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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL of the
MIDLAND RENT ASSESSMENT PANEL**

No. BIR/00CS/LIS/2010/0018

**PROPERTIES AT GRAVITY MEWS, PRYOR ROAD / BRISTNALL HALL ROAD,
OLDBURY WEST MIDLANDS**

SERVICE CHARGE

Section 20C and 27A of the Landlord and Tenant Act 1985

BETWEEN:-

Applicants

Miss G.K.Heron	96 Pryor Road
Mr T.Dyke	6 Gravity Mews
Mr and Mrs K.Alsop	194 Bristnall Hall Road
Ms V Evans	8 Gravity Mews
Ms H.Bottoms	10 Gravity Mews
Y.Sheppard	94 Pryor Road

and

Respondents

Solitaire Property Management Company Limited	<u>First Respondent</u>
Holding and Management (Solitaire) Limited	<u>Second Respondent</u>
Selbourne Homes Limited	<u>Third Respondent</u>

TRIBUNAL

Mr A.J.ENGEL MA (Hons.)	Chairman
Mr I.D.HUMPHRIES B.Sc.(Est.Man.) FRICS	
Mrs N.JUKES	

DECISIONS

- A** The service charges payable for the period up to 30th June 2008, 2008/9 and 2009/10 are set out at Nos. 51, 62 and 70 below.
- B** The interim service charges payable for 2010/11 are set out at No.73 below.
- C** All the costs incurred or to be incurred by the Respondents in connection with these 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 Applicants or other persons.

REASONS

Page References are to Documents in the Respondents' bundles.

Background

- 1 The Third Respondent is the Developer and Freeholder of a modern development in Oldbury comprising 10 houses and 16 flats with a shared car park. The units are of two and three storey brick and tile construction.
- 2 The postal addresses of the houses and flats are Pryor Road, Gravity Mews and Bristnall Hall Road.
- 3 The 16 flats are let on long leases.
- 4 4 of the 16 flats have a communal area.

The Leases

- 5 We have seen the Lease of 96 Pryor Road which is let to Miss G.K. Heron for a term of 150 years from 1st January 2006. The Lease is dated 9th March 2007.
- 6 We assume that the Leases of the other Applicants are in similar terms – save for the Lease of 194, Bristnall Hall Road (Mr and Mrs K. Alsop) as this is one of the 4 flats that has a communal area and therefore subject to extra service charges (Group 3) – but otherwise, we assume the lease is in the same terms as that of 96 Pryor Road.

The Service Charge

- 7 Clause 7.1 of the Leases states that the Second Respondent is to provide services and be the payee of the service charges.
- 8 The service charge year runs from 1st July to 30th June.
- 9 The Leases contain the usual provisions for payment of estimated service charges in advance with an adjustment after the end of the service charge year.
- 10 There is also provision for a reserve fund.
- 11 The Lease for 94 Pryor Road states that the current service charge at the date of grant of the lease was £467. We assume this is per annum.
- 12 We were informed that the Second Respondent appointed the First Respondent to act as its agent.
- 13 We were also informed that it was in December 2007 that the Third Respondent handed over management to the First and Second Respondents and that no service charges (other than for buildings insurance) have been demanded from the Applicants in respect of the period prior to the hand-over.

The Service Charge Proportions

- 14 The Leases provide that each flat is liable for 1/26th of the cost of the services provided to all 26 units (16 flats plus 10 houses) – Group 1 (Estate costs) plus 1/16th of the cost of the services provided to the (16) flats – Group 2 (Block costs).
- 15 In addition, the 4 flats that share the communal area are liable for one quarter of the cost of the services to the communal area (Group 3).
- 16 This complexity has been increased (unnecessarily, in our view) by the way in which the accounts have been drawn up and the fact that the first set of accounts (up to 30th June 2008) have had to be extensively adjusted by reason of the fact that the flats had been occupied for different periods of time prior to 30th June 2008.
- 17 It is not surprising that the Lessees have been perplexed by the documents provided to them by the Respondents.

Application

- 18 By written application, dated 30th April 2010, Miss Heron (96 Pryor Road) applied to the Tribunal for a determination of her liability to pay service charges in respect of the periods ending 30th June 2008, 30th June 2009 and 30th June 2010.
- 19 Miss Heron also applied for an Order pursuant to Section 20C of the Landlord and Tenant Act 1985.

Parties

- 20 The other Applicants were later joined as parties.

Pre-Trial Review

- 21 An oral Pre-Trial Review was held before me (sitting alone) on 12th August 2010.

