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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LSC/2014/0540**
Property	:	**Flat 2, 139 Hurlingham Road, London SW6 3NH**
Applicant	:	**Concerto Properties Limited**
Representative	:	**Mr B Adams of Counsel**
Respondent	:	**Ms Brigitte Georgette Marie-Claude Lardier**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mr Roberts** **Ms Wilby**
Date and venue of Hearing	:	**23rd & 24th March 2015, 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17.8.15**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this decision.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The tribunal determines that the respondent shall reimburse the applicant, within 28 days of this decision, the tribunal fees paid by the applicant.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent in respect of the service charge years 2009-2015.

2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a three storey converted house located in West London, built circa 1900, comprising four flats. The respondents property is a bedsitter / flat located at the rear of the first floor. The tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

4. Both parties confirmed at the hearing that none of the other flats are owned by the applicant and none of the other lessees have challenged the service charges for the relevant years, although the respondent stated that flat 4 was "suing" the respondent for compensation.

5. Both parties confirmed at the hearing that the lease provides for a fixed percentage service charge contribution of 17% by the respondent, each service charge year runs from 29th September to the 28th of September following, and payments are due on the 29th of September and the 25th of March each year.

6. In a previous decision by this tribunal dated 5.10.12, following a transfer from the county court sitting at West London, concerning service charge years 2009-2012, the tribunal determined that the respondent was not required to pay any service charges as the applicant

had failed to comply with section 47 of the Landlord and Tenant Act 1987 Act (failure to provide the landlords address). The tribunal on that occasion did not consider whether the service charges were reasonable as neither party had requested that the tribunal consider the issue and the matter was transferred back to the county court.

7. Following that decision, the applicant claims to have subsequently complied with the section 47 requirement.

8. Both parties confirmed at the hearing that the applicant then mistakenly started proceedings at the county court (under claim number A00WL251), to "enforce the tribunal decision", instead of starting fresh proceedings. The applicant subsequently made an application to this tribunal on 15.10.14, resulting in the current proceedings before this tribunal. Both parties confirmed that at present there were no ongoing matters at the county court.

9. An oral case management hearing took place on 20.11.14. Both parties attended. The tribunal identified the following issue to be determined, namely, *"Whether the service charges for the years 2009-2015 are reasonable and payable by the Respondent"*. The tribunal noted the amount claimed as at the date of the application was £10,252.13.

The hearing

10. The applicant was represented by Mr B Adams of Counsel. Also in attendance on behalf of the applicant was Ms Tracey Asquith-Fox, a Senior Property Manager at Hathaways, who have been appointed as managing agents in respect of the relevant property. The respondent appeared in person.

11. The tribunal had before it a bundle prepared by the applicant containing 485 pages of evidence. Immediately prior to the hearing the parties handed in further documents, all of which have been considered by the tribunal. The applicant provided a skeleton argument, one Upper Tribunal decision, and an enlarged copy of the Scott Schedule. The respondent provided a note entitled "Preliminary for the hearing on 23rd-24th March 2015" and an email dated 19.3.15.

12. At the start of the hearing the respondent objected to the enlarged Scott Schedule on the basis that it was a new Scott Schedule. The applicant stated that it was not a new Scott Schedule, it included all the information provided by the respondent in the Scott Schedule she had completed, it included the respondents reply, and was provided to simply assist the tribunal with an easy to read document containing comments made by both parties on the same document. The respondent stated in reply that she had not checked the enlarged Scott Schedule but the applicant should not be allowed to rely upon it as it

was not included in the bundle as per the tribunals direction. Having considered the enlarged Scott Schedule, which contained the same information as provided by the parties in their respective Scott Schedules, the tribunal allowed the applicant to rely upon the enlarged Scott Schedule which helpfully put the comments made by both parties on the same page. The tribunal found the respondents objection to be without merit.

13. The respondent also objected to the 485 page bundle as she claimed it was served three days late and because of the "appalling quality and contents" of the bundle. The respondent stated that it was not an agreed bundle. She received the bundle on Monday 9th March instead of Friday 6th March. Whilst the bundle contained all the relevant documents, they were not in a good state. However, she had copies of all the relevant documents with her at the hearing. In particular, the documents at pages 244, 315, and 351 should be in colour. She had the coloured copies of the documents on pages 244 and 351 with her at the hearing. The respondent stated that she did not have the coloured copy of the document on page 315 but that it did not matter and that the hearing could proceed fairly. The respondent stated that she did not provide her own bundle as she was too ill.

14. The applicant argued that the relevant direction stated "*The landlord...shall by 6 March 2015 send one copy to the other party...*". The applicant stated that the direction had been complied with in that the bundle had been sent on Friday 6th and the direction did not state that it should be "received" by the other party by the 6th. In any event, even if it had been late, it was only late by one working day and there was no evidence of any prejudice to the respondent. The lack of coloured photographs was irrelevant as the black and white copies together with the text in the relevant documents were adequate and the document concerning the asbestos was no longer of relevance. If the respondent disagreed with the bundle provided by the applicant, the tribunal had directed that she send her own bundle by 6th March 2015. The respondent had not provided any bundle.

