In the FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY) and in the COUNTY COURT AT Lancaster

Tribunal Case reference	:	**MAN/30UK/LSC/2022/0039**
County Court Claim Number	:	**H8QZ7EOE**
Property	:	**Centenary Mill, Court New Hall Lane Preston PR1 5JH**
Applicant (Claimant)	:	**Centenary Mill Court (Preston) RTM Company Limited**
Representative		**Ms. Robyn Cunningham of Counsel**
Respondent (Defendant)	:	**Mr. Martin Kamijo - Flanagan**
Representative		
Type of application	:	**Transfer from County Court Service charges Appointment of Managing Agent Costs : s51 of the County Courts Act 1981**
Tribunal	:	**John Murray LLb John Faulkner FRICS**
Date of Hearing	:	**31 August 2023**

DECISION

Decision

The Tribunal determines that the service charges sought by the Applicant are reasonable and payable.

The Tribunal makes no order under s20 Landlord and Tenant Act 1985.

Background

1. The Applicant issued proceedings in the County Court on 1 September 2021 making a claim for £7493.94 comprising

    (i) Insurance, Service Charges Administration, Administration Charges and Major Works costs totalling £5943.98.

    (ii) Interest of £394.96

    (iii) Court fee £455

    (iv) Legal Costs £700 (including VAT)

A Defence was filed on 3 October 2021.

2. A Reply to Defence was filed on 29 October 2021

3. On 31 March 2022 District Judge Bland made the following order:

    (a) The Court has decided that the following questions arise in this case which the First Tier Tribunal (Property Chamber) (FTT) have jurisdiction, inter alia, to determine:

        (i) The issue as to the enforceability of the service charges.

        (ii) The running of the service charges and whether they have been reasonably incurred.

        (iii) Questions as to the liability for works of repair/renovation carried out at the property

        (iv) Issues as to the appointment of a new managing agent

        (v) Issues as to the provision of the building's insurance

    (b) Further the Court considers that there are other issues within the current proceedings which fall outside the jurisdiction of the FTT, and which fall within the Jurisdiction of the County Court, as follows;

        (i) The issue of costs incurred following the issue of these proceedings in the County Court, pursuant to s51 of the County Courts Act 1981

    (c) Overall the Court considering the provisions of the Civil Procedure Rules 1989 (CPR) parts 1.1 and 3.1(2)(m) that to deal with this matter

justly and at proportionate cost determined that it would be more appropriate to transfer these proceedings to the FTT to be heard by a Judge with dual Jurisdiction

1. Pursuant to the provisions of s176A of the Commonhold and Leasehold Reform Act 2002 these proceedings are transferred to the First Tier Tribunal (Property Chamber) (FTT) to be determined by a Judge having dual Jurisdiction to sit both in the FTT and as a Judge of the County Court.

2. Pursuant to the provisions of CPR PD56 paragraph 16.1 copies of all Pleadings Documents Statements and orders in Claim H8QZ7EODE shall be sent to the FTT along with this order for Transfer.

3. Immediately upon receipt of this order and documents by the FTT the matter shall be referred to a Judge of the FTT for further directions.

4. Cost in the case.

4. The issues in the case appear to be

(a) payability and reasonableness of service charges for the periods 1 January 2019 to 31 December 2021;

(b) payability and reasonableness administration fees for the periods 1 January 2019 to 31 December 2021;

(c) the Respondent's application pursuant to s20c Landlord and Tenant Act 1985;

(d) costs.

5. These proceedings will be administered by the Tribunal office. *All* the issues in the case, including, interest and costs, will be dealt with under the Tribunal's administration. Any matters falling within the sole jurisdiction of the County Court will be dealt with by a Tribunal Judge (sitting as a Judge of the County Court) (DJ).

6. Directions were made by the Tribunal on 1st July 2022.

7. The case was allocated (so far as is necessary for the purpose of County Court proceedings) to the Small Claims Track.

8. Directions were made for the exchange of documents and statements of case by the parties, with provision for witness statements if required.

9. The matter was listed for an inspection and a hearing.

INSPECTION

10. An inspection of Centenary Mill ("the Property") took place on the morning of the hearing. In attendance for the Applicant were Counsel Ms. Robyn Cunningham, Mr David Bentham of Homestead Consultancy Service Managing Agent (and Company Secretary) for the Applicant; two Directors for the Applicant, Mr. Mark Walsh, and Mr. Riding, Company Secretary. The Tribunal was told at the hearing that Mr. Walsh and Mr. Riding are also partners in CMS who provide janitorial services to the Applicant at the Property, and Mr. Riding held a lease for a commercial unit at the Property, number 205. The Respondent was present in person.

11. The Tribunal was shown around the Property, which comprised a main building being a former Cotton Mill converted to approximately 182 flats (figures provided by the parties varied) spread over six floors, and a basement. Inside the main building, flats were arranged around 4 atria each with staircases. Two lifts served the main building. The most unusual feature of the building was that the atria were open to the elements. The Tribunal was told by parties present during the inspection that this was not how the building was originally designed; the Fire Service at the point of development (c.2005) had insisted that the roof be left open for fire safety purposes. They were consequently covered in netting to exclude birds, and rain could penetrate. The Tribunal was told that internal floor tiles were of insufficient grade to be exposed to weather. Iron balustrades and staircases were showing a considerable amount of rust and deterioration having been left exposed to the elements.

