholder's covenant to pay to the Company '*one tenth share of any expenses properly incurred by the Company in the performance of its obligations under this Lease.*'
15. The Fifth Schedule sets out the Company's covenants including insurance; repair and renewal; cleaning; external decoration; enforcement of covenants and the making of regulations for the better management of the Development and the Building.

Inspection/Hearing

16. The Tribunal did not consider that an inspection was necessary. Neither party requested a hearing, and the Tribunal was satisfied that the matter could be dealt with on paper.

Submissions

17. The Applicant submitted a written statement dated 15 January 2024 supplemented by further documentation dated 18th January 2024 and 19 January 2024. She also submitted further emails on 21 January 2024 (two), 24 January 2024 and 26 January 2024 which she did not send to the Respondent company or its representative and which have therefore not been considered by the Tribunal.

18. The Applicant's submission and documentation (15, 18 and 19 January 2024) raised many issues not relevant to the matter before the Tribunal and these have not been considered.
19. The Applicant objects to the service charge items and amounts in the service charge accounts and raised further relevant matters as detailed in paragraphs 22-56 and 75-84 respectively set out below.
20. The Respondent's representative provided a written submission which addressed each of the Applicant's concerns that were relevant to expenses included within the service charges and identified the relevant Lease provision that allowed such expenses to be charged. The Respondent's representative produced a copy of the Lease at Appendix 1 and further Appendices 2-17 with supporting evidence in relation to each service charge item. Appendix 7 contains invoices for items of expenditure on service charge items in the previous service charge year 1 June 2022 to 31 May 2023.
21. The Respondent's representative asserts that by an e-mail from the Applicant to the Respondent's representative dated 27 January 2024 produced at Appendix 3, the Applicant agreed to the increase in service charge to £80 per month.

Disputed service charge items- Service charge year 1 June 2023-31 May 2024

22. The figures below are based on the Annual Service Charge 1 June 2023- 31 May 2024 proposed budget.

Communal cleaning - £0

23. The Applicant says fortnightly cleaning of internal communal areas was cancelled at an AGM before 2019. The Applicant was outvoted by others present at the meeting. She says that the internal communal area for Flats 1 to 4 is filthy, with the carpets being filthy, worn, and requiring replacement. They are never cleaned by the individuals who agreed between themselves that they would take over such cleaning, namely two resident directors and the resident of another flat. The Applicant believes that there should be a professional service provided and paid for under the service charge.
24. The Respondent's representative confirms that at a past AGM, the Respondent company consulted with the Leaseholders and the vote was taken in favour of agreeing not to pay for a professional cleaning service and instead to accept the offer of one of the Leaseholders who had volunteered to undertake the cleaning of the communal areas for no fee. The Respondent company has received no complaints regarding the cleanliness of the communal areas from any resident or Leaseholder at the other nine properties. The Respondent company considers that the current cost of £0 is reasonable and that it is meeting its obligations to keep the common parts clean and tidy. To engage a professional cleaning company, as the Applicant suggests, would increase the service charges unnecessarily. The Respondent's representative produces Appendices 2 and 3 copies which are photos of the communal areas.

Window cleaning - £260

25. The Respondent company says that the window cleaner attends every two months at a cost of £43.20 including VAT per visit. They clean the communal windows and the windows of the flats. The Respondent company does not believe there will be any significant cost saving for the Applicant if the window cleaner were instructed to reduce their services and clean only the communal windows as they would still have the cost associated with travelling to site etc. To do this would also mean that every Leaseholder would also be obliged to pay for their own windows to be regularly cleaned.
26. Each Leaseholder pays 1/10th of the annual window cleaning costs, approximately £26.50 per year. Checkatrade.com lists average window cleaning costs as between 20 to £50 per hour. Even if an individual Leaseholder only cleaned their windows once a year, it's likely it would cost them more to have their flat windows cleaned once than it currently costs them to have their flat windows cleaned 6 times a year. They would also then also pay the additional costs of the communal window cleaning.
27. The Respondent's representative attaches as Appendices 4 and 5 respectively a copy of a Checkatrade website screenshot from February 2024 and invoices for the cleaning costs of £43.20 every two months dated 3 July 2022, 1 September 2022, 25 October 2022, 19 January 2023, 21 March 2023 and 9 May 2023.
28. The Applicant states that window cleaning is occasional, perhaps twice a year, and this cost was never discussed with nor agreed to by her.