15. The tribunal found the applicant had complied with the direction to "send" by 6th March the bundle of evidence. Even if it were late by three days, there is no evidence whatsoever of any prejudice to the respondent. The respondent did not state that she had been prejudiced and it is obvious from a reading of the respondents analysis of the 485 page bundle in her note entitled "Preliminary for the hearing on 23rd-24th March 2015" that she had the opportunity to consider in detail the bundle that she had received two weeks prior to the hearing date. Despite the respondents claim of the "appalling quality and contents" of the bundle, the respondent failed to provide her own bundle as per the tribunal direction (in the event the bundle was not agreed) or seek further time to provide her own bundle if she was ill as claimed. The respondent accepts in any event that the bundle contains all the relevant documents and with respect to the documents she was not

happy with, she had her own coloured copies to provide at the hearing and the coloured copies she did not have would not prevent her from having a fair hearing. The tribunal found some of the criticisms made by the respondent exaggerated and unnecessary. For example, the respondent stated that the bundle was not fit for purpose and that the managing agents could not even bother to maintain and clean the drum of their photocopier and that the copy of the lease on pages 11-31 of the bundle was of extremely poor quality and not fit for purpose. The tribunal found the copy of the lease adequate and had no difficulty in reading it. The tribunal found the respondents application lacked merit and refused her application to exclude all the evidence contained in the 485 page bundle.

16. Having considered the preliminary points raised by the respondent, the tribunal sought to clarify the issues in dispute. The respondent confirmed that the issues in dispute were the points she had raised in the Scott Schedule. In addition, although she had not raised the issue in the Scott Schedule, she wished to challenge whether the applicant had complied with the duty to include the applicants correct address in the service charge demands that had been issued. The applicant stated that although the point had not been raised in the Scott Schedule, it was prepared to deal with the argument now being raised.

17. By lunch time on the first day, the applicant had realised that it may need to provide all relevant invoices to demonstrate that the service charges were reasonable. The tribunal informed the applicant that it was a matter for the applicant to decide what evidence to provide. If it sought permission to adduce invoices the following day, the tribunal would determine whether to allow that evidence to be relied upon if and when that application was made.

18. The hearing was adjourned at 4:20pm on the first day to 10:30am the following day. By the end of the first day all the oral evidence and arguments concerning the disputed items as identified in the Scott Schedule had been covered and it was anticipated that the tribunal would deal with the application by the applicant to adduce further evidence, consider how to deal with the invoices if they were allowed to be relied upon, and closing submissions from both parties.

19. As anticipated, the applicant adduced further evidence on day two, namely; all relevant invoices for each of the disputed service charge years except for the year ending September 2009, pages 1 and 5 of the end of year Account report for the service charge year ending September 2011 (which were missing in the main bundle and were to be inserted into the main bundle as pages 208A and 210A), certificate of insurance for the relevant property from "Allianz" for the years 2010-2011, 2011-2012, 2012-2013, and 2013-2014, a certificate of insurance from "NIG" for the period May 2014-May 2015, and a copy of the

company details from Companies House confirming the applicants name and registered office.

20. The respondent objected to the late submission of the invoices, which she stated had not been included in the bundle as per the tribunal direction despite her previous request to see relevant invoices. The tribunal noted that the respondent had stated in both the Scott Schedule and her witness statement that she wanted to see the relevant invoices. The applicant stated that it had thought that the respondent was simply stating that the invoices had not been served at the relevant time and were therefore not payable. Despite the respondents request to see the relevant invoices, the applicant had believed that the invoices were not required as the respondent had not alleged that the applicant had not paid the relevant sums. The applicant, having heard the arguments on the first day, now realised the significance of the invoices. The applicant stated that the issue was what prejudice there would be to the respondent if the invoices were allowed in at this late stage. If they were not allowed in, the consequences for the applicant would be "drastic" as the applicant could lose all the claimed service charges totalling more than £10,000.00. Any prejudice to the respondent could be addressed by either a short adjournment or by having a longer adjournment to allow the respondent the opportunity to consider the invoices and for both parties to make written representations. The applicant stated that it accepts that it had breached the tribunal direction, however, it was not deliberate and was based upon a misunderstanding.

21. In reply, the respondent raised a number of issues, a lot of which were of a general and historical nature, but her main argument was that she had previously requested to see the invoices and the applicant had failed to provide them in accordance with the directions. The applicant should not be allowed to rely upon them in breach of the tribunals direction.

22. The tribunal reminded itself of the overriding objective to deal with cases fairly and justly, which included (amongst other things) dealing with cases in ways which were proportionate to the importance of the case, the complexity of the issues, the anticipated costs, the resources of the parties, and the need to avoid delay so far as compatible with a proper consideration of the issues. The tribunal reminded itself that where a party failed to comply with a direction, the tribunal may take such action as the tribunal considered just, which may include waiving the requirement or for the failure to be remedied or refusing to allow the evidence to be relied upon.