12. The Tribunal was shown inside two flats (113 and 139) which had suffered extreme disrepair and damage apparently due to the concrete roof and ceiling respectively having seriously deteriorated since the development was completed. The flats had been stripped out and the residents decanted; they were in the process of being remediated by the Applicant on behalf of their owners so they could be reoccupied. The Tribunal was told that the costs would not be met by insurance as the damage was on account of design/disrepair issues rather than as a result of any insurable event occurring.

13. Outside of the main building, three modern blocks had been built at the time of development comprising of a further 24 flats. In addition the development was home to a chimney reportedly 56 metres high, from the original mill building and understood by the Tribunal to be Grade 2 listed..

THE HEARING

14. The hearing took place at Preston Magistrates Court. The Applicant was represented by Ms. Cunningham of Counsel; the Respondent appeared in person.

15. The Applicant had prepared the Trial Bundle. The original version was a 1147 page PDF document with no index or navigation and would have made the hearing extremely difficult. After it was rejected in the days prior to the hearing, the Applicant provided four separate indexed bundles, which was

more helpful. However a fifth bundle was provided the evening before the hearing, which was not in accordance with directions. This was not ideal, but the documents were permitted.

THE LEASE

16. The Respondent is the leaseholder of Apartment 176 which was originally granted as the lease for Plot 176 on the 16th November 2005 by a lease between Bowesfield Investments Limited, Mandale Management Company Limited and Dean Fredrick for a term of 125 years from 1 January 2004. An annual rent of £150 is payable on the 1st January each year in advance, and adjusted in accordance with clause 9 of the lease.

17. The Applicant is a Right to Manage Company established and now responsible for the provision of services to Centenary Mill.

18. By clause 3 the Respondent was obliged to pay:

    a. Rent

    b. Insurance Rent : a fair and reasonable proportion of the costs incurred by the Landlord in insuring the Building pursuant to Schedule 5 of the this Lease

    c. Service charge in accordance with Schedule 3

    d. on demand all expenses which the Landlord may from time to time incur in connection with or in procuring the remedy of any breach of the Tenant's Covenants contained in this Lease

    e. Interest at 6% above the base rate of HSBC Bank plc from the date on which any payment is due to the date of payment"

19. The Services in Schedule 3 Paragraph 1 include:

    (a) Keeping the Main Structure and any other part of the Building which is not included in a lease of a flat within the Estate in good and substantial repair condition and decoration

    (b) Cleaning the Retained Property and refuse disposal

20. The Service Costs for which service charge is payable are set out in Schedule 3 Paragraph 2 include:

    (a) The sums spent by the Management Company of and incidental to the observance and performance of the covenants on the part of the Management Company contained in the Lease

    (b) All fees charges expenses salaries wages and commissions paid to any…agent contractor or employee whom the Management Company may employ in connection with the carrying out of its obligations under this Lease

(c) The costs of electricity, gas, oil and other fuel supplies and water for the provision of the Services or otherwise consumed in the Retained Property

(d) The costs incurred by the Management Company in bringing or defending any actions or other proceedings against or by any person whatsoever

(e) All other costs, charges, expenses and outgoings incurred in or incidental to the provision of Services by the Management Company

21. Schedule 3 Paragraph 3 set out the Tenant's Proportion of service charge to pay being the Specified Proportion of the Total Charge, payable in advance on 1 January each year, or if the Management Company should require on the 1st day of each month a twelfth of the amount.

22. The Tenant's covenants were set out in Schedule 4 and include

(a) Pay the Rent and Insurance Rent

(b) Pay the relevant Specified Proportion of the Service Charges.

(c) to be responsible for and to keep the Landlord and the Management Company fully indemnified against all damage damages losses costs expenses actions demands proceedings claims and liabilities made against or suffered or incurred by the Landlord and the Management Company arising directly or indirectly out of any breach or non-observance by the Tenant of the covenants conditions or other provisions of this Lease

23. An obligation to pay all costs and expenses including the solicitors costs and surveyor's fees incurred by the Landlord and the Management Company incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or in contemplation of the proceedings under Sections 146 and 147 of that Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court.

24. Landlord's covenants to allow quiet enjoyment, and to insure, were set out in Schedule 5, which also included an obligation at paragraph 6 that for the period that any property within the Estate remains unsold, pay in respect of all such properties a sum equal to the Service Charge contributions that would be payable by the tenant and shall be dealt with for all purposes as if it were a Service Charge paid by the tenants of such properties.

THE LEGISLATION

25. The relevant legislation is contained in of sections 19, 27A and s20C Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 the relevant paragraphs of which read as follows:

s19 Limitation of service charges: reasonableness.

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

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

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

s27A Liability to pay service charges: jurisdiction.

(1) An application may be made to a relevant tribunal for a determination whether a service charge is payable and, if it is, as to— .

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a relevant tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to— .

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and .

(e) the manner in which it would be payable.

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

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

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

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

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

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

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

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a relevant tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

s20C Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal] or relevant tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

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

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

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

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

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

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Schedule 11 to the Commonhold and Leasehold Reform Act 2002

1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

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

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

Liability to pay administration charges

5 (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

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

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

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

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

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

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

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

SUBMISSIONS AND EVIDENCE

THE APPLICANT

26. The Applicant filed a statement of case by its solicitor Elizabeth Rowen of Realty Law confirming that it sought a determination of the Respondent's liability to pay service charge pursuant to S.27A(3) of the Landlord and Tenant Act 1985 ('the 1985 Act')

27. By way of background, it was explained that the Applicant had acquired the right to manage of the residential development known as Centenary Mill pursuant to Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'). As such, and pursuant to sections 96 and 97 of the 2002 Act, the Applicant performed the management functions in respect of Centenary Mill including repairs, maintenance, and management : section 96(5) of the 2002 Act.