Garden and grounds maintenance- £0

29. The Applicant says that this service was cancelled prior to 2019, in the same way as communal cleaning. A resident director and a resident of another flat volunteer to do this between themselves to "save money for the fund". The Applicant says that the cancellation was made without discussion with or agreement by her.
30. The Respondent's representative states that to their knowledge, the Applicant is correct regarding the cancellation of the service at a past AGM after the Respondent company had consulted with the Leaseholders. A vote was taken in favour of agreeing not to pay for professional grounds maintenance and gardening and instead to accept the offer of one of the Leaseholders, who had volunteered to undertake these tasks for no fee.
31. The Respondent company has received no complaints regarding the grounds maintenance and gardening from any resident or Leaseholder at the other nine properties. The Respondent company states that the current cost of £0 is reasonable and that it is meeting its obligations. To engage a professional gardener or grounds maintenance company as the Applicant suggests, would increase the service charges unnecessarily. The Respondent's representative attaches as appendix 6, photos of the garden and grounds.

Communal electricity - £600

32. The Applicant says that electricity is provided in very low lighting to internal and external communal areas and disputes the amount.
33. The Respondent's representative says that contract rates were sought via a broker who was able to provide multiple quotes on the most favourable rates available at the time the contract was taken out and was selected. A Fire Risk Assessment Report dated 14 June 2023 noted adequate lighting in communal areas as required for escape routes. The Respondent's representative attaches appendices 8 and 9 which relate to the Fire Risk Assessment Report dated 14 June 2023 and electricity supplier invoices for supplies from 21 May 2022 to 30 April 2023 respectively.

Block buildings Insurance- £1480

34. The Applicant says that she expects this figure to only be relevant for the flats at Foundry Yard and to not include any other properties. She's unclear as to this figure.
35. The Respondent's representative says that the costs and cover provided by the policies relate only to the development at Foundry Yard and attaches Appendix 10 which sets out the insurance policy issued to the Respondent company which runs from 1 February 2023 to 31 January 2024 and invoice dated 7 February 2023 in the sum of £1381.29 incurred in the previous service charge year.

Terrorism Insurance - £117

36. The Applicant says that this fee has never been discussed with nor agreed by her.
37. The Respondent's representative attaches Appendix 10 which sets out the insurance policy from 1 February 2023 to 31 January 2024 and invoice dated 17 February 2023 in the sum of £109.79 incurred in the previous service charge year.

Director's and Officer's Insurance - £184

38. The Applicant says this fee has never been discussed with nor agreed by her.
39. The Respondent's representative produces Appendix 10 which sets out the insurance policy from 1 February 2023 to 31 March 2024 and invoice dated 17 February 2023 in the sum of £175.27 incurred in the previous service charge year.

Management fees - £2520

40. The Applicant says this fee has risen from £1500 in 2019 to £2520 in the service charge year 2023-2024. Bearing in mind the rise in the cost- of- living expenses, she says that any increase should be no more than £1750 as this would also reflect the "next to minimal management of this building that Oakland are involved in". The

Applicant says that she has never met Mr. Tucker, the estates manager from Oakland and has not seen Miss Dickey in more than five or six years.