Directions

- 22 On 12th August 2010, after the Pre-Trial Review, I gave written Directions which included:-
- (i) An amendment to the Application to the effect that the Tribunal would also determine the Applicants' liability for estimated services charges payable in advance in respect of the period ending 30th June 2011.
 - (ii) A Direction that Mr and Mrs Burnett and Mrs Ghuman (who had previously been joined as Applicants) be dismissed as parties as it had come to light that they were freeholders – not tenants – which meant that the Tribunal had no jurisdiction to determine their liability for service charges.

Inspection

- 23 We inspected the interior of 96 Pryor Road, the communal area (serving 4 flats), the car park and the exterior of the development on the morning of 29th November 2010.

Hearings

- 24 Hearings took place on the afternoon of 29th November 2010, 30th November 2010 and 24th January 2011.
- 25 The First and Second Respondents were represented by Mrs M.Khan (Solicitor).

Evidence

- 26 Oral evidence was given by Miss Heron, Mr Dyke, Mr and Mrs Alsop (Applicants) and by Mrs Ward (Property Manager) and Mr Bettinson (insurance expert) on behalf of the Respondents.
- 27 The Tribunal was provided with voluminous documentation by the Respondents and some documents were provided by the Applicants.

Insurance

- 28 The Tribunal accepted the evidence of Mr Bettinson and found that the sums expended by the Respondents on buildings insurance were reasonable – save for the Direct Debit charges.
- 29 The Direct Debit charges arose because payments were delayed due to service charges not being collected promptly. We consider that such delay was either due to inaction by the Respondents or should be charged to the tenants who failed to pay promptly and it is not a charge which can reasonably be included in the service charges payable by all Lessees.

The Period ending 30th June 2008

- 30 These were the first service charge accounts and they were signed off by Chartered Accountants on 18th December 2008.
- 31 The adjusted accounts showing the sums due in respect of each flat are at Page 6 (and Page 231) and there is a partial explanation on Page 232.
- 32 We were told that the adjusted accounts were drawn up by applying complicated formulae which involved dividing by 568 and then multiplying by the number of days from the date of completion to 30th June 2008 (see Page 232).
- 33 We have no way of checking the accuracy of the formulae but the adjusted accounts were drawn up by Chartered Accountants and we therefore assume that they are accurate and fair – although this is subject to a mathematical error whereby the total Group 1 charges are shown as £1,924.67 whereas this figure should be £1,850.65.

34 The Group 1 (Estate) costs are set out on Page 7. The total is £3,007.29

35 Our determinations are as follows:-

Sweeping - £624.96

We accept the Lessees' evidence that sweeping was spasmodic and we find that the reasonable cost for the work actually done is **£250.00**.

Electricity - £75.00

Conceded by the Respondents.

Repairs and Maintenance - £810.75

£282 was conceded by the Respondents.

The invoice for fencing (Page 26) was not supported by evidence. We accept the Lessee's evidence that the fencing was never repaired and we disallow this expenditure (£235).

The invoice for guttering (Page 29) is detailed and allowed in the sum claimed - **£293.75**.

Account Handling Charges - £70.00

Conceded by the Respondents.

Audit Fee - £143.75

Having regard to the criticisms (above) we allow **£100.00**

Management Fees - £1,092.89 + VAT

This figure is based on £43.71 per unit. We regard this as too high for the (approx.) 6 months period (since the hand-over) and allow £37.50 (including VAT) x 26 = **£975**

Thus the total is:-

Sweeping:-	£ 250.00
Repairs and Maintenance:-	£ 293.75
Audit:-	£ 100.00
Management:-	£ 975.00
Bank Interest Received:-	(£ 1.32)
	<u>£1,617.43</u>

36 Thus we have reduced the Group 1 service charges from £3,007.29 to £1,617.43.

37 The way the Respondents' Accountants dealt with the Group 1 service charges is shown on Page 12.

The total Group 1 charge of £3,007.29 was multiplied by 61.5392 % (i.e. 16/26 representing the flats' proportion of the total units in the development) which was stated as £1,924.67, although as Mrs Khan pointed out to us there was an error in their calculations and the correct calculation should have been £1850.65.

Following the same method, 61.5392% of our figure of £1,617.43 is £995.34.

- 38 The Accountants transferred their (erroneous) figure of £1,924.67 to Page 6. This should now be £995.34.
- 39 Then in order to calculate the Group 1 service charges due in respect of each flat belonging to an Applicant by using the Accountants' method, it is first necessary to multiply £995.34 by 6.25% (i.e. 1/16th) which is £62.20.
- 40 Dividing by 568 and multiplying by the number in Column 2 on Page 6 (the number of days from completion of each lease to 30th June 2008) produces the following figures for the flats leased by the Applicants:-

10 Gravity Mews:-	567 days	£62.09
6 Gravity Mews:-	578 days	£63.29
8 Gravity Mews:-	577 days	£63.18
94 Pryor Road:-	557 days	£60.99
96 Pryor Road:-	479 days	£52.45
194 Bristnall Hall Road:-	264 days	£28.90

- 41 Group 2 (Block) Charges are set out on Page 1. They total £1,226.84.
- 42 Our determinations are as follows:-

Account Handling - £70.00
Conceded by Respondents.

Bank Charges Paid - £45.08
Disallowed.

These bank charges were incurred due to non-collection of service charges.

We consider this was either due to inaction by the Respondents or should be charged to the tenants who failed to pay promptly and is not a charge that can reasonably be included in the service charges payable by all Lessees.

Audit Fees - £322.00

We regard £322 as excessive even for work of a reasonable standard and we found that this work fell below a reasonable standard in that there was an error, unnecessary complexity and lack of clarity.

We allow **£100.00**.

Management Fees - £672.33 + VAT

We were told that this figure was based on £42.03 (plus VAT) for each of the 16 flats.

We regard £672 (+VAT) as excessive for 6 months since the hand-over – particularly bearing in mind that Management Fees are also charges under Group 1.

We allow another £32.50 (including VAT) per flat = **£520.00**.

43 Thus the Group 2 total allowed is:-

Audit Fees	£ 100.00
Management Fees (including VAT)	£ 520.00
Bank Interest Received	(£ 0.23)
	<u>£ 619.77</u>

44 The way the Accountants dealt with Group 2 service charges is set out on Page 6 – although one would not know the method used just by looking at the table on Page 6.

45 The method adopted was to multiply the total Group 2 charges by 6.25% (1/16th), which for our total of £619.77 gives £38.74. This figure is then divided by 568 and multiplied by the number in Column 2 on Page 6 (the number of days from completion of each lease to 30th June 2008). This calculation produces the following figures for the flats leased by the Applicants:-

10 Gravity Mews:-	567 days	£38.67
6 Gravity Mews:-	578 days	£39.42
8 Gravity Mews:-	577 days	£39.35
94 Pryor Road:-	557 days	£37.98
96 Pryor Road:-	479 days	£32.66
194 Bristnall Hall Road:-	264 days	£18.00

46 Group 3 charges were £130 (see Page 1). We were told by Mrs Khan that this amount was credited in 2010 and on that basis one quarter of that amount - **£32.50** – was correctly allocated to 194 Bristnall Hall Road (see Page 6).

47 The Buildings Insurance Service Charge levied for the 16 flats for the period up to 20th June 2008 was £4,057.38 (see Page 1). This figure was the total of the premiums shown on Pages 14 (£1,418.55) and 15 (£2,561.98) plus £76.85 (being 3% of £2,561.98) direct debits charge. We allow the premiums but not the direct debits charge (see Nos 28 and 29 above). Thus, we allow **£3,980.53**.

48 £3,980.53 divided by 16 (or multiplied by 6.25%) = **£248.78**.

49 We have discovered (since the hearings ended) that the insurance calculation per flat shown on Page 6 (and 231) is arrived at by dividing the total by 578 (rather than 568 as for the Group 1 and 2 charges) and then multiplying by the number in Column 2 on Page 6 (the number of days from completion of each lease to 30th June 2008).

50 We do not know why 578 was used rather than 568. It may, of course, have been in error (or that 568 was in error) but we must assume there was a valid reason and do the same. Dividing £248.78 by 578 and multiplying by the number in Column 2 on Page 6 (the number of days from completion of each lease to 30th June 2008) produces the following figures for the flats leased by the Applicants:-

10 Gravity Mews:-	567 days	£244.04
6 Gravity Mews:-	578 days	£248.78
8 Gravity Mews:-	577 days	£248.35
94 Pryor Road:-	557 days	£239.74
96 Pryor Road:-	479 days	£206.17
194 Bristnall Hall Road:-	264 days	£113.63

51 Thus the total service charges allowed in respect of the Applicants' flats for the period up to 30th June 2008 are:-

	<u>Group 1</u>	<u>Group 2</u>	<u>Insurance</u>	<u>Total</u>
10 Gravity Mews:-	62.09	38.67	244.04	344.80
6 Gravity Mews:-	63.29	39.42	248.78	351.49
8 Gravity Mews:-	63.18	39.35	248.35	350.88
94 Pryor Road:-	60.99	37.98	239.74	338.71
96 Pryor Road:-	52.45	32.66	206.17	291.28
194 Bristnall Hall Road:-	28.90 + £32.50 Group 3	18.00	113.63	193.03

2008/9

52 Group 1 Charges are set out on Page 245.

53 Our determinations are as follows:-

Sweeping £1,333.90

We accept the Lessees' evidence that sweeping was spasmodic and find that the reasonable cost for the work actually done is **£250.00**.

Electricity £512.83

We accept Miss Heron's evidence that external lights were left on all day. We also accept Mrs Ward's evidence that the Respondents have been advised by an Electrician that 6 (70 watt) lights on for 12 hours each day would cost £238.22.

We therefore allow **£238.22**.

Repairs and Maintenance £126.50

Conceded by Respondents.

Account Handling Charges £25.00

Mrs Khan informed us (and we therefore accept) that this charge was later credited and on that basis it is included in our total.

Bank Charges £5.37

Disallowed.

These bank charges were incurred due to non-collection of service charges.

We consider this was either due to inaction by the Respondents or should be charged to the tenants who failed to pay promptly and it is not a charge that can reasonably be included in the service charges payable by all Lessees.

Audit Fees £148.64

£100.00 allowed.

There were mistakes made and we consider £100 is the appropriate sum for the work carried out to a reasonable standard.

Management Fee

£2,235.60 (including VAT)

Allowed.

54 Therefore, the total is:-

Sweeping:-	£ 250.00
Electricity:-	£ 238.22
Account Handling:-	£ 25.00
Audit:-	£ 100.00
Management:-	£2,235.60
Bank Interest Received	(£ 1.39)

TOTAL £2,847.43

55 The Respondents' Accountants multiplied their Group 1 figure by 61.5392 % (i.e 16/26) in order to arrive at the total proportion for the flats – although they made an arithmetical error in so doing.

56 Adopting the same method, £2,847.43 x 16/26 = **£1,752.26**

57 Each of the 6 flats belonging to the Applicants is liable to one sixteenth of £1,752.26 = **£109.52**

58 Group 2 charges are set out on Page 279. Our determinations are:-

Repairs and Maintenance £313.50

£141-00 – conceded by the Respondents. We accept that the balance of £172.50 was reasonably incurred.

Account Handling & Bank Charges £37.40

We disallow these charges as unreasonable.

Audit Fees £322.00

£100-00 allowed.

There were mistakes made and we consider £100 is the appropriate sum for the work carried out to a reasonable standard.

Management Fee

£1,515.00 (including VAT) – Allowed.

Buildings Insurance

£2,740-51 allowed.

(Direct Debit Fees disallowed – see No. 29 above).

Thus our total for Group 2 is **£4,524.04** (to take into account £3.97 bank interest received).

- 59 Each of the 6 flats belonging to the Applicants is liable to 1/16th of £4,524.04 = **£282.75.**
- 60 The Group 3 service charges are set out on Page 279. They total **£365.30** which we consider to be reasonable and this figure is, accordingly, allowed.
- 61 194 Bristnall Hall Road is liable for one quarter of this figure = **£91-32.**
- 62 Thus the total service charges allowed in respect of the Applicants' flats for 2008/9 are:-

	<u>Group 1</u>	<u>Group 2</u>	<u>Group 3</u>	<u>Total</u>
10 Gravity Mews:-	109.52	282.75	0	392.27
6 Gravity Mews:-	109.52	282.75	0	392.27
8 Gravity Mews:-	109.52	282.75	0	392.27
94 Pryor Road:-	109.52	282.75	0	392.27
96 Pryor Road:-	109.52	282.75	0	392.27
194 Bristnall Hall Road:-	109.52	282.75	91.32	483.59

2009/2010

- 63 Group 1 Charges are set out on Page 497d.
- 64 Our determinations are as follows:-

Electricity - £238.22

Allowed.

Communal Area Cleaning

Conceded by the Respondents.

Sweeping - £418.50

We accept the Lessees' evidence that sweeping was spasmodic and find that the reasonable cost for the work actually done would have been **£250.00**

General Repairs - £836.96

The documentation supporting this figure is at Pages 564 – 569.

We reject the criticisms made by the Applicants in respect of this item and allow it in full. In addition, we add £55.20 for the costs of the Care Line which the Respondents concede should be moved from Group 2 to Group 1. Thus, we allow **£892.16**.

Accountancy and Audit Fees - £230.00

Again, there were some mistakes and we consider that the reasonable fee for the work reasonably carried out would have been **£150.00**.

Health and Safety - £207.98

Allowed.

Prior Year Adjustment

Conceded by the Respondents.

Management Fees - £3,141.30

Mrs Khan informed us that this Management Fee was about a half of a total Group 1 and Group 2 Management Fee of approximately £250 per unit – including VAT. We thought that there was probably a mathematical error in the accounts presented to us (Pages 497d and e) but we did not need to investigate the matter further.

We consider £250 per unit to be too high for the work actually and reasonably carried out and find that a reasonable fee is £175 per unit – including VAT. We therefore allow £87.50 per unit for Group 1. As there are 26 units in Group 1, we allow a total of **£2,275.00 including VAT**.

65 Thus the total Group 1 charges we allow are **£4,013.36**.

Each of the 16 flats is liable for 1/26th of this amount (see Page 497g) - **£154.36**.

66 Group 2 charges are set out on Page 497e.

67 Our determinations are as follows:-

Insurance - £3,353.61

This figure includes direct debit fees of £61.24 (see Page 498) which we disallow (see No.29 above). Accordingly, we allow **£3,292.37**

Maintenance of Landscaped Areas - £697.50

This charge is £50 a month plus VAT.

We accept the evidence of the Applicants that the work done was minimal and we consider that the reasonable cost of the work actually and reasonably done was £30 a month including VAT. Thus, we allow **£360.00**.

General Repairs - £244.95.

£55.20 is to be deducted (see No. 65 above). This leaves **£189.75** which is allowed.

Accountancy and Audit Fees - £144.00.

£100 allowed. We consider £144 too high in view of the mistakes.

Health and Safety - **£294.93**

Allowed.

Management Fees - £2,010.36

£1,400 (i.e. £87.50 x 16) allowed – see No. 65 above.

Thus the total Group 2 charges allowed is **£5,637.05**.

- 68 Each flat is liable for 6.25% (one sixteenth) of the Group 2 Charges = **£352.32**
- 69 The Group 3 charges are also set out on Page 497e. We consider they are reasonable and they are, therefore, allowed in the sum of **£1,283.95**. 194 Bristnall Hall Road is liable for one quarter of this sum = **£320.99**.
- 70 Thus the total service charges allowed in respect of the Applicants' flats for 2009/10 are:-

	<u>Group 1</u>	<u>Group 2</u>	<u>Group 3</u>	<u>Total</u>
10 Gravity Mews:-	154.36	352.32	0	506.68
6 Gravity Mews:-	154.36	352.32	0	506.68
8 Gravity Mews:-	154.36	352.32	0	506.68
94 Pryor Road:-	154.36	352.32	0	506.68
96 Pryor Road:-	154.36	352.32	0	506.68
194 Bristnall Hall Road:-	154.36	352.32	320.99	827.67

2010/11

- 71 The Respondents conceded that the interim payments in respect of the estimated service charges should be based on the 2009/10 figures plus contributions to the reserve funds.
- 72 The contributions to the reserve funds are set out on Pages 281 and 282 as follows:-

Group 1 - £990 (divided by 26 = £ 38.08 per flat)

Group 2 - £1,220 (divided by 16 = £ 76.25 per flat)

Group 3 - £1,200 (divided by 4 = £300.00 per flat)

73 Therefore, the total interim payments in respect of 2010/11 for the Applicants' flats are:-

				Total
10 Gravity Mews:-	506.68	38.08	76.25	£ 621.01
6 Gravity Mews:-	506.68	38.08	76.25	£ 621.01
8 Gravity Mews:-	506.68	38.08	76.25	£ 621.01
94 Pryor Road:-	506.68	38.08	76.25	£ 621.01
96 Pryor Road:-	506.68	38.08	76.25	£ 621.01
194 Bristnall Hall Road:-	506.68	38.08	76.25	
	+ 300.00			£1,242.32

Section 20C

74 Having regard to the Applicants' success in these proceedings in reducing the amount of their service charges and the obscurity of the Respondents' accounts presented to the Applicants, we consider it just and equitable to make the Order set out at C above.

SIGNED: Mr A.J. Engel
Chairman

DATED: 11th April 2011