28. The Respondent owned Flat 176 Centenary Mill, Newhall Lane Preston Lancashire (the Flat) under a long residential lease between Bowsfields Investments Limited (1) Mandale Residential Management Company Limited(2) Dean Frederick (3) ('the Lease').

29. Pursuant to the terms of the Lease the Respondent had covenanted to pay service charges in Clause 3 of the Lease as follows:

The Tenant YIELDING AND PAYING the following rents clear of all deductions whatsoever:

3.1 the Rent to be paid by banker's order (if the Landlord so requires) in advance, the first of such payments in respect of the period from the date of this Lease to the next due date to be made on today's date

3.2 the Insurance Rent within 14 days of demand

3.3 the Specified Proportions of the Service Charges on the terms set out in Schedule 3;

On demand all expenses which the Landlord may from time to time incur in connection with or in procuring the remedy of any breach of the Tenant's covenants contained in this Lease.

6. Clause 4 of the Lease further provides that the Applicant covenants to observe the provisions in Schedule 4 of the Lease.

7. Schedule 4 Clause 2 set out as follows: 'pay to the Management Company the relevant Specified Proportion of the Service Charge at the time and in the manner provided in this Lease without deduction'

9. The Specified Proportion is defined at clause 1.27 of the Lease as follows: 'the relevant fair and reasonable proportion of the Service Charges in any given Account Period payable to the Management Company (as such terms are defined in Schedule 3)'

30. The service charge proportion was defined as "a fair and reasonable proportion" with no mechanism provided in the Lease to calculate this determination. The Applicant in their written evidence stated that the apportionment they had determined was based upon the square footage of the flats. The Applicant provided a table detailing the square footage of each flat together with the service charge apportionment applied.

31. On questioning by the Tribunal in the light of evidence that the Respondent put forward it seemed clear that the square footage ascribed to the commercial unit (number 205) was incorrect. From the inspection, and the plan, it was substantially larger than the residential apartments adjoining it.

32. On questioning the Applicant's Managing Agent Mr. Bentham resiled from the position as set out in the statement, saying that a commercial arrangement had been entered into when a lease had been entered into on the basis that any contribution from an occupant of the commercial unit was better than no contribution which had been the previous situation when the unit had been occupied with no lease in place, and that taking into account the very slight difference it made to the residential occupier the "de minimis" principle should apply.

33. The Service Charge Proportion was defined in Schedule 3 as 'the Specified Proportion of the Total Charge' ; the Total Charge is defined in Schedule 3 as 'the total of all Service Costs during an Account Period net of any receipts from insurers, the Tenant or other occupiers of the Building or third parties (otherwise by way of a service charge) which are properly applicable to payment of such Service Costs.'

34. The Service Costs are defined in Clause 2 of Schedule 3 of the Lease as being the aggregate of:-

2.1 The sums spent by the Management Company of an incidental to the observance and performance of the covenants on the part of the Management Company contained in this Lease.'

2.2 All fees charges expenses salaries wages and commission paid to any Auditor Accountant Surveyor Valuer Architect Solicitor or any other agent contractor or employee whom the Management Company may employ in connection with the carrying out of its obligations under this Lease and Leases including the costs of and incidental to the preparation of the estimates notices and accounts referred to in this Schedule.

2.3 All expenditure incurred in respect of any employees of the Management Company in the provision of uniforms clothing or accommodation and all outgoings incurred in connection therewith or payable in respect thereof and the costs of any such other items in connection therewith as the Management Company shall from time to time determine.'

2.4 All rates (including water rates) charges taxes assessments and any other outgoings payable in respect of the Estate

2.5 The costs of electricity , gas, oil or other fuel supplies and water for the provision of the Services or otherwise consumed in the Retained Property.

2.6 The costs of providing heating and cooling to individual flats within the estate benefiting from such a Service

2.7 The cost of providing, maintaining, and renewing such equipment materials and supplies as from time to time required in order to provide the Services.

2.8 The costs of operating the Fitness Centre (through the Tenant's Contribution towards such costs shall only apply if and only for as long as the Tenant is entitled to use the Fitness Centre)

2.9 The cost of all maintenance and other contracts entered into in relation to the provision of the Services.

2.10 All contributions to the Service Installations, party wall or structures or other things common to or used in common by the Building and other property.

2.11 The costs of the Management Company of complying with or contesting the requirements or proposals of any authority insofar as they relate to the Building (as distinct from any particular Flat)

2.12 All sums paid by the Management Company for the repair and maintenance decoration cleaning lighting and managing of the Estate whether or not the Management Company was liable to incur the same under its covenants herein contained

2.13 Any tax (including Value Added Tax and Stamp Duty Land Tax) paid or payable by the Management Company to the extent that the same is not recoverable by the Management Company

2.14 Any interest or other charges incurred by the Management company borrowing money (including the costs of procuring any guarantee or bond for repayment) for the purpose of any of the matters referred to in this Schedule)

2.15 The costs incurred by the Management Company in bringing or defending any actions or other proceedings against any person whatsoever

2.16 The costs of administering the Management Company including the costs of preparing and auditing accounts, the expenses of Directors and the Secretary the printing and sending out of notice circulars reports of accounts the holding of meetings and all fees payable to any statutory body or any other body

2.17 Such sums as the Management Company shall determine as desirable to be set aside in any year towards a reserve fund to make provision for expected future substantial capital expenditure.