41. The Applicant makes allegations of financial mismanagement in relation to the service charges of £13,1520 that she has paid since 2006 and what she considers to be a significant amount of money missing from the capital accounts after considering expenses for communal electricity and management company fees. She alleges the 'plundering' and 'raiding' of the Capital Accounts of approximately £100,000. She also refers to receiving demands for shortfalls in service charges despite her promptly paying all service charges and that there is no shortfall. She refers to 'irresponsible management of the accounts'.
42. The Applicant makes allegations regarding the ongoing lack of maintenance and repair of the development; the administration of the Respondent's company AGMs and of a clique between the managing agents and the two resident directors.
43. The Respondent's representative states that it is one of a small number of Leasehold management companies which manage small buildings. The management fee was agreed by the Respondent's directors and is competitive and lower than alternative agents. They produce Appendix 11 which are the management fee invoices dated 14 July 2022, 1 October 2022, 4 January 2023 and 14 April 2023 in the sums of £475, £600, £600 and £600 respectively, totalling £2275 for the period from 1 July 2022 to 30 June 2023.

Managing agent disbursements (postage etc.)- £60

44. The Applicant says this cost had never been discussed with nor agreed by her and she disputes it.
45. The Respondent's representative says that the cost relates to postage for documents provided to Leaseholders at Foundry Court, filing fees for Companies House, and nominal administration charges for the managing agent to file these on behalf of the directors of the Respondent company. They produce Appendix 12, an invoice dated 19 October 2022 in the sum of £39.40 for fee for filing annual Companies House return and administration fee.

Accountant's fees - £408

46. The Applicant says that this fee has never been discussed with nor agreed by her. She says it is not for Foundry Yard Limited to pay Oakland's accountant. Foundry Yard Limited does not have an accountant. Oakland may employ such an accountant and pay for that themselves. This is not a cost that should be made on Foundry Yard Limited.
47. The Respondent's representative says that this is the cost of the preparation of the Respondent company's end-of-year accounts by independent accountants. Appendix 13 is the accountant's invoice dated 31 August 2022 in the sum of £408 for preparation of service charge accounts and related dormant statutory accounts for the service charge year ended 31 May 2022.

Buildings Valuation Fee - £100

48. The Applicant states this is a fee that is without merit or clarified.
49. The Respondent's representative says that they endeavor to have a building reinstatement valuation report conducted every five years. The 2022 and 2023 service charge budgets include a sum of £250 and £100 respectively as sums to build towards the cost of the next report. A report was last undertaken in August 2019 and the next will be due later in 2024.

Bank Charges - £60

50. The Applicant says that as a service charge payment should be made on time, then no bank charges should be levied to Foundry Yard Limited. If there is an accountant that has been doing a job for Foundry Court on behalf of Oakland, it is for them to ensure there are no bank charges to be paid. If they are not paid, any such payments should be met by Oakland Residential management and not by Foundry Yard Limited.
51. The Respondent's representative says these are the fees charged by the bank for the business bank account for the Respondent company, not penalty charges. The bank invoiced Oakland and Oakland recovers these costs from the service charges. This type of bank account, where managing agents hold the service charge monies, is a requirement of the RICS Code of Conduct.

General Repairs and Maintenance - total £1811

52. Under this heading, the Applicant did not specify any issue other than saying 'as indicated above' where she had amalgamated the heading with her concerns re garden and grounds maintenance but did not specifically raise any issues with this amount.
53. The Respondent's representative says that the figure relates to the second and final instalment in relation to the restoration of the stairwells (see paragraph 60 below).

Reserves- £2000

54. The Applicant states that this figure is nominal and "flits in and out of the account which would include reserves, as often the account has been shown to be in debt, hence their demands of me to pay for their shortfalls...".
55. The Respondent's representative says that they do not fully understand the Applicant's submission. Annual service charges are collected to meet that year's expenses and so the monies are spent to meet the Respondent company's liabilities as set out in the Lease. Where large expenditure items such as cyclical maintenance are required, reserve funds may be used so reserve fund balances do not accumulate indefinitely, they fluctuate in response to expenditure in any given year.

56. The sum of £2000 is the sum to be collected in this service charge year and placed in the reserve account. The Respondent's representative states that they believe that the sum is a reasonable annual contribution to build the reserve fund.