23. The tribunal accepts the breach was not deliberate. Mr Adam, who had attended the case management hearing, stated that the significance of the invoices was not apparent at the case management hearing. The tribunal accepts the applicant had misunderstood the need to provide

the invoices, which it had in its possession (except for those concerning the year ending September 2009), as it could easily have provided the invoices together with the 485 pages of evidence it had already submitted. To exclude the invoices would result in the applicant potentially losing more than £10,000.00 of service charge arrears. Any prejudice to the respondent could be remedied with a short adjournment, to allow the respondent an opportunity to consider the invoices, and to make written representations. In the circumstances of this case, the tribunal found that it would be disproportionate and therefore unjust to exclude the invoices. Having considered the overriding objective, the tribunal determined the applicant could rely upon the invoices.

24. Upon the tribunal giving its decision after a short adjournment, the respondent reacted with the use of inappropriate and racist language and aggressive and violent behaviour towards the tribunal and the applicants representatives, which unfortunately resulted in the respondent having to be escorted out of the building by the tribunal security at approximately 12:05pm. The respondent had also used inappropriate and aggressive language the previous day and had been politely warned about her behaviour and the consequences that may follow.

25. The tribunal considered the best way to proceed with the hearing. The applicant submitted that the tribunal may consider using its power under the Tribunal Procedure Rules 2013 (Rule 9(3)(b) or (d)) to strike out the whole or part of the respondents case on the basis that the respondents behaviour had resulted in her failing to co-operate with the tribunal such that the tribunal cannot deal with the case fairly and justly or that the manner in which the respondent had conducted herself was vexatious or otherwise an abuse of the process of the tribunal.

26. The tribunal had regard to the overriding objective to deal with cases fairly and justly and in particular the resources of the parties and of the tribunal, seeking flexibility in the proceedings, ensuring so far as practicable that the parties are able to participate fully in the proceedings, and avoiding delay so far as compatible with a proper consideration of the issues. Given the time that had already been spent in dealing with the application, having heard all the oral evidence and arguments concerning the disputed items, and to avoid any satellite litigation, the tribunal determined that the respondents case would not be struck out and the parties would be allowed to make written representations concerning the additional evidence adduced by the applicant and any closing submissions before the tribunal made its final decision concerning the disputed service charge issues.

27. The tribunal directed that the applicant immediately serve on the respondent the additional evidence submitted at the hearing on 24.3.15

(the respondent had been escorted out of the building without taking the additional evidence with her). The respondent be at liberty to make further written representations dealing with the additional evidence and making closing submissions by 5.5.15 (the tribunal was told by the respondent that she would need 6 weeks as she would be in France for three weeks). The applicant be at liberty to provide a written response to the respondents representations and to provide closing submissions by 19.5.15. The tribunal would reconvene, without the need for an oral hearing, after receipt of the further written representations.

28. The tribunal received written representations from both parties as per the directions. Having reconvened on 15.6.15 and having considered the oral evidence and the written submissions from both the parties and having considered all of the documents provided, the tribunal has made determinations on the disputed issues as follows.

Reserve Fund

29. The applicant agreed with the respondent that the amount payable by the respondent towards the reserve fund shall not in any one year exceed 30% of the total costs incurred in that year. Both parties agreed that the reserve fund contribution would be calculated and added to the service charge the tribunal determined for each of the disputed service charge years.

Were the service charge demands compliant with s.47 of the Landlord and Tenant Act 1987

30. The respondent stated that the demands issued since 2009 did not contain the landlords correct address. The address on the demands was 16 Finchley Road, St John's Wood, London NW8 6EB. The respondent stated that the applicants address was in fact 109 Gloucester Place, LondonW1U 6JW. In support, the respondent adduced a copy of the applicants address from Companies House dated 19.10.13. The respondent also stated that the county court order dated 8.1.14, on page 241 of the bundle, confirmed the same address for the applicant as its address for service.

31. The applicant stated that section 47 of the 1987 Act required the landlords name and address. In relation to a corporate landlord, the requirement was for the landlords registered office or the place where it carried on business. The applicant stated that its registered office was at 109 Gloucester Place but its place of business was 16 Finchley Road. Ms Asquith-Fox stated that she was aware that the applicant had its office and staff at 16 Finchley Road, although she had not been there.

32. The applicant further stated that in any event, by the time that all the service charge demands had been re-issued, the applicant had also

changed its registered office to 16 Finchley Road. The applicant provided a recent copy of its details from Companies House confirming its registered office as 16 Finchley Road.

33. The tribunal is satisfied, in view of the evidence from Companies House, that the applicant had at some point changed its registered office to 16 Finchley Road. The tribunal is also satisfied, based upon the unchallenged oral evidence from Ms Asquith-Fox and the applicants eventual change of registered office to 16 Finchley Road, that prior to changing its registered office to 16 Finchley Road, it had used that address as the place where it carried on business. The tribunal accordingly found the demands were compliant with s.47 of the 1987 Act.