2.18 All other costs, charges, expenses and outgoings in or incidental to the provision of Services by the Management Company.

35. The Respondent had failed to pay service charges and a claim was issued in the County Court on 1 September 2021 for service charge arrears of £5943.98. The matter was subsequently transferred from the County Court to the First Tier Tribunal.

36. The years in dispute were 2019, 2020 and 2021 and Scott Schedules had been submitted by the Applicant for these years setting out charges sought based on the finalised accounts for those years. The Respondent's responses to the Scott Schedules were very similar for the items included in the accounts for those years and the Applicant addressed those issues in turn for each year.

Accounting Year 2019

37. Service Charge Apportionment: The Respondent asserted that his service charge apportionment was incorrectly calculated by the Applicant and should in his view be 0.435735% rather the 0.439639%. The difference was 0.003904%. The basis of the Respondent's argument was that the square footage for Unit 205 (the Commercial Unit) was incorrect and that it should have been the same as flats 48 and 50. Flat 48 has a square footage of 685.00 and 50 is 906.35. The Applicant in their evidence stated that these two flats had different square footages and therefore flat 205 cannot be the same. Flat

205 did not contribute to the lift costs but contributed a greater proportion of the service charge than the Respondent.

38. The Applicant stated that Unit 205 had a square footage of 832.19, being the same as a two bedroom flat such as number 5 which was also given a square footage of 832.19. 25. The Applicant averred that the Respondent was incorrect in his assertions and that conversely the service charge apportionment attributed to the Flat was correct in terms of the square footage recorded as well as fair and reasonable.

39. Before the Tribunal the Applicant through its managing agent Mr. Bentham accepted that the square footage recorded in the spreadsheet for Flat (commercial unit) 205 was not accurate and that the figure had been recorded in the spreadsheet to calculate the resultant figure that the Applicant had decided to charge for services to 205.

40. A number of items of expenditure had been reduced by the Respondent based solely on his recalculated apportionment. The Applicant set out the items where on the apportionment was an issue setting out the actual charge to him, what he believed he should pay and the difference between those figures.

	Actual Charge	Respondent figure	Difference
a. Accountancy	£1.9783	£1.96	0.01p
b. Company Secretarial	£0.0057	£0.06	0.003p
c. Electrical Repairs	£27.10	£26.86	0.24p
d. Fire Equipment	£23.89	£23.67	0.22p
e. Fire Risk Assessment	£8.30	£8.23	0.07p
f. Health and Safety	£2.24	£2.22	0.02p
g. Insurance (lifts)	£2.71	£2.69	0.02p
h. Intercom Service	£1.89	£1.88	0.01p
i. Internal redecoration	£3.42	£3.40	0.02p
j. Lift Maintenance	£32.01	£31.73	0.28p
k. Lift Telephone	£2.29	£2.21	0.08p
l. Pest Control	£0.615	£0.61	0.005p
m. Pumping station	£10.84	£10.74	0.10p

41. The Applicant asserted that the apportionments were fair and reasonable and that as such the full amount of the sums incurred in 2019 for the above sums were recoverable from the Respondent. In any event, the sums the Respondent actually disputed were so small that the Applicant averred that the de minimis principal should apply.

42. CMS Contract: A copy of the 2019 CMS Contract was attached to the statement of case dated 01 January 2019. The contract was said to be a general maintenance contract and included services such as cleaning, landscaping, gardening and general repairs and maintenance. CMS invoiced a monthly fee of £5416.17 of these services. The overall value of the contract was £65,000 per annum.

43. The monthly invoices from CMS broke down the costs of each of the services into

(a) cleaning accounts for £2750 inclusive of VAT

(b) gardening and landscaping accounts for £400 inclusive of VAT

(c) window cleaning accounts for £333 inclusive of VAT

(d) general repairs /maintenance accounts for £1933.67.

Copies of these invoices had been provided to the Respondent and the Tribunal.

44. The Respondent had seemed to suggest that this contract breached S.20 Landlord and Tenant Act 1985. While the Respondent had not been explicit in his assertions the Applicant is assuming that this is reference to the contract being a qualifying long term agreement and therefore subject to consultation requirements. The Applicant refuted this pointing out that the contract had been entered into for a term of one year, ending on 31 December 2020 and was therefore not subject to the requirements under the 1985 Act.

45. Cleaning: the Respondent suggested that the CMS contract in respect of cleaning was unreasonable in cost. The monthly cleaning cost was £2750 inclusive of VAT. The Applicant stated that there were two cleaners on site from Monday to Friday 8am to 4pm and Saturday 9am -1pm. In addition to this there were two additional individuals on Monday and Tuesday helping with bin store clean up between 8am and 9:30am on Monday and Tuesdays

46. Door Entry System: the Respondent asserted that he should not contribute £8.56 to the door entry system in 2019 as this should have been included in the CMS contract. The Applicant stated that dealings with the door entry system did not form part of the responsibilities under the CMS Contract and therefore works to the door entry system will be charged in addition to the charges for the CMS Contract.

47. Electricity : the Respondent's contribution to communal electricity in 2019 was £184.36. He disputed this sum was due on as the basis that it included the three commercial units (Unit 205). The Applicant denied that the communal electricity charges related to the residential units; they stated that the Respondent had failed to provide any information to substantiate a 50% reduction in the electricity charge. In 2019 the commercial units meter readings were included in the bill for the communal electricity however the costs for the commercial units had been recharged back to Dave Riding who made payment for the 3 shops. The meter had 6 different meter numbers which consists of the Main Block, Block 181-186, Block 187-192, Block 193-198, Block 199-204, and the Commercial Units. The meter even now was said to be heating the communal water heater which Mr. Dave Riding (of 205) continues to pay.

48. External Decoration: The Respondent had suggested that the external redecoration charges should be reduced by 50% as the works were of poor quality. This was denied by the Applicant. The works were carried out to a reasonable standard and the Respondent had failed to provide evidence to the contrary. The Tribunal did not observe any evidence of poor external redecoration or pointing which the Respondent had made reference to at the site visit. The brickwork to the left wall to the main entrance had been repointed and was satisfactory.

49. General repairs and maintenance: the Respondent had asserted that the £195.89 charge for general repairs and maintenance should be reduced by 50% as being "unreasonable, poor quality, double charge". The Respondent had provided no detail; the Applicant denied that general maintenance works were of a poor quality or that there had been double charging.

50. Gutter and drains: the Respondent asserted that the charges relating to the gutter and drains should be included within the CMS contract charges. The Applicant agreed that the CMS contract included gutter cleaning when required however these works charged for and disputed were for drain repairs to the basement. Such repairs were not included in the CMS Contract which was for caretaker/general repairs services; the drain repairs under review required a more specialist contractor to carry out the work.

51. Insurance: the Applicant employed a managing agent, Homestead Consultancy Services ('HCL'); a copy of the Management agreement was supplied. HCL arranged insurance for the Applicant. Under the terms of the management agreement HCL was at point 7.2 of the agreement entitled to retain any commissions that it is paid. The finder's fee for insurance was such a commission. This was declared by HCS and represented 12.5% of the premium. The Applicant averred that this was reasonable. The Respondent, while suggesting that the premium was high did not appear to suggest that it was unreasonable.

52. Insurance (other): the Respondent suggested that directors' and officers' insurance for the Applicant should not be recovered via the service charge. The Applicant pointed out that under Schedule 3 of the Lease, Clause 2.16 the costs of administering the management company (and therefore the Applicant) were recoverable via the service charge.

53. Insurance (claims): the Respondent's contribution to insurance in respect of claims was £2.19. The Respondent disputed this on the basis of 'leaseholder excess.' The Applicant did not adequately understand the Respondent's assertion but assumed that he did not believe that they should contribute to the excess payment on claims which they refuted.

54. Landscaping : the Respondent disputed the landscaping charges asserting that the CMS contract, under which the charges were levied, should have been subject to S.20 Consultation. The Applicant disputed this once again on the basis the agreement was not a Qualifying Long Term Agreement.

55. Legal and Professional fees: In 2019 work was required to the Chimney and contractors attended the site prior to the consultation process commencing in 2020. The sum which was invoiced in 2019 for professional fees was recovered at the year end from the reserve fund in the sums of £19,716.00, which was shown on the expenditure and the service charge accounts.

56. Management Fee: the Respondent disputed the set-up fee for the managing agents of £12,300. This was said to be a one-off fee charged at the commencement of HCL's management service and related to the work carried out in dealing with the handover of management to them. The Applicant asserted that the handover process could be very time consuming and involve a considerable amount of work including obtaining and reviewing handover documentation, and setting the client up on internal systems. The Applicant asserted that the set-up fee of £12,300 was reasonable. The Respondent further suggested that the management fee of £317.42 is unreasonable but did not provide any reasons why he believed this to be the case. Centenary Mill is a large development of a converted cotton mill and as such the Applicant suggests that £317.42 per unit was within a reasonable range of management fee.

57. Sundry Expenses : the Respondent suggested that postage costs of £72.40 should not be recoverable as sundry expenses. The Applicant averred they were recoverable under the terms of the Lease under Schedule 3 clause 2.16. The Applicant was unsure as to how the Respondent has arrived at the figure of £72.40 for postage and sought further information to adequately respond.

58. Water Rates: The Respondent sought a 50% reduction in the service charge for water rates on account of the 3 commercial units in the basement. The Applicant asserted that the water rates were for the residential communal water not the commercial units which had their own water meter which Mr Riding the director was in the process of getting United Utilities to fit a new meter for.

59. Window cleaning: Window cleaning was carried out under the CMS contact. The Respondent relied on arguments pursuant to S.20 of the 1985 Act in respect of this which the Applicant disputed was applicable.

Accounting year 2020

60. The Applicant asserted that the heads of expenditure for the year 2020 largely mirrored those for 2019 as did the Respondent's comments in respect of the same. The Applicant relied upon its earlier assertions where they were identical.

61. Again a number of items were not disputed as being unreasonable by the Respondent who had raised the same argument in respect of apportionment. The Applicant again averred that the De minimis principal should be applied to these charges.

	Actual Charge	Respondent Figure	Difference
a. Accountancy	£1.97	£1.96	£0.01p
b. Fire Equipment	£10.65	£10.56	£0.09p
c. Health and Safety	£3.03	£3.00	£0.03p
d. Insurance (Lifts)	£2.88	£2.86	£0.02p
e. Intercom Services	£2.23	£2.21	£0.02p
f. Legal and Professional	£2.91	£2.27	£0.64p
g. Lift Maintenance	£16.37	£16.23	£0.14p
h. Lift Telephone	£2.86	£2.27	£0.59p
i. Lightening Conductor	£1.318	£1.31	£0.008p
j. Management Fee	£293.81	£200	£93.81p
k. Pumping Station	£14.34	£14.22	£0.12p

62. CCTV: the Respondent averred that no charges should be payable for this head of expenditure as Ridings (the company employed to carry out works) were not a CCTV company. The Applicant considered this irrelevant. The £1500 invoice in respect of CCTV was to 'carry out work on the CCTV System and cameras as agreed on site for the site manager and a specialist company was not needed for the work which involved changing a number of cameras, swapping broken ones for new ones. This involved the hiring of a machine to adjust where the high level external cameras were looking per the site managers instruction; as no CCTV cameras required installation; some broken cameras need unplugging them and replacing.

63. Cleaning: the Respondent again referred to the CMS contract having not been subject to consultation under S.20 of the 1985 Act; the Applicant relied on its earlier assertion.

64. Company Secretarial: the Applicant asserted that Company Secretarial fees related to the Applicant company and therefore were recoverable under Schedule 3 Clause 2.16 of the Lease and did not fall within the scope of the management agreement.

65. Door entry System: The Applicant relied upon earlier assertions in relation to this element of the service charge.

66. Electricity: The Applicant relied upon earlier assertions in relation to this element of the service charge.

67. Electrical Repairs: in 2020 Electrical Repairs/Lightbulbs expenses were £2807.89. The Respondent produced invoices for this expenditure and averred that this was entirely reasonable.

68. General Maintenance and Repairs: the Applicant relied upon earlier assertions in relation to this element of the service charge.

69. Insurance (Building): the Applicant relied upon earlier assertions in relation to this element of the service charge.

70. Insurance (other): the Applicant relied upon earlier assertions in relation to this element of the service charge.

71. Landscaping : the Applicant relied upon earlier assertions in relation to this element of the service charge.

72. Sundry Expenses: the Applicant relied upon earlier assertions in relation to this element of the service charge.

73. Water Rates: the Applicant relied upon earlier assertions in relation to this element of the service charge.

74. Window Cleaning: the Applicant relied upon earlier assertions in relation to this element of the service charge.

Accounting year 2021

75. The heads of expenditure for 2021 were very similar to those in 2020 and 2019, as were the Respondent's arguments in respect of those heads of expenditure. A number of items were not disputed as being unreasonable by the Respondent. The Applicant relied upon its earlier assertions as well as the de minimis principle.

	Actual Charge	Respondent Figure	Difference
a. Accountancy	£1.97	£1.96	£0.01p
b. Fire Equipment	£17.53	£17.38	£0.15p
c. Risk Assessments	£4.35	£4.31	£0.04p
d. Insurance (Lifts)	£2.92	£2.89	£0.03p
e. Intercom Services	£1.89	£1.88	£0.01p
f. Landscaping	£12.01	£11.91	£0.10p
g. Lift Maintenance	£36.47	£36.15	£0.32p
h. Lift Telephone	£2.86	£2.27	£0.59p
j. Management Fee	£174.09	£174.10	£0.01p
k. Pumping Station	£6.91	£6.85	£0.06p
l. Sundry charges	£2.12	£2.11	£0.01p

76. Cleaning: the Respondent averred that the cleaning costs had increased unreasonably despite the works being the same. The Applicant stated that the cleaning costs were carried out under a contract with CMS and the CMS overall contract prices had remained the same over the period 2019, 2020 and 2021 but the split to cleaning as against caretaking/repairs had increased. It was denied that this increase was unreasonable. The monthly costs for cleaning under the CMS contract in 2021 was £4166 inclusive of VAT. The fee covered one cleaner being on site from Monday to Friday 8:30am to 4pm and a second cleaner being on site Monday to Friday 8:30am to 1pm and then on Saturday from 9am to 1pm. The Applicant relied upon earlier assertions in relation to the CMS contract.

77. Company Secretarial fees: HCL carried out company secretarial services on behalf of the Applicant. This was in addition to the management services carried out under the management agreement. The additional service was charged at an annual fee of £1000 inclusive of VAT. The Applicant averred that this service was required for the administration of the Applicant company and recoverable under Schedule 3 clause 2.16 of the Lease. The fee of £1000 inclusive of VAT was considered by the Applicant to be entirely reasonable for the work carried out in respect of company administration including filing confirmation statements with Companies House and maintaining the list of company members. This figure was also agreed with the director when the budget for the year was prepared.

78. Electricity: the Applicant relied upon earlier assertions in relation to this element of the service charge.

79. General Repairs and Maintenance: the Respondent disputed these on the basis that there have been poor quality works, double charging, overinflated costs, and repeated repairs. The Applicant stated that the Respondent's submissions lack detail, and he had failed to elaborate on the assertions in respect of double charging, overinflated costs, or repeated repairs. The Applicant had difficultly responding to the assertions but denied them.

80. Gutters and Drains : the Applicant relied upon earlier assertions in relation to this element of the service charge.

81. Health and Safety Compliance: the Health and Safety compliance fees fell outside the HCL management agreement being a separate service and therefore was charged in addition to the management fee. The service was charged at £833.33 plus VAT and the Applicant asserted that the charges were entirely reasonable.

82. Insurance (Building) : the Applicant relied upon earlier assertions in relation to this element of the service charge.

83. Insurance (Other): the Applicant relied upon earlier assertions in relation to this element of the service charge.

84. Legal and Professional fees: in accordance with the management agreement with HCL, HCL were entitled to charge an additional fee in respect of major works which did not fall within the scope of the management fee. The management agreement provided that HCL would charge a fee of 6% of the value of the works in instalments of 50% at the outset of the works and 50% at the completion of the works. The Respondent had disputed the fees as being unreasonable. The Applicant asserted that given the works involved in a major works project, the fees were payable and entirely reasonable.

85. Surcharge Works: the Respondent asserted that the Applicant had failed to follow S.20 Consultation procedures. The Applicant denied this and produced the consultation documents in respect of the major works.

86. Water Charges : the Applicant relied upon earlier assertions made in relation to this element of the service charge.

THE RESPONDENT

87. The Respondent did not provide any statement in support of his case in accordance with the directions of the Tribunal. He completed the Scott Schedule prepared by the Applicant, and sent in a number of assorted emails to the Tribunal office.

88. In his defence to the County Court proceedings the Respondent asserted that he had been illegally removed as a director from the Applicant Right to Manage company, and had withheld his payments until he was reinstated as a director and could have access to accounts invoices surveys and quotes.

89. The Defendant stated that building insurance had been increased to an unreasonable amount and with unreasonable terms. He was concerned that the agents commission of 12.5% £479167 had not been refunded to the service charge account. He felt there was a conflict of interest by the Agent keeping the commission and that it was against the spirit of the Right to Manage process for a third party to unnecessarily profit from leaseholders.

90. The Respondent asserted that the service charge invoice did not include the correct landlord freeholder details and the freehold had been sold without being offered to the leaseholders. The transfer of the Freehold was not a matter for consideration by the Tribunal.

91. He asserted that service Charges were not reasonably incurred and works/services carried out were not to a reasonable standard; he provided no detail of this other than showing the Tribunal during the inspection an exterior wall that had been pointed poorly, in his view, and the opinion of a professional (this was not put in evidence).

92. The Respondent was concerned that the directors and secretary of the company providing the services were invoicing costs which were collected through the service changes.

93. He asserted that three commercial units (known as Unit 205) leased by a Director of the Applicant were not paying service charge towards the building at the same square footage rate as the rest of the leaseholders and had been using communal electricity added to the service charge up to 2019 and that consequently the apportionment was not in accordance with the lease. He said that the owner had told a leaseholder that his unit was 3200 square feet, and that it was directly under two 2 bedroomed units and one large 1 bedroom unit – numbered 48 49 and 50 on the plan. Unit 205 did not contribute to the lift whereas all the other units in the basement and on the ground floor did.

94. In relation to the major works the Respondent asserted that no specifications of works had been provided to leaseholders before starting works. He asserted that the costs were higher than they should have been due to

historical neglect, and delays in acting on the part of the Applicant had led to higher costs to repair damage. He said that there had been no repairs to the chimney on conversion; there had then been major works paid for to the chimney previously but these had not been carried out to a good standard, and it had been the same with the flat roof. A warranty had been provided but the provider of the warranty had not been called back when the roof had failed. He asserted that the costs would have been 90% lower if fixed immediately (but he provided no evidence of this). He had recommended a contractor for the roof repairs which had not been used.

95. The Respondent stated that major works to the chimney had been proposed and money collected. However with no further discussion with leaseholders these monies had then been used for payment of repairs to the roof. The Applicant confirmed that this was indeed the case, because whilst works to the chimney were necessary and desirable, the works to the roof were urgent and necessary to protect the residential accommodation and residential occupiers. The Respondent said that the money should have been repaid to the leaseholders and collected again.

96. S20c Application :

97. The Respondent objected to the administration fees, referral fees, letter before action fees. He objected to the interest charged, saying it was higher than base rate; the Applicant responded to state interest was sought at the contractual rate provided for in the lease.

THE DETERMINATION

98. This case started as a referral from the County Court, whereby the Tribunal was tasked with considering (only) payability of service charges, reasonableness of administration fees, and whether an order should be made under s20C Landlord and Tenant Act 1985. The Tribunal Judge sitting as a County Court Judge was asked to consider costs in the County Court. The County Court claim had not broken the charges down between service charges and administration charges; the Applicant's statement of case made no reference to administration charges so these did not fall for consideration by the Tribunal.

99. In his defence to the County Court claim the Respondent asserted that he had been illegally removed as a director from the Applicant Right to Manage company, and had withheld his payments until he was reinstated as a director and could have access to accounts invoices surveys and quotes.

100. The Respondent's position as a director of the Applicant RTM Co was not a matter that the Tribunal can or should consider; the only issues before the Tribunal are those as defined in the terms of reference handed down by the County Court and the Defendant's position as a Director (or not) could have no bearing on the payability of service charges.

101. The Tribunal was not provided with a detailed statement of case by the Respondent. He had provided a response to the Scott Schedule, and a

collection of emails but no co-ordinated overview. He appeared to expect the Tribunal to look at the documentation he presented and work out the case he was trying to make. Whilst recognising the Respondent was a litigant in person, the directions were fairly clear and the Respondent by failing to properly set out his case by way of a statement helped neither himself or the Tribunal.

Apportionment of service charges

102. The first question the Tribunal had to determine was whether the Applicant had apportioned service charges in accordance with the lease. The service charge proportion was defined as "a fair and reasonable proportion" with no mechanism provided in the Lease to calculate this determination. The Respondent objected to the commercial unit 205 paying what seemed to be a comparatively low sum for a large unit. The Applicant in their written evidence stated that the apportionment they had determined was based upon the square footage of the flats providing a table detailing the square footage of each flat together with the service charge apportionment applied.

103. However on questioning by the Tribunal Mr. Bentham said that this was not the case, and it was apparent to the Tribunal from the floor plan and the site visit, that Unit 205 was substantially larger than any of the residential units. The square footage provided in evidence was not accurate and it ought to have been apparent to the Applicant that the Tribunal was being misled.

104. Mr. Bentham's suggestion that to get any service charge at all from the leaseholder was better than getting none (when the unit was unlet) may have seemed a sensible one; but the lease provides for the freeholder to pay service charges for any units unlet. To let a larger unit with a lower rate of service charges to other units would not prima facie be considered a fair and reasonable proportion. The Applicant's statement of case at paragraph 23 is simply untrue, as was the explanation at the hearing that to get some service charge was better than getting no service charge was also untrue given the freeholder should have been paying the equivalent service charge for any empty unit.

105. The difference made to the 188 residential leaseholders will be relatively small; if Unit 205 was paying twice its current rate of service charge the rebate to each leaseholder would be less than £10 per year.

106. In Aviva Investors Ground Rent GP Ltd v Williams [2023] UKSC 6 the Supreme Court confirmed the Tribunal's jurisdiction to be able to intervene with service charge apportionment where the lease provided for the Landlord to determine a fair and reasonable division.

107. The Supreme Court stated that the question for the tribunal was not whether there should be a re-apportionment and, if so, in what fractions; rather, the question for the tribunal was whether the landlord's re-apportionment had been reasonable; the First-tier Tribunal had decided that the landlord had acted reasonably in making the re-apportionment.

108. In the present case the evidence of the Applicant as to how they arrived at a figure for the service charges for Unit 205 was contradictory and confusing and did not stand up to scrutiny. However the different nature of the accommodation, and the very slight difference that re-apportionment would make to the Respondent's service charge contribution lead the Tribunal to determine that it would not be appropriate to intervene.

109. That said, the Tribunal would recommend that service charge apportionment be reviewed by the Applicant to ensure fairness and transparency for all paying parties going forward. It seems unfair to charge at a lower rate, and for the Commercial unit not to pay for the lift when others on the same floor do.

Buildings Insurance

110. The Respondent stated that building insurance had been increased to an unreasonable amount and with unreasonable terms; he did not however state what those unreasonable terms were, or produce any evidence of comparable insurance for a different amount, which in the Tribunal's experience would be difficult to produce in any event.

111. The Respondent was concerned that the agents commission of 12.5% of £4791.67 had not been refunded to the service charge account. He felt there was a conflict of interest by the Agent keeping the commission and that it was against the spirit of the Right to Manage process for a third party to unnecessarily profit from leaseholders. The Defendant did not produce any comparative evidence for buildings insurance in support of his argument. The contract permitted Homestead to retain the commission and the Applicant had negotiated the contract with Homestead.

Electricity

112. There was no evidence that the electricity was paid for by the commercial unit.

General Repairs and Maintenance

113. The Respondent suggested that the costs of works would have been higher due to historical neglect? He provided no evidence of this. It is likely that the costs of works have likely been high due to the complex nature of the building and its poor initial development neither of which the Applicant was responsible for. Previous works were not carried out by the Applicant and predated the current managing agent.

114. There was a general lack of detail as to the Respondent's objection to service charges for specific works. He referred to external decoration costs saying it was an unreasonable charge for poor quality works but he provided no evidence of this to support his claim.

115. The Respondent objected to the charges or works to the CCTV system no reason was provided to dispute the charges for the work carried out. The Respondent stated that they were not specialists, but he raised no issue with the works they carried out or the costs charged.

116. It was understandable that the Respondent should be concerned about the potential for conflict of interest where the directors of the Right to Manage Company are charging for providing services for the Building. Conversely of course the Directors had a vested interest in being closely involved with the management of a complex building that has been beset with problems from the time it was built; in the absence of evidence that works were not being carried out to an acceptable standard at a reasonable cost, the Tribunal found the charges to be reasonable.

S20 Consultations/Major Works

117. There was no need for a s20 consultation for the management agreement. The agreement for management was not a Qualifying Long Term Agreement, being for less than a year.

118. In relation to the major works, the Respondent was concerned that the Applicant did not contact his preferred contractor: there was no requirement for the Applicant to do so and the Tribunal was not persuaded the consultation process was flawed.

119. The Respondent objected to the monies being used for major works other than the chimney works for which they were originally collected. The Tribunal was satisfied that the works were necessary and more urgent than the chimney works and the funds were put to a legitimate use in the interests of the Building and the leaseholders.

Managing Agent charges

120. The Respondent objected to the set up costs for the managing agents of £12300, saying it was not reasonable. The Tribunal considered that there would be a good deal of management required for a Right to Manage Company for a building which is complex and came with a number of inherent defects and problems and that it was prudent for a managing agent to recognize and adequately charge for the set up costs of taking on the responsibilities of management.

121. The Managing Agent had changed their charging methods to take into account increased company secretarial duties, but the costs had been agreed by the Applicant and the Respondent had not provided any comparables. The Tribunal found these costs reasonable.

122. In summary, the Tribunal finds the service charges for the years under review to be reasonable, and payable by the Respondent.

S20C Cost Order

123. The Tribunal makes no order under s20C Landlord and Tenant Act 1985.

Costs in the County Court

124. As an observation the Tribunal notes that the Applicant has been successful in these proceedings and is entitled to costs contractually under the lease. That is a matter for the County Court as the original transfer order makes clear.

Tribunal/County Court Judge Murray

12 October 2023