Disputed service charge items-Service charge year 1 June 2023-31 May 2023

57. The Applicant also raised concerns with figures in the Income and Expenditure account for year ended 31 May 2023 and disputes the total cost of repair and maintenance of £3,361.00. The Applicant's comments regarding when the works were carried out demonstrate to the Tribunal that she has not appreciated the distinction between the service charge year 2022-2023 which covers the period 1 June 2023 to 31 May 2023 and service charge year 2023-2024 which covers 1 June 2023 to 31 May 2024. The application to the Tribunal refers only to service charge year 2023 to 2024 and not previous years.
58. However, we have set out the information below as the Respondent's representative has provided detailed information which hopefully assists the Applicant in understanding her service charges.

Restoration of stairwell windows -£1880.

59. The Applicant says that she received confirmation of the decision to paint two windows in 2023. She requested Oakland to send her the cost before proceeding but says that she did not receive details of the cost and the work was done without her agreement.
60. The Respondent's representative says that the total cost of this work was £3760. A 50% deposit of £1800 was paid in the 2022-2023 accounting period. The balance was paid in the following 2023-2024 service charge accounting period. There are 10 properties at Foundry Court and in accordance with the Lease, they each contribute 1/10th to the costs of the Respondent company meeting its obligations. Under the Lease the cost of the window works was £376 per flat and therefore consultation was undertaken with the Leaseholders under section 20 of the Landlord and Tenant Act, 1985. The Respondent's representative produces Appendix 6, the receipt for the window restoration deposit dated 17 April 2023, and Appendix 17 sets out the Section 20 consultation documents dated 21 April 2023.

Repair to grids -£432

61. The Applicant says these works were carried out in 2021 or 2022 and not in 2023 as the Respondent claims. She was not advised of nor agreed to such expenditure.
62. The Respondent's representative says that the relevant service charge accounting year was the 1st of June 2022 to the 31st of May 2023 and the grid repair (refitting 2 manhole covers) was undertaken on the 8 August 2022. Appendix 7 sets out the relevant invoice dated 21 September 2022, although we note it refers to work carried out on the 8 September 2022 not August 2022.

Painting -£252

63. The Applicant says the only painting she saw was to the demised windows of Flats 4 and 7 painted by Prestige Windows over a period of two weeks which would have cost more than £252. This work was not discussed with nor agreed by the Applicant. Painting to the internal side of windows should not be charged to the service charge account as it is outside the Lease.
64. The Respondent's representative says that the expense of £120 was for the exterior painting of the 2 communal doors. They have reviewed the accounts and noted that the balance of £132 is an error. The accountants have incorrectly attributed to painting in the repairs and maintenance analysis an invoice from CIA 2000 dated 20 October 2022 for £132 (replacement of bulkhead outside Flat 8). It should have been put under the heading 'EML system' in the accounts. (see below).
65. No further painting costs were incurred. No payment was made to anyone for painting any windows demised to them. This included the Applicant who submitted an invoice for £30 for painting work to two windows in her flat. She was advised that as the windows were demised to the Applicant, the invoice was not a service charge cost. Appendix 7 includes the painting invoice dated 17 June 2022.

Fire alarm system- £348

66. The Applicant says that she was not advised of this prior to the contractor arriving and Oakland are in breach of the Lease provisions which require notice to be given to Leaseholders before people enter. The cost was not discussed or agreed with her.
67. The Respondent's representative produces in Appendix 7 the relevant invoices dated 20 October 2022 for £288 for the 12-month service contract for the fire alarm system and 5 May 2023 for £96 for the 6-month service contract of the fire alarm system. Appendix 8 is a copy of the Fire Risk assessment report dated 14 June 2023.