Building insurance

34. The applicant stated that the cost of the building insurance for the year ending September 2009 was £885.08, for 2010 it was £960.98, for 2011 it was £1,029.08, for 2012 it was £1,146.75, and for 2013 it was £1,207.39. Other than for the year ending September 2009, the applicant provided copies of all the certificates of insurance with "Allianz" for each of the relevant years.

35. The respondent stated that the cost of the insurance for each of the years was unreasonable. The respondent stated that the cost of the insurance was high because the applicant had made claims concerning flat 4 with respect to problems with the roof. Had the roof been fixed, there would not have been as many claims. However, she accepted that the claims were genuine. The respondent also stated that the additional cost for terrorism cover was unnecessary. The respondent stated that she did not have any alternative quotes to demonstrate that the costs were excessive. She had tried to get quotes from the same company used by the applicant but was told that the premiums were high due to the claims history. She tried to obtain quotes from other companies. They provided quotes that were about £300 cheaper but once they were aware of the claims history, the cost was increased.

36. The applicant stated that the respondent was raising arguments concerning historical neglect, which she had not specifically raised before and had not provided any evidence to show that patch-work repairs carried out by the applicant had resulted in higher insurance premiums than would otherwise have been the case had the applicant replaced the roof.

37. The applicant stated that the lease allowed cover against terrorism at the applicants discretion and referred the tribunal to clause 4 of the Sixth Schedule, setting out the lessors covenants, which stated "*To keep the property...insured to its full insurable value against loss or damage by fire and such other of the usual comprehensive risks as the*

Lessor may in its discretion think fit...". Furthermore, the RICS Code stated that it was desirable to have terrorism cover. Therefore, the applicants decision to have terrorism cover was reasonable. The applicant referred the tribunal to the Upper Tribunal decision in **Qdime Ltd -v- Others** [2014] UKUT 0261 (LC), in which the Upper Tribunal stated (in relation to a case concerning a lease which provided that the landlord may insure against "...such other risks as the landlord may in its reasonable discretion think fit to insure against..." and noting the RICS Code which provided that serious consideration should be given to taking out terrorism insurance), that "*the exercise of a discretion so as to accord with the RICS Code was a reasonable exercise of discretion*" (para 39).

38. The applicant stated that the respondents own evidence of enquiries that she had made confirmed that the price paid by the applicant was reasonable. The respondent had failed to provide any cheaper alternative quote. The applicant had obtained the insurance cover from an independent company.

39. The applicant also explained that part of the reason for the increase in the insurance premium from the year ending September 2011 was due to the buildings rebuild cost having been reassessed and significantly increased (from £439,913 in 2010 to £600,481 in 2011, as confirmed by the production of the insurance certificates on the second day).

40. In view of the cogent evidence provided by the applicant and in the absence of any supporting evidence from the respondent, the tribunal determined the cost of the insurance premium was reasonable.

41. The respondent had stated on day one of the hearing that she did not believe that the applicant had actually paid for the insurance and wanted to see invoices. This resulted in the applicant providing copies of the relevant insurance certificates on the second day. Having seen the copies of the insurance certificates, issued by the same company for consecutive years, the tribunal is satisfied that the applicant had paid for the relevant insurance cover.

Managing agents fee

42. The fees for the service charge years ending September 2009, 2010, 2011, 2012, and 2013 were £1,139.00, £1,185.53, £1,250.00, £1,224.00, and £1,277.00 respectively.

43. The respondent has failed to provide any comparables to demonstrate that the management fees were unreasonable. The respondent has made a number of assertions in her statement on pages 233-234. However, in view of the basic management functions carried out by the managing agent, the evidence of all the correspondence between the

respondent and the managing agent suggesting that the managing agent responded to matters raised by the respondent, the tribunal is satisfied that the management fees were reasonable.

44. The respondent stated in her final written submissions, in her comments concerning the invoices that had been submitted on the second day, that there was no evidence of a managing agency contract. However, the tribunal noted that this issue had not previously been raised by the respondent and the tribunal accordingly attached little weight to this argument.

On Account Payments

45. The respondent stated that the lease did not allow for "on account" payments and that an LVT decision in 2006 confirmed the same.

46. The tribunal noted that the relevant part of paragraph 2 of the Fifth Schedule of the lease states "*To pay the lessor...17 percent of the expenses (including the provision for future expenditure) mentioned in the Eighth Schedule which the lessor shall reasonably and properly incur in each Maintenance Year (as defined) the amount of such payment to be certified by the lessors Managing Agent or Accountant...as soon as conveniently possible after the expiry of each Maintenance Year and FURTHER on the Twenty fifth day of March and the Twenty ninth day of September in each Maintenance Year* ***to pay on account*** *of the Lessees liability under this clause the sum of £15 or one half of the amount of the Maintenance Charge for the immediately preceding Maintenance Year whichever shall be the greater PROVIDED THAT (a) Immediately upon the Lessors Managing Agents or Accountants certificate being given as aforesaid there shall be paid by the Lessee or repaid to the Lessee as the case may be any deficiency or excess between the amount paid by the Lessee on account of the Maintenance Charge and the Maintenance Charge so certified...*" (page 268).