EML system - £222

68. The Applicant says that she is not clear what this is for, and it was not discussed with or agreed by her.
69. The Respondent's representative says that this relates to the emergency-maintained lighting system. They produce at Appendix 7 the relevant invoice for £222 dated 20 October 2022 relating to the annual maintenance and testing of the system. There is a further invoice dated 7 November 2022 in the sum of £132 for the replacement of a new bulkhead outside Flat 8 which had failed at the annual maintenance inspection and which is referred to in paragraph 64 above.

Door entry- £78.

70. The Applicant says that the intercom service is from 1992 and is outdated. This was discussed in meetings prior to 2020 and since then the idea has been abandoned. She says she is not clear what the works were, and they were not discussed with nor agreed by her.
71. The Respondent's representative says the intercom system is serviced annually and produces the relevant invoice dated 20 October 2022 at Appendix 7.

Handrail- £62.80

72. The Applicant says this work was carried out in 2021 or early 2022 and not 2023. The expenditure was not discussed with or agreed by her.
73. The Respondent's representative produces the relevant invoice dated 17 August 2022 at Appendix 7 which relates to the supply and fit of a handrail to the main entrance doorway step (Flats 1-4).

Locks- £50

74. The Respondent's representative produces the relevant invoice dated 5 August 2022 at Appendix 7 which details that the front door cylinder and latch had come loose on communal door to Flats 1-4 and therefore the rim cylinder and night latch were secured.

Other issues raised by the Applicant

AGM Venue hire fees

75. The Applicant suspects the Respondent company holds AGM meetings in expensive venues and the expenditure hasn't not been discussed or agreed by her.
76. The Respondent's representative says that many venues have begun to charge a fee for the use of a room and there has been a marked increase in this practice following the lifting of COVID restrictions. Where possible, venues used for AGM's are free, or some venues are contacted, and the cheapest suitable venue is used. Appendix 16 sets out the room hire invoice dated 21 July 2022 for £50 for the hire of a function room for 2 hours on 11 August 2022.

Hidden fees/expenses

77. The Applicant alleges that a payment is made to the volunteer who carries out the garden and grounds maintenance through the repairs and maintenance costs, and that this decision was made without discussion or agreement with her.

78. The Respondent's representative says that there are no hidden fees or expenses. The managing agents' fees are clearly set out in the accounts and no fees or other remuneration is received by the directors of the Respondent company. The Applicant has been provided with copies of accounts and invoices on several occasions over the past few years, in addition to the usual annual disclosure to Leaseholders. The managing agent has, on behalf of the Respondent company, offered to meet with the Applicant to take her through the accounts, but this offer has been refused. The Applicant has had full disclosure of hundreds of documents as part of a complaint she made to the Property Ombudsman and none of the matters complained of were upheld.

Leaseholder authority for service charge expenditure and budgeting

79. The Applicant says that the Lease requires that "any expenditure involving Oakland Residential Management and resident directors should first be advised by them in writing to ensure my agreement of such expenditure or not, their reasons and specific details of such expenditure. They operate as though I am not a service charge paying resident and make and take those decisions with the funds, and any other aspect of their "management /mismanagement" of the building between themselves."
80. The Respondent's representative says that they are not aware of any such requirement in the Lease. The Respondent company's Memorandum and Articles of Association allow directors to conduct the company's business. It is usual for the directors to seek the input and opinion of Leaseholders on some matters, but this would not be practical for the day-to-day running of the development. They have produced Appendix 14, the Memorandum and Articles of Association of the Respondent company.

Failure to address hazards

81. The Applicant says there is a seriously dangerous hazard at the step to the entrance to Flats 1 to 4, which was assessed by the Council as a Category 1 Hazard and remains.
82. The Respondent's representative says that in 2022, the Applicant reported an issue to the local authority as she was dissatisfied that the Respondent company disagreed with her assessment of the danger posed by the step between the car park area and the entrance to in front of Flats 1-4 and the solution she sought. On receipt of a Hazard Awareness Notice, the Respondent company worked with the local authority undertaking work to address the hazard and provide a suitable solution. The Respondent's representative produces Appendix 15, the Hazard Awareness Notice dated 6 May 2022 and e-mail from the Council dated 26 January 2023 confirming that the Council was satisfied that sufficient works had been undertaken to reduce the hazard to an acceptable level and there was no longer a Category 1 Hazard associated with the steps.

Clutter in grounds

83. The Applicant says that the Respondent company/Oakland have failed to address a seating bench cluttering up the entrance to the courtyard and one on a path outside Flat 2, which are in breach of the Lease which requires the grounds to be kept free of clutter.
84. The Respondent's representative says there is a bench in the courtyard for residents' use. They do not agree that it is a hazard, and they are not able to find reference in the Lease that would suggest its presence is a breach of the Lease. The Respondent's representative attaches at Appendix 6 a photo of the bench.

Deliberations

85. The Tribunal has not considered the many matters raised by the Applicant which do not directly relate to the sole question before it, namely the payability and reasonableness of the service charge for service charge year 2023-4.
86. The Tribunal does not consider, as suggested by the Respondent's representative, that the Applicant's email of 27 January 2024 is her agreement to the increased service charge of £80, the subject of this application. The implication is that we have no jurisdiction to consider the case in accordance with section 27 A (4) (a) of the Landlord and Tenant Act 1985. The email was in response to correspondence following service charge increase proposals to be considered at an AGM in February 2024 where it was proposed to increase the service charge in the forthcoming service charge year of 2024-5 to £112 per month. Whilst the Applicant made a counter proposal of an increase of £5 to £85 per month, she is not explicit in the email that she agrees the service charge of £80 per month for service charge year 2023-4 and the email continues with what she considers to be ongoing deficiencies not addressed. Further, that email was written in the knowledge of the ongoing Tribunal proceedings for which the parties had attended a case management hearing only 2 weeks prior. We therefore do not find that the Applicant has agreed or admitted the service charge and section 27A (4)(a) of the 1985 Act does not apply
87. The Applicant was directed by Direction 11 to:
 - a. *'set out their substantiated reasons as to why any of the costs set out in the accounts and budget are not reasonable, due and payable in a written statement (in the form of an indexed paginated pdf document). As discussed at the CMH, these reasons should be substantiated by reference to alternative quotations and/or professional opinion.*
 - b. *The written statement should also include submissions respect of the request for an Order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.'*

Payability

88. The Applicant has not asserted that any charges are not allowed under the Lease provisions. The Respondent's representative has identified the relevant Lease provisions in their submission. We have also reviewed the provisions of the Lease

and have set out the relevant provisions in paragraphs 13-15 above. We determine that the service charge items fall within the Lease provisions and are payable.

89. The Applicant asserts that many of the costs have never been discussed or agreed with her. Contrary to the Applicant's assertion, the Lease does not contain provisions which require her agreement to every element of expenditure. A Lessor or managing agent does not have to agree every single item of expenditure individually with each Leaseholder before the expenditure is made. A framework of expenditure is provided under the Lease and, where there is a freeholder company, as in this case, the details of the services to be provided, (and indeed not) are agreed by the Respondent company at the AGM, of which the Applicant is a member.
90. The Applicant refers to being outvoted at an AGM. Decisions are taken by the majority, and whilst it is unfortunate for the minority whose views do not hold the meeting, that is how the Memorandum and Articles of the Respondent company say that decisions are to be made. It is not appropriate to dispute a service charge item, or the extent of services provided, solely because your view did not hold sway at an AGM.