47. The tribunal also noted, contrary to what the respondent had suggested, that the LVT in its 2006 decision stated at paragraph 16 "*Para 2 of the Fifth Schedule provides for the tenant to pay service charges on account half yearly on 29th September and 25th March*" (page 404).

48. The tribunal accordingly determines that the applicant is permitted to demand on account payments.

49. However, the tribunal noted that the applicant did not calculate the on account payments in accordance with the terms of the lease. The applicant stated that it produced and charged an "anticipated expenditure" instead of basing the on account payment on the actual

expenditure for the preceding year. It initially argued that it made no practical difference as the second on account payment would be based upon the actual expenditure for the preceding year and therefore the on account payment made for the whole year would be in accordance with the terms of the lease. However, the applicant conceded that that was not always the case as the final accounts for the preceding year were not always completed by the time the second on account payment was demanded, as was the case concerning the on account payments for 2015.

50. The applicant submitted that the tribunal should consider the actual sums expended for each of the relevant years and determine whether they were reasonable. The question of payability could then be determined by reference to those figures and no adverse consequences would follow for the tenants in terms of late payment charges. The applicant further stated that although the final accounts for the year ending September 2014 were not yet available, the on account payment for 2014 could be based upon the actual amount the tribunal determined to be reasonable and payable for 2013 and the on account payment for 2015 could be based upon the interim figures for 2014.

51. The respondents reply on this issue was unclear and difficult to follow. However, the respondent repeated her earlier submission that the 2006 LVT decision stated that the lease did not allow for on account payments.

52. The tribunal noted that it did not have the final end of year accounts for the year ending September 2008, therefore, the tribunal could not determine whether the on account payment for the year ending September 2009 was reasonable or payable under the terms of the lease. However, given that the final accounts for the year ending September 2009 were now available, as per the requirements of the lease, the sum demanded on account became immaterial, especially in light of the applicants assurance that no adverse consequences would follow for the tenants in terms of late payment charges. Under the terms of the lease, once the final accounts had been prepared, the respondent was required to pay or be repaid as the case may be, any deficiency or excess between the amount paid by the respondent on account and the actual costs for that year.

53. For the same reasons, the on account charges for the service charge years ending September 2010, 2011, 2012, and 2013, were also now immaterial as the final accounts for each of those years were now available.

54. Given the issues before the tribunal, the tribunal decided that it would determine whether the actual expenditure for each of the service charge years ending September 2009 to September 2013 were reasonable. The on account charge for the year ending September 2014 would be

dependent upon our finding of the reasonable charges payable for the preceding year. The on account charge for the year ending September 2015 should ideally be based upon the final accounts for the preceding year. However, given that the final accounts for the year ending September 2014 are not yet available, we found that the on account charge could be based upon the on account charges paid for the year ending September 2014 as that is the "*amount of the Maintenance Charge for the immediately preceding Maintenance Year*".

Whether the actual expenditure for each of the service charge years ending September 2009 to September 2013 were reasonable and payable and what should be the on account charges for the service charge years ending September 2014 and 2015

Year ending September 2009: actual expenditure (excluding on account payments to the reserve fund) £3,453.58 (page 198)

55. The actual expenditure for the year ending September 2009 was £3,453.58 (excluding on account payments to the reserve fund). The cost was based upon the following: buildings insurance £885.08, communal electricity £144.82, repairs £1,275.68, management fee £1,139.00, and miscellaneous £9.00 (as set out in the accounts on page 198). A further and more detailed breakdown of the costs, including all the repair costs, is provided on page 199 of the bundle.

56. The respondent objected to the payment of any service charge for the year as she claimed that she had not been provided the relevant invoices despite written requests. The respondent referred the tribunal to an email dated 3.12.11, sent from her to Ms Asquith-Fox (page 312), the relevant part of which stated "*You may not like my equation: No year-end accounts, as per my lease, with justifications/evidences for payments = no valid claim = no arrears. But you know the remedy is for you to make an application with the RPTS if I haven't done so before*". The respondent stated that she sent a further email on 2.1.12 stating "*There are no year-end accounts, as per my lease, for 2009, 2010, and 2011...*" (page 313). The respondent stated that she received the final accounts on page 198 later in 2012.

57. In reply the applicant stated that the respondent had simply requested the year-end accounts as per her email dated 2.1.12 and did not request to see any invoices. Ms Asquith-Fox stated that, in any event, she had provided the year end accounts and the invoices for 2009 and 2010. She referred the tribunal to a letter on page 435, dated 13.9.11, sent by her to the respondent, the material parts of which stated "*Please now find enclosed the end of year accounts and invoices for 2009 and the end of year accounts and invoices for 2010 as requested...This letter has been sent by recorded delivery to ensure that you receive the documents enclosed*". Ms Asquith-Fox stated that she recalled sending

the letter by recorded delivery and that it had included invoices for the electricity, insurance, management fee, and other items paid for.

58. In reply the respondent stated that she could not find that letter in her correspondence and cannot recall receiving it.

59. The tribunal found the respondent had failed to show that she had previously made any clear written request to see those invoices. In any event, we are satisfied, having heard from Ms Asquith-Fox and considering the clear and unambiguous letter that had been sent to the respondent by recorded delivery, that the respondent had been provided the relevant invoices in September 2011. In any event, considering the detailed breakdown provided on page 199, we are satisfied, despite the lack of invoices, that the costs as claimed by the applicant had been incurred. The items of expenditure and the amounts involved are unremarkable and would be expected in an annual service charge account.

60. We found the service charge for the year ending September 2009 in the sum of £3,453.58 to be reasonable and payable.

Year ending September 2010: actual expenditure (excluding on account payments to the reserve fund) £3,317.00 (page 204)

61. The respondent took issue with the following invoices, which the tribunal have determined as follows.

62. Insurance; for reasons already given, the tribunal found the inclusion of terrorism cover reasonable.

63. £138.00 (Undercover Roofing Ltd); the tribunal found the invoice to be valid and in the absence of any evidence to the contrary, the tribunal accept that the invoice would have been paid. The respondent states two roof repairs were carried out in the previous service charge year and this third roof repair invoice made her query whether three separate invoices had been provided for three badly completed jobs instead of one bill for a job properly done. The tribunal found the respondents evidence to be simply speculative and found the invoice, on the face of it, reasonable and payable.

64. £142.18 (H S Electrical); the tribunal found the invoice to be reasonable and payable. It is clearly an invoice from H S Electrical, on their letter head, for works carried out to the relevant property. The words "From: Concerto Properties Ltd" appears to be a typing error.

65. £580.40 and £290.20 (HML Hathaways); the tribunal found the two invoices for the management fee reasonable and payable. The fact that

the invoice for £290.20 is undated is irrelevant as it clearly states it is payment for the "quarter to 23 June 2010 management fee" for the relevant property for the year September 2009 to September 2010. These are valid invoices and in the absence of any evidence to the contrary, the tribunal accepts that the invoices would have been paid.

66. £1,287.98; this appears to be a sum demanded by HML Hathaways concerning "LVT" legal costs. The applicant states that a credit note in the sum of £1,287.98 was provided in the following service charge year. The tribunal noted that a credit note had been included amongst the invoices for the following service charge year. Clearly the applicant accepts this amount was not payable hence the credit note. In the circumstances, the tribunal did not find this payable.

67. A point not raised by the respondent, but which is apparent to the tribunal, is that the invoices provided by the applicant total £2,145.87. Yet the applicant has provided end of year accounts showing that the actual expenditure was £3,317.00. It is not apparent from the accounts or the invoices what those other charges relate to. In the circumstances, the tribunal determines the sum of £2,145.87 to be reasonable and payable (to which the reserve fund contribution should be calculated and added).

Year ending September 2011: actual expenditure (excluding on account payments to the reserve fund) £5,385.00 (page 209A)

68. The respondent took issue with the following invoices, which the tribunal have determined as follows.

69. Insurance; for reasons already given, the tribunal found the inclusion of terrorism cover reasonable.

70. £532.80 (Treecare), £156.00 (QuicKil), £208.80 (CPM), £48.52 (EDF); whilst the invoices are addressed to Amek International Limited, the tribunal accepts the applicants evidence that Amek and the applicant are part of the same group of property investment companies (the Marcus Cooper Group), HML Hathaways manage properties for various companies within the group, and due to a software mistake Amek's name was used instead of the applicants. The tribunal noted that the relevant invoices clearly state that they relate to 139 Hurlingham Road, SW6 3NH. In the circumstances, the tribunal is satisfied that these invoices related to the subject property.

71. £193.20 (CPM); whilst the invoice does not specify a vat number, it does not necessarily follow that CPM were not vat registered or that the applicant had not settled the payment in full.

72. £90.00 (CPM), £600 (CPM); whilst the invoices are addressed to GT Properties, the tribunal accepts the applicants evidence that GT Properties and the applicant are part of the same group of property investment companies (the Marcus Cooper Group), HML Hathaways manage properties for various companies within the group, and due to a software mistake GT Properties name was used instead of the applicants. The tribunal noted that the relevant invoices clearly state that they relate to 139 Hurlingham Road. In the circumstances, the tribunal is satisfied that these invoices related to the subject property.

73. £48.52 (EDF); despite the invoice being addressed to Amek, the tribunal is satisfied that it relates to the subject property for the reasons given above. Although the applicant paid this invoice twice, the applicant states that the EDF account was placed in credit and credit notes were provided for the following year.

74. £150.00 (ARJOS, accountancy fee); the respondent objects to the fee on the basis that a Profit & Loss Account and Balance Sheet were inappropriate business account and much criticised by the LVT in 2012 for being unacceptable for a residential property, no service charge account had been submitted in breach of the lease, and the service charge accounts should be compiled by the managing agent and any relevant fee should be included in their yearly management fees, as had been the case under the previous managing agent. The tribunal noted that the respondent had not referred to any specific part of the lease in support of her contention. The tribunal noted the lease states at paragraph 2 of the Fifth Schedule, in dealing with the "Maintenance Charge", "*...the amount of such payment to be certified by the Lessors Managing Agent or Accountant...*". The Accountants report for the relevant year states "*You have approved the accounts for the year ended 29 September 2011...*". The tribunal found that the lease allows the use of an accountant, the account had been certified by the managing agent in that they had approved the accounts, the sum charged is modest and reasonable, and the respondent has failed to show that such a charge is not recoverable under the terms of the lease. It is not clear to the tribunal why the use of a profit and loss account and balance sheet is unacceptable for a residential property. The tribunal found the charge reasonable and payable.

75. £580.40 and £290.20 (HML Hathaways); the tribunal noted that these two invoices are a duplicate of the invoices included in the preceding service charge year and are therefore not payable.

76. £296.51 (HML Hathaways, invoice number TAA01798); the invoice states that it relates to the "Quarter to 28 September 2010 Management Fee for management of the property for the year 30 September 2009 to 29 September 2010". The tribunal noted that the management fee for the relevant quarter had not been included in the previous service charge year, there is no evidence to suggest that this fee was not

demanded within the 18 month limitation period, and on the face of it there is no evidence that this fee had not been paid. The tribunal therefore found this charge reasonable and payable.

77. £296.51-invoice 15151, £296.51-invoice 15618, £311.90-invoice 16175, £311.90-invoice 17048 (HML Hathaways); these are valid invoices and in the absence of any evidence to the contrary, the tribunal accepts that the invoices for the management fee would have been paid. Although invoice 17048 is addressed to Amek Investments Limited, for the reasons previously given on the same issue, the tribunal is satisfied that the charge is payable.

78. £18.17 (Hathaways); this relates to "Management Fee Adjustment period from September 2010 to 24/3/11". On the face of it there is no evidence that this fee had not been paid.

79. Four invoices from Hathaways dated 28.4.11, each in the sum of £60.00; these relate to management arrears fees issued to each of the four flats. The respondents objection is inconsistent in that she states, in relation to the other three flats, that each of the lessee should pay the charge individually and not as a service charge. However, in relation to her invoice, she states that the lease does not allow for such a fee. The tribunal found the provision contained in the lease at paragraph 9 of the Eighth Schedule, allowing the employment of a managing agent to collect the maintenance charge, does not preclude the managing agent from making an additional charge for the time spent in chasing arrears and for that cost to be recoverable as a service charge.

80. A point not raised by the respondent, but which is apparent to the tribunal, is that the invoices provided by the applicant total £6,710.22. The tribunal found that two of the invoices were duplicates and accordingly deducted £870.60, leaving a balance of £5,839.62, which is higher than the actual expenditure as set out in the end of year accounts. Given that the applicant has provided end of year accounts showing that the actual expenditure was £5,385.00, that is the amount the tribunal found reasonable and payable (to which the reserve fund contribution should be calculated and added).

Year ending September 2012: actual expenditure (excluding on account payments to the reserve fund) £3,230.00 (page 216)

81. The respondent took issue with the following invoices, which the tribunal have determined as follows.

82. Insurance; for reasons already given, the tribunal found the inclusion of terrorism cover reasonable.

83. £13.20, £35.07, £30,51, £300.00, £300.00, £312.00, £312.00; the respondent objected on the basis that they were all addressed to Amek Investments Limited. For the reasons previously given on the same issue, the tribunal is satisfied that the charges are payable.

84. £200.00 (Excel Accounting); the respondent objected on the same basis as she had concerning the accountancy fee in the previous service charge year. For the reasons previously given on the same issue, the tribunal is satisfied that the charge is payable.

85. £133.84; this relates to an under charge of the management fee in 2011. The respondent states it is addressed to Amek and therefore not payable and the "controversial under charge fee is not acceptable and reasonable". The respondent does not explain why the fee is controversial or unreasonable. The tribunal found that on the face of it, it is a corrective invoice submitted within the 18 month limitation period and is therefore payable. For the reasons previously given on the same issue, the tribunal is satisfied that the charge is payable despite the invoice being addressed to Amek.

86. £19.50; this relates to the "annual cost of emergency out of hours service". The respondents main points are that the invoice is addressed to Amek and the cost of emergency out of hours service should be included in the annual management fee. The applicant states that the out of hours service was outsourced to a third party to provide a more cost effective service. The tribunal is satisfied that the additional modest charge for the out of hours service is reasonable. For the reasons previously given on the same issue, the tribunal is satisfied that the charge is payable despite the invoice being addressed to Amek.

87. A point not raised by the respondent, but which is apparent to the tribunal, is that the invoices provided by the applicant total £6,302.86. Yet the applicant has provided end of year accounts showing that the actual expenditure was £3,230.00. Given that the applicant has provided end of year accounts showing that the actual expenditure was £3,230.00, that is the amount the tribunal found reasonable and payable (to which the reserve fund contribution should be calculated and added).

88. **Year ending September 2013: actual expenditure (excluding on account payments to the reserve fund) £7,204.00 (page 222)**

89. The respondent took issue with the following invoices, which the tribunal have determined as follows.

90. Insurance; for reasons already given, the tribunal found the inclusion of terrorism cover reasonable.

91. £80.00 and £216.00 (Rickets & Young Ltd); the respondent states the invoices are not payable as there are no invoice numbers. The tribunal noted that the letters state "Our Ref #: 0094" and "Our Ref #: 0161" under the heading "Invoice" on each of the letters. The tribunal found that this was as good as an invoice number. In any event, the tribunal agreed with the applicant that an invoice does not need to be numbered to be valid. The tribunal found the charges payable.

92. £270.00 (Jet Clean Maintenance Services Limited); the respondent stated that this work related to unblocking the sink of flat 1 and therefore it is payable by flat 1 only and should not be included in the service charge. The applicant stated that the works related to clearing the landlords pipes which were blocking the sink in flat 1. The tribunal noted that the invoice states that it related to a blocked drain at the "front of the property", the manhole cover was lifted and checked, and the work involved "drill and spring to pipe work and carried out high pressure jetting from manhole to gully...". The tribunal found that the works were to the outside of the flat and the costs are recoverable as a service charge.

93. £1,200.00 (Gutterclear); the respondent states she would like to see the original as the "invoice looks too much amended" and there was no section 20 consultation therefore the maximum that can be recovered is £250 per flat. The tribunal does not find the invoice to have been amended in any material respect. The tribunal noted that the applicant did not refute the respondents argument that there was the need for and a failure to consult on the matter. In the circumstances, the tribunal found that the cost is limited to £1,000.00 (of which the respondent is liable to pay 17%).

94. £300.00 (PBM); the respondent stated that the work on the roof could have been done at the same time as previous repairs and that roof repairs would have been more cost effective if done as one job. The applicant stated that the respondents criticisms are misguided as the works were to clear gutters and not to repair the roof. The tribunal noted, according to the invoice, the works involved clearing rubbish and leaves from the gutters and removal of silt blocking the gutters and downpipes. The tribunal found that the works did not relate to "roof repairs" as suggested by the respondent. The charge is payable.

95. Four invoices from EDF in the sum of £26.40, £23.18, £28.89 and £26.70 and four invoices from HML Hathaways in the sum of £325.00 each; for the reasons previously given on the same issue, the tribunal is satisfied that the charges are payable despite the invoices being addressed to Amek.

96. £1,010.00; the applicant accepts that the legal fee concerning the LVT decision in 2012 is not recoverable from the respondent as a section 20C order had been made in the respondents favour thus preventing

the recovery of the legal fee from the respondent. However, the section 20C order does not affect the other leaseholders, therefore the tribunal found that the applicant was entitled to include and recover the legal fee as a service charge.

97. £300.00 (Mayor, Cuttle & Co); the respondent objected on the same basis as she had concerning the accountancy fee in the previous service charge year. For the reasons previously given on the same issue, the tribunal is satisfied that the charge is payable.

98. £19.50 (HML Hathaways); this relates to the "annual cost of emergency out of hours service". For the reasons previously given on the same issue, the tribunal is satisfied that the charge is payable.

99. A point not raised by the respondent, but which is apparent to the tribunal, is that the invoices provided by the applicant total £6,582.56. Yet the applicant has provided end of year accounts showing that the actual expenditure was £7,204.00. It is not apparent from the accounts or the invoices what those other charges relate to. In the circumstances, the tribunal determines the sum of £6382.56 (£6,582.56 minus the £200 deduction for the failure to consult on the roof works) to be reasonable and payable (to which the reserve fund contribution should be calculated and added).

On account charges for the service charge years ending September 2014 and September 2015

100. For the reasons already given earlier in the decision, the tribunal determines the on account charge for each of the service charge years ending September 2014 and September 2015 in the sum of £6,382.56 to be reasonable and payable, to which should be added the reserve fund contribution for each of the years.

101. Whilst not relevant to the tribunals determination of the reasonable on account charge for the year ending September 2014, the tribunal noted the applicants evidence on the second day of the hearing that it was not seeking to recover the sum of £2,634.00 for the asbestos related works from the respondent as a service charge at present and had taken this out of the respondents service charge account. This information may be of relevance if any subsequent challenge is made to the actual expenditure for the year ending September 2014.

Application under s.20C and refund of fees and costs

102. Having considered the submissions from the parties and taking into account the determinations above, the tribunal orders the respondent to refund any fees paid by the applicant within 28 days of the date of this decision.

103. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines the applicant acted reasonably in connection with the proceedings and was successful on nearly all the disputed issues, therefore the tribunal decline to make an order under section 20C.

Name: Judge L Rahman **Date:** 17.8.15

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 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 that tribunal;

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