Reasonableness

91. We note that Direction 11 gave the Applicant the opportunity to comment on the costs set out in the accounts and budget. The accounts relate to service charge year 1 June 2022 to 31 May 2023. The Applicant disputes the costs of several items under the repairs and maintenance head. The Respondent's representative has provided invoices for all costs incurred together with an explanation in relation to each item. The Applicant has not provided any evidence that the costs were not incurred or that they were unreasonable. In many instances, her description of what she thinks the costs relate to are incorrect and based on assumption. Therefore, on the basis of the lack of evidence provided by the Applicant and having regard to the Respondent's representative detailed submission, we find that the costs incurred were payable and reasonable.
92. This application relates to service charge year 2023-2024 which commenced on 1 June 2023. With the exception of the costs of £1881 for the restoration of the stairwells, at the date of this decision we have not been provided with details of any costs incurred. We are, therefore, required to determine whether the proposed costs are reasonable. After the relevant costs are incurred, then any necessary adjustment will be made by the repayment, reduction or levying of subsequent service charges.
93. In determining the question of reasonableness, the burden of proof is on the Applicant. The Applicant has not complied with the Directions as she has not provided alternative quotations and/or professional opinion to substantiate her assertions as she was required to do. The Respondent's representative has provided details of relevant invoices in the previous service charge year and also an explanation regarding the proposed charges under each service charge item.
94. The Applicant's dispute with communal cleaning and grounds and garden maintenance is that there is no expenditure. As there is no charge, then that must be reasonable. The Applicant would like there to be such services, whereas the majority vote at an AGM was that there was not to be such services. That is a matter for the Respondent Company.

95. We find the proposed budget for window cleaning of £260 to be reasonable based on the invoices submitted in the previous service charge year and the Respondent's representative comparator evidence.
96. We find the proposed budget for communal electricity of £600 to be reasonable based on the supplier invoices submitted in the previous service charge year and that the supplier was procured through a broker.
97. We find the proposed budgets of £1480, £117 and £184 for Block Building, Terrorism and Director's and Officer's insurance respectively to be reasonable based on the invoices submitted in the previous service charge year and also that the insurances were obtained through a broker. Terrorism insurance is now standard practice. Director's and officer's liability insurance is also reasonable when Directors and officers of the company are non- professionals, as in this case.
98. In our professional opinion as an expert Tribunal, and knowing the range of activities required of the role of managing agent and having regard to the size of this development, we find that the proposed budget of £2520 for the management fee is reasonable. As this development is 10 flats only, there would unlikely be any benefit from the economies of scale.
99. It is common practice for non-professional freehold companies to engage managing agents to ensure that the Lessor's obligations both under the Lease and the law are met. Many Leaseholders do not appreciate the activities required to manage a development, as many of the activities are office based and administrative and are not seen by the Leaseholders. They include, for example, procurement arrangements for insurance, repairs etc.; health and safety and fire safety arrangements; keeping service charge accounts and ensuring they are prepared professionally; sending service charge demands and chasing arrears; enforcement of Leaseholder covenants; dealing with queries re repairs; and responding to complaints. On this development we are aware that due to the Applicant's complaints, the managing agent was required to correspond with the Council regarding the Hazard Awareness Notice and also with the Property Ombudsman.
100. A managing agent carries out a standard set of residential management activities to which other activities can be added by the Respondent company. There are professional Codes of Practice regulating such activities.
101. The Applicant has made many allegations against the managing agent, some very serious, regarding financial mismanagement, lack of maintenance and repair, the lack of administration of the Respondent company's AGMs and the alleged 'clique'. However, she has provided no evidence to support or substantiate such allegations. The repair invoices show that in the previous service charge year, there had been ongoing repair and maintenance. We find no evidence that due to the conduct of the managing agents in previous years that the proposed budget of £2520 is unreasonable.
102. In relation to the proposed budget of £60 for managing agent disbursements, we find that is reasonable based on the invoices in the previous service charge year.

103. In relation to the proposed accountant's fees of £408, we find that it is reasonable based on the invoices in the previous service charge year. Accountants need to be engaged to ensure that freehold companies comply with their financial and company obligations.
104. In relation to the proposed building's valuation fee of £100, we find that it is reasonable based on our professional opinion as an expert Tribunal, and noting that £250 was charged in the previous service charge year. A building valuation fee is necessary as this information is used for insurance purposes.
105. In relation to proposed bank charges of £60, noting that a business account is required to hold service charge monies, we find the sum to be reasonable.
106. In relation to the proposed budget for general repairs and maintenance of £1811, if anything we find it to be low, as £1881 is the second and final instalment of the restoration of the stairwell windows incurred in the service charge year 1 June 2023 to 31 May 2024. The Tribunal anticipate that there will be the need for further costs, such as the annual maintenance contracts regarding fire safety and EML at the very least. However, that is a matter for the Respondent company. We find the proposed budget of £1881 to be reasonable.
107. In relation to the proposed budget of £2000 for reserves, in our professional opinion as an expert Tribunal and noting the particular development, we find the sum to be reasonable.
108. In conclusion, in the absence of any evidence from the Applicant and having regard to the detailed submission from the Respondent's representative, we find that all items in the proposed budget for service charge year 1 June 2023 to 31 May 2024 referred to in paragraphs 22-56 above are reasonable.

Section 20C Landlord and Tenant Act 1985

109. No application was made under this provision, and we make no such order.

Paragraph 5(A) of Schedule 11 Commonhold and Leasehold Reform Act 2002

110. The Applicant applied for an order under the 2002 Act to reduce or extinguish the Applicant's liability to pay an 'administrative charge in respect of litigation costs' i.e. contractual costs in a Lease.
111. The Applicant did not make a submission on this issue despite being directed to do so by the Directions. The Respondent's representative says that the Applicant has previously raised all the matters in this application as lengthy and convoluted complaints with Oakland and the Property Ombudsman. The Applicant has been provided with full responses, disclosure, explanations and offers of assistance which have been declined. Oakland and directors of the Respondent company have previously answered in good faith all the matters the Applicant raises in this application. She appears to have failed to take legal advice or follow independent advice she has stated she received from Citizens Advice. This has now caused additional costs to be incurred by the Respondent company for assistance from Oakland to participate in these proceedings.

112. The Respondent company is a not-for-profit company with the only income being service charges. The Respondent company owns the freehold and accordingly all Leaseholders also own a share of the freehold. The director's endeavor to keep service charges as low as reasonably possible. However, the only directors are volunteers without professional expertise, time or knowledge to participate in these proceedings. The Respondent's representative states that the costs of Oakland to help with the Tribunal are modest, reasonably incurred and entirely avoidable had the Applicant engaged with the managing Oakland reasonably. They therefore submit that the costs should be recoverable and an order under paragraph 5A should not be granted.
113. In the absence of a submission by the Applicant, and, having regard to the Respondent's representative's submission and the fact that the Applicant has not succeeded in her application, we do not make an order under paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act 2002

Costs

114. No application was made for costs by either party and we therefore make no order.

Final note

115. From her submissions, we consider that the Applicant fundamentally misunderstands both the principle of service charges and how service charge accounts work. One Leaseholder cannot independently dictate what services should and should not be provided or how a development is run. Neither does the Lessor have to get written approval from each Leaseholder before any item of expenditure occurs.
116. The Applicant does not appear to understand the service charge accounts. She says "what is being done with the rest of the £9600 (i.e £960 x ten flats) after fees and disbursements and sundry communal expenses are paid." The fact that the Applicant does not agree with some of the charges does not mean that they have not been incurred. She cannot pick and choose which service charge items she thinks her service charge payment should pay and consider that she has a 'balance' in relation to the service charge items she disagrees with.
117. When detailing issues with the repair and maintenance items set out in the Income and Expenditure account for service charge year ended 31 May 2023, the Applicant refers to the works not being carried out in 2023 as she claims the Respondent alleges. However, she misunderstands that the accounts refer to the period 1 June 2022 to 31 May 2023 and therefore cover any costs incurred during that period.
118. The Applicant also appears to misunderstand the relationship between a freeholder company and managing agents. To put it bluntly, any expenditure, however small, incurred by the managing agents in managing the development in accordance with their management agreement with the Respondent company will be charged to the Respondent company. They are, after all, carrying out the activities on behalf of the Respondent company.

Appeal

119. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson