11616

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/12UG/LSC/2016/0028**	
Property	:	**6, 8 & 10 New Hall Lane, Great Cambourne CB23 6GE**	
Applicants	:	**Leaseholders/Tenants**	**Flat**
		Amy & Steve Bates	**6**
		Sonia Mrowiec	**8**
		Chloe Shanahan	**10**
Respondent	:	**Circle Housing**	
Date of Application	:	**24th April 2016**	
Type of Application	:	**A determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985)**	
Tribunal	:	**Judge JR Morris** **Ms E Flint FRICS IRRV** **Mr O N Miller BSc**	
Date of Hearing	:	**15th September 2016**	
Date of Decision	:	**4th October 2016**	

DECISION

Decision

1. The Tribunal determined that the apportioned costs to be incurred for the Service Charge for the year ending 31st March 2017 were reasonable with the following exceptions:
   - the estimated charge for the item Fire and Smoke Detection Equipment of £87.84 was unreasonable and is to be replaced by an estimated cost of £35.71 payable by each Applicant;
   - the estimated charge for the item External Repairs of £120.64 was unreasonable and is to be replaced by an estimated cost of £56.63 payable by each Applicant;
   - the estimated deficit of £313.21 is unreasonable and is to be replaced by the actual deficit for the year ending 31st March 2015 of £213.64 payable by each Applicant.

2. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants and the fees in relation to the present proceedings should be reimbursed.

Reasons

Application

3. The Application made on 24th April 2016 was for a determination of reasonableness and payability under section 27A of the Landlord and Tenant Act 1985 of the costs of the Service Charge to be incurred for the year ending 31st March 2017.

Issues

4. The items in issue are stated in the Application as follows (the issues are numbered in the reasons accordingly):
   1. The estimate for the Service Charge for the financial year ending 31st March 2017 has increased unreasonably in the region of £40.71 per month compared with the estimated Service Charge for the financial year ending March 2016.
   2. The water charge is unreasonable as the stand pipe to which it relates is not accessible to the Tenants.
   3. The roof repairs should be taken out of the Cyclical Maintenance Fund/Reserve Fund (estimated to be £15,000) as it is unreasonable that they should be a separate cost item of the Service Charge.
   4. The roof repairs should be undertaken by the Landlord's own maintenance team as alleged to be stated in the Lease, which would be at a more reasonable cost.
   5. The estimated Service Charge has increased unreasonably.
   6. No Notice was given for the roof repair to the Tenants.
   7. The estimated charge of £928.91 is unreasonable as no scaffolding was used.

8. No evidence of the repairs required or costings have been given in spite of requests to the Landlord to do so.
9. The Tenants made safe a window broken by Norse, the Landlord's Grounds Maintenance Contractor. Any charge for repair would be unreasonable.

The Law

5. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

6. Section 18 Meaning of "service charge" and "relevant costs"

(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, improvement 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 of 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 period

7. Section 19 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.

8. Section 27A of the Landlord and Tenant Act 1985

(1) *An application may be made to a leasehold valuation 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 leasehold valuation 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 arbitration agreement to which the tenant was a party
   (c) has been the subject of a determination by a court

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

9. Section 20 of the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a Leasehold Valuation Tribunal, now subsumed into the First-tier Tribunal (Property Chamber). Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount, which results in the relevant contribution of any tenant being more than £250.The consultation provisions are set out in the Schedules to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations).

10. The Procedure appropriate to the present case is in Schedule 4 Part 2 of the Regulations and may be summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days.

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord's Proposals must be served on all tenants in which an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. This is for tenants to check that the works to be carried out conform to the schedule of works, are appropriately guaranteed and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord's response to them.

Lease

11. A copy of the Lease for Flat 8 was provided, the covenants of which were said by the Applicants on the Application Form to be the same for all their Leases. The Lease dated 3rd March 2006 is for a term of 99 years from the 3rd March 2006.

12. The relevant Clauses under the Lease are, in brief, as follows:

13. Clause 3.2.2 requires the Tenants "To pay the Service Charge in accordance with Clause 7" The Particulars of the Lease state the proportion of the Service Charge relating to the Building is 16.7% and for the Service Charge relating to the Estate is 1.27%

14. Clause 5 requires the Landlord to insure the Building and to maintain repair, redecorate and renew the roof, foundations and main structure and all external and load bearing walls, the windows and doors on the outside of the building and all parts which are not the responsibility of the Tenants and the Common Parts. The Landlord will also decorate the outside doors of the Premises (i.e. the flats).

15. Clause 1 defines the Common Parts means the entrance landings, staircases of the Building and other parts of the Building which are intended to be used in common with the occupiers of other units in the Building.

16. Clause 7 requires the Tenant to pay the Service Charge together with an appropriate amount as a reserve by equal payments in advance. The reserve is towards such matters "which are likely to arise either only once during the unexpired term of the Lease or at intervals of more than one year including...such matters as the decoration of the exterior of the Building". The Service Charge is the proportion of the Service Provision as specified in the Particulars.

17. The Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with repair, management, maintenance and provision of services for the Building including costs incurred in complying with Clause 5 as well as any reasonable fees, charges and expenses payable to a surveyor, accountant or solicitor in the management of the Building.

Inspection

18. The Tribunal inspected the Building in which the Applicants' flats are located in the presence of the Applicant's Representative Ms Mrowiec and Mr Bates, one of the Applicants and the Respondent's Representatives. The Properties are three purpose built flats in a Building of 6 flats built circa 2006. The Building is on the outskirts of Cambourne with Retail Park nearby.

19. Externally the Building is in fair condition. It is three storeys, constructed of brick and possibly concrete block, which is rendered, with decorative wooden panels, under a pitched concrete tile roof. Each flat has a galvanised steel balcony. In the front there is an area of glass blocks to give light to the common parts. All other windows are upvc double glazed units. The doors are timber. The edge of the front door had been planed to ease it but it had not been re-painted. There is a canopy over the front entrance. There is an area of grass to the rear and around the building is a border of shrubs. The boundary is marked by railings. The position and the condition of the water stand pipe was noted. In particular there is no top to the tap. There is unrestricted parking in the roads around the Building.

20. Internally the Building has an entrance foyer access to which is via a door entry system. There is one staircase. The common parts were utilitarian. They were in fair condition although there were marks on the wall which needed to be cleaned and was due for re-decoration. There are no fire or smoke alarms but there is emergency lighting.

Attendance at the Hearing

21. The Applicants were represented by Ms Sonia Mrowiec. Signed confirmation was received from Amy & Steve Bates of Flat 6 and Chloe Shanahan of Flat 10. The Respondent was represented by Mr N. Bennett Housing Service Manager, Mr B Hussain, Commercial Leasehold Manager, Ms R Tennekoon, Commercial Leasehold Officer, Mr J Adams, Senior Service Charge officer, Mr D Mc Donald, Senior Service Charge Officer and Mr J Anders, Surveyor.

Evidence

22. The Respondent is a registered Social Landlord registered with the Homes & Communities Agency and the freehold owner of the Building of six residential units at 2 – 10 New Hall Lane Cambourne. The Applicants are Leaseholders (Tenants) of Flats 6, 8 and 10 which they hold on shared ownership long leases.

23. In response to the issues raised by the Applicants the Respondent provided a written statement addressing each of the issues dated 5th July 2016. The Applicants provided a reply dated 10th July 2016 to which the Respondent gave a further response. The Respondent's and the Applicants' written statements were combined into a single document by the Respondent dated 20th July. This was followed at the hearing and is set out in brief below together with additional evidence and comment given at the hearing.

24. In addition to the statements of case the actual service charge accounts for the past financial years ending 31st March 2012, 2013, 2014 and 2015 were provided. In these reasons, inkeeping with the reference to them in the bundle documents, they have been abbreviated to 2011/12, 2012/13, 2013/14 and 2014/15. These set out the following:

- The percentage apportionment of 16.67% for items that relate solely to the Building or 1.20% for items that relate to the whole Estate,
- The total and apportioned estimated cost,
- The total and apportioned actual cost,
- The difference between the estimated and the actual paid by the Tenant, and
- The under or overspend for that year.

Issue 1 – General Increase

25. The Applicants submitted that the estimate for the Service Charge for the financial year ending 31st March 2017 has increased unreasonably in the region of £40.71 per month for each flat compared with the estimated Service Charge for the financial year ending 31st March 2016.

26. The Respondent stated that the Actual costs for the Service Charge accounts were still being prepared therefore the increase in cost referred to by the Applicants is based on estimated costs for both year ending 31st March 2016 and 2017.

27. The Applicants said that they considered that after 10 years a more accurate forecast should be predicted.

28. The Respondent said that estimates are set before the previous year's accounts are actualised and so there is effectively a three year cycle which makes estimating difficult.

29. This was noted at the hearing as a general issue which would be addressed in relation to ***Issue 5***.

Issue 2 – Water Charge

30. The Applicants considered the water charge is unreasonable as the stand pipe to which it relates is not accessible to the Tenants.

31. The Respondent said that the water charge is the standing charge for Cambridge Water for the facility of a stand pipe which the Respondent deemed appropriate to maintain should it be required.

32. The Applicants said that the water pipe burst in 2007 and was cut off. It was understood a considerable repair would be needed before it could be used. The Applicants asked for a meter reading as they did not use the water as each household has their own supply.

33. The Respondent referred to the February to July 2015 bill of £15.68 which showed usage of 1 cubic metre and the standing charge. The Respondent stated that if the provision is unnecessary it would have the supply capped.

34. At the hearing there was some discussion as to whether the account of £15.68 provided related to the stand pipe adjacent to the Building. Some usage was recorded but this was very small and could be accounted for through leakage. What was clear was that there were several standpipes, one for each block. However, only one of the stand pipes was in active use, all the others were said to be 'capped', although what this meant was not certain. The one standpipe in use was required to provide water for cement, plastering and other repairs, watering plants (if necessary), cleaning, etc. for all the blocks on the site owned by the Respondent. It was apparent from the Service Charge Expenditure Accounts provided that the apportionment for the charge was 1.20% and so the cost was spread over the whole Estate.

35. The Tribunal expressed the view that if the stand pipes that were not in use were not required and were attracting a standing charge then the water company should be asked to cut off/cap the supply so only the one pipe would have a standing and use charge. The Tribunal was of the view that it was for the Respondent to show that the unused stand pipes were required in this instance and that any charge was reasonable as the Tenants were not able to draw water from them. The Respondent adduced no evidence to show that the stand pipes currently not in use were required.

Issue 3, 4, 6, 7 & 8 – Roof Repairs

36. The Applicants said that the roof repairs which had been undertaken in January 2015 and for which the original invoice was £928.91 (£774.09 plus £154.82 VAT) should be taken out of the Cyclical Maintenance Fund/Reserve Fund (estimated to be £15,000) as it is unreasonable that they should be a separate cost item of the Service Charge (***Issue 3***).

37. The Respondent stated that the balance of the reserve as at 31st March 2016 was £12,272.32. The repair to the roof was considered to be a day to day repair and not a major work.

38. The Applicants stated that no cyclical or major works have been carried out since the property was built in 2006 and it was considered that a reasonable period for such works was 7 to 9 years. The communal areas require redecoration and it was submitted that the roof still required attention due to loose tiles and its repair should be considered a major work. The failure to

carry out works was not directly within the jurisdiction of the Tribunal but did go to the issue of management.

39. The Respondent conceded that the cyclical programme was two years behind schedule and apologised for this not being made clear to occupiers. It was said that the Respondent was aware of the need for redecoration of the building but at the time they were fully committed. However, the Building is in the 2016 to 2017 programme and a section 20 consultation process will commence as soon as the work has been priced by the contractors. The Respondent said it was not aware of the continuing roof problems and would make arrangements for a surveyor to re-inspect the roof with a building contractor and contact Ms Mrowiec to discuss concerns.

40. The Applicants questioned why the roof repairs had not been undertaken by the Landlord's own maintenance team (***Issue 4***). The Respondent agreed that it had become an ongoing issue that had started with slipped hip tiles. The maintenance team had subcontracted out the work to TM Browne Ltd who in turn subcontracted it to a specialist company. The Applicants said that if the job had been done properly in the first place it would not have become an ongoing problem.

41. The Applicants stated that no notice of the roof repairs had been given (***Issue 6***). The Respondent said that as the charge for the work was less than £250 per leaseholder a section 20 consultation was not required. As stated the works were ordered as a routine repair with a 20 working days timescale given to the contractor, TM Browne. The Respondent apologised to the Tenants that they were not kept informed of when the works were being undertaken.

42. The Applicants had noted that the sub-contractors had not used scaffolding, only ladders, and yet this had been a significant part of the invoice (***Issue 7***). The Respondents said the contractors had been challenged on the point and had confirmed that scaffolding was not required.

43. The Applicants also stated that they had received no evidence of repairs and costings for the roof repairs (***Issue 8***). The Respondent replied that originally the invoice was for £928.91 inclusive of VAT. The Respondent provided an e mail conversation in which the contractor agreed that scaffolding had not been used and that a revised invoice for £533.52 (£444.60 plus £88.92 VAT) was submitted. The cost of the scaffolding having been deducted.

44. Ms Mrowiec observed that the roof work had been carried out via a ladder which had been placed on her balcony. She was concerned about how the sub-contractor had gained access to her balcony particularly if it was through her flat. The Tribunal said that this was not directly within its jurisdiction but did go to the issue of the standard of management.

45. Ms Mrowiec referred the Tribunal to the previous repair undertaken in 2012. The invoices dated 20th December 2011 (£1,413.78 including VAT), 7th March 2012 (£1,378.17 including VAT) and 30th March 2012 (£399.65 including VAT) from TC Garrett, who was the roofing contractor, were provided. A letter dated 19th October 2012 explaining that the total cost of £3,192.60 was below

the excess of the 10 year build insurance cover with Zurich but if all the Tenants agreed the cost could be taken from the Reserve Fund. A further letter was included dated 8th November 2012 informing Ms Mroviec that the majority of the Tenants did agree that the cost should be taken out of the fund and the Service Charge would be adjusted accordingly.

Issue 5 – Increase on Specific Items

46. The Applicants referred back to Issue 1 stating that the estimated Service Charge has increased unreasonably.

47. The Respondent stated that the costs referred to by the Applicants for both years ending 31st March 2016 and 2017 were estimated. A table was provided to show how the two years compare. It was stated that the Leases share the Building charges equally between the six flats (16.7%) and that an additional 1.20% of the cost of services to the Estate is charged.

48. The estimated costs for each flat were as follows:

Description	Apportion-ment	Estimated Charge for 2015/16 £	Estimated Charge for 2016/17 £	Change in Charge Significant charges in bold £
Light & Power	16.67	20.73	22.37	1.64
Water Charges	1.20	1.22	1.65	0.43
Rubbish Clearance	1.20	4.85	6.93	2.08
General Cleaning	16.67	57.05	56.44	-0.61
Grounds Maintenance	1.20	36.49	36.71	0.22
Fire Detection	16.67	35.71	87.84	**52.13**
Door Entry Phone	16.67	14.38	9.58	-4.80
TV & Satellite	16.67	14.38	9.58	-4.80
External Repairs	16.67	56.63	120.24	**63.61**
Internal Maintenance	16.67	39.12	19.17	-19.95
Building Insurance	16.67	109.12	123.38	**14.19**
Management Fee	16.67	196.00	241.00	**45.00**
Audit Fees	16.67	0	0	0
Reserve Fund	16.67	250.00	250.00	0
Surplus/Deficit Brought forward		-125.73	187.48	**313.21**
Annual Charge		710.02	1,172.37	
Monthly Charge		59.17	97.70	
Increase				38.53

49. The Respondent identified the following items as comprising the increase and these are shown in bold:
Fire and smoke detection equipment,
External repairs,
Insurance,
Management Fee,
Service Charge surplus/deficit carried forward.

50. The Respondent stated that the **fire and smoke detection equipment** covers both inspection and maintenance costs. In 2015/16 an increase in maintenance costs was noted as a result of the replacement of emergency light fittings and so it was thought prudent to increase the provision for 2016/17.

51. The Applicants stated that the Building only had emergency lighting. The Respondent explained that "Fire and smoke detection equipment" was a standard heading and included emergency lighting which would be the only item for this Building.

52. The Tribunal commented that it would be helpful to know in relation to the actual costs how much was attributed to the ongoing maintenance/inspection agreement and how much to repair and replacement of bulbs and light fittings. If the Applicants were concerned about this they could ask to see the invoices when the actual accounts became available as stated in the Summary of tenants' rights and obligations provided by the Respondent.

53. The Tribunal noted from the actual accounts for the years that the costs for 2011/12, 2012/13, 2013/14 and 2014/15 varied significantly from year to year.

54. The Respondent noted an increase in the cost of **external repairs**, in particular the roof repair bill in 2014/15. It was explained that the estimate is based on costs:
    a) for items that are already known such as insurance or can be anticipated with some degree of certainty such as ground maintenance and cleaning because they are recurring contract and
    b) for items that are not known and so are based on expenditure for the last available actual account.

55. The Tribunal commented that the problem with b) is that if the cost of an item in the last actual account was very high due to some exceptional work this may lead to an unreasonably high estimate.

56. With this in mind the Tribunal noted that the roof repairs referred to were those that were carried out in January 2015 and which were in issue in these proceedings. The original cost of these had been included in the actual cost accounts for 2014/15. Subsequently the cost of these had been reduced by £395.39 because there had been no need to use scaffolding. The Tribunal therefore questioned the estimation of the 2016/17 Service Charge if based on the original invoice recorded in the 2014/15 actual accounts.

57. It was said that the **Building insurance** premium increased. The market is tested and the annual charge is believed to be the best that can be obtained. This was not questioned by the Applicants.

58. The Respondent stated that the **Management Fee** had been set at £150.00 for many years up until 2014/15. In this year a comprehensive review was carried out which involved costing the service and benchmarking against other landlord. As a result the new charge is £241.00 which was introduced over two years (2015/16 and 2016/17. Reference was made to a document "A Guide to Centra Living" which was said to have been sent to all Tenants in 2014. In particular reference was made to page 15 of the document which showed Housing Associations as having management charges ranging from £141 to £350 and Private Managing Agents as ranging from £200 to £519.

59. The Tribunal commented that it thought the charge was at the higher end for the area but noted that there was no additional charge for auditing or accountancy. In response to the Tribunal's question the Respondent's representatives said that there were emergency numbers on the notice board in the hallway and an out of hours call centre. The Tribunal was concerned that if the Applicants had not questioned the use of the scaffolding in relation to the roof repair it might not have been picked up. It was said that 10% of all work carried out by contractors is checked. Although relatively smaller works are not.

60. It was said that the organisation had been significantly restructured and that the role of property managers would now be taken over by Neighbourhood Officers. The Tribunal suggested that there had been gaps in the service during the re-organisation. The Respondent's Representatives said that people had been available to cover the work.

61. Ms Mrowiec said that she had not seen the document "A Guide to Centra Living" before she had received the bundle. She said she had had cause to complain about the poor grounds maintenance each year and an email from Ruth Mann, Neighbourhood Manager dated 19th August 2016 was noted. She said she was also unaware of the phone numbers for emergencies etc.

Issue 9 – Broken Window

62. The Applicants stated that their having to make safe a window broken by Norse, the Landlord's Grounds Maintenance Contractor indicated poor management. The Respondent confirmed that the window had been accidently broken by a member of the grounds maintenance staff on 11th March 2015 and the Respondent received a request for an urgent repair and given a 3 days' timescale to complete. The contractor attended on 13th March 2016 to secure the window but the Tenant had already intervened. No charge was made for re-glazing the window as the cost was met by the grounds maintenance contractor.

63. The broken pane was above one metre and did not appear to be safety glass leaving shards of glass which prompted the Tenants to clean up. The Tribunal expressed the view that the grounds maintenance contractor should have

ensured that the glass was cleared away in this instance and the parties agreed.

Decision Application under 20C Landlord and Tenant Act 1985

64. An application was made by the Applicant for the limitation of Service Charge arising from the landlord's costs of proceedings and an order that the fees should be reimbursed.

65. The Respondent stated that it would not be seeking reimbursement for its costs through the Service Charge and would be prepared to reimburse the fee.

66. The Tribunal's determination only applies to the estimated costs. The Landlord or the Tenant may on completion of the work apply for a determination as to the reasonableness of the costs incurred and the standard of the work carried out under section 27A of the Landlord and Tenant Act 1985.

Issue 2 – Water Charge

67. The Tribunal found that in the absence of evidence to the contrary the standing charge and usage for the currently unused stand pipe, although not a significant sum, was nevertheless unreasonable. The amount of the standing charge and usage for the unused standpipes should be calculated and deducted from the Service Charge at least for the year in issue.

68. The Tribunal determined that the estimated Service Charge for the year 2016/17 was reasonable. However the water charge should be investigated and the unused stand pipes disconnected. There should then be a reduced cost in the actual accounts reflecting the loss of the standing charge.

Issue 3, 4, 6, 7 & 8 – Roof Repairs

69. The Tribunal understood that since the roof repairs in 2011/12 were paid out of the Cyclical Maintenance Fund/Reserve Fund the Applicants thought the same should apply to those of 2014/15. (Although the Tribunal could not find where the cost of the 2011/12 repairs had been credited to the Service Charge account having been paid from the Reserve Fund.) The Tribunal found that the cost of the repairs in 2011/12 was significantly more than those of 2014/15. The Tribunal thought that a section 20 consultation might have taken place. In addition the cost of those in 2014/15 had been reduced bringing them within the range of day to day repairs. Therefore the Tribunal considered it reasonable for the cost to be attributed to the Service Charge. (***Issue 3***).

70. The Tribunal found that it was reasonable for the Respondent to employ a specialist roofing contractor. (***Issue 4***).

71. The Tribunal found that the Respondent is under no obligation to give notice of day to day repairs. The Tribunal has outlined above the circumstances in which a section 20 consultation must be carried out and the procedure to be followed. (***Issue 6***).

72. The Tribunal found that the Respondents had acted upon the Applicants' complaint that they had been charged for scaffolding to repair the roof when none was used and the invoice had been reduced accordingly (***Issues 7 & 8***).

73. The effect on the estimated charge for external repairs for 2016/17 is that it had been based on the cost of external repairs in 2014/15 which had been higher than usual and had since been reduced. The Tribunal determined the estimate for 2016/17 of £87.84 was an overestimate and the estimate for 2015/16 of £35.71 should be repeated (see below).

Issue 1 & 5 – General and Specific Increases

74. The Tribunal found that the accounts for the actual costs for the **fire and smoke detection equipment** for the Building showed that the amounts varied significantly from year to year as follows:

2011/12	£0
2012/13	£21 (£3.50 per flat)
2013/14	£143.34 (£23.89 per flat)
2014/15	£334.31 (£55.72 per flat)

75. The Tribunal noted that the increase in 2014/15 was due to the replacement of a number of light fittings. The Tribunal was of the opinion that taking into account the number of emergency lights, the age of the installation and that work had been carried out in 2014/15, an estimated cost of £527.04 in 2016/17 appeared unreasonable. There was no evidence that an inspection or work would be needed to justify this expenditure on emergency lighting. The Tribunal determined that the estimate of 2015/16 was reasonable and should be repeated for 2016/17.

76. The Tribunal found that the Respondent's increased estimated costs for 2016/17 for **external repairs**, was based on the expenditure on the roof repair in 2014/15, as stated above. The Tribunal found that the expenditure for that year was higher than usual because of the roof repairs. The Tribunal also found that the bill had since been reduced. Therefore the Tribunal found the estimation of the 2016/17 Service Charge based on the 2014/15 actual accounts with the original invoice for the roof repairs was unreasonable. Taking into account the age and condition of the building and in the absence of evidence that costly day to day repairs would be required, the Tribunal determined that the estimate of 2015/16 was reasonable and should be repeated for 2016/17.

77. The Applicants accepted that the **Building insurance** premium increased.

78. The Tribunal found that the Respondent had made a genuine attempt to calculate an appropriate **Management Fee.** The Tribunal found that the fee of £241.00 per unit was reasonable taking into account that it included accounting and auditing charges and provided a good service was given. The Tribunal had concerns that during the course of the re-organisation in 2015/16 the service was not consistent. Communication between Landlord and Tenants appeared to have suffered as permanent Neighbourhood Officers

were in the process of being appointed. In addition checks on certain works e.g. grounds maintenance had not been carried out promptly and the manner of carrying out works had not been overseen e.g. the unauthorised access to Ms Mrowiec's balcony by the roofing contractors.

79. The Management Fee for 2015/16 had been estimated at £196.00 as the first stage of the increase from £150.00 per unit and the estimated fee for 2016/17 at £241.00 as the second stage of the increase. The Tribunal considered that the two stage increase took account of the short-comings during the re-organisation and determined the estimated fees to be reasonable.

80. The Tribunal found that the Service Charge **surplus or deficit brought forward** was the amount that had been an over or underspend the year before last. Therefore in the actual accounts for 2013/14 an underspend payable by each individual flat was recorded of £125.73. This was taken into account in the estimated Service Charge for the 2015/16. In the actual accounts for the year 2014/15 an overspend was recorded of £213.64 payable by each individual flat. However, for the estimated Service Charge per flat for 2016/17 each flat was required to pay £313.21. No justification was put forward for the additional £99. 57 other than it was anticipated there would be an overspend in 2016/17. The Tribunal was of the opinion that for the sake of consistency and clarity the actual over or underspend of the year before last (as the amount carried over) should be included in the estimated account. Therefore the Tribunal determined that the estimated deficit should be reduced to the actual sum of £213.64. This is then reduced by the surplus of £125.73 for 2013/14 to £87.91 instead of £187.48.

81. With a view to being accommodating the Respondent mentioned in its statement of case that if an adjustment to the Service Charge had to be made in favour of the Applicants this might be done through the rental payment. The Tribunal, aware of the trust status of the Service Charge, stated that this was unlikely to be appropriate and that an adjustment would have to be made through crediting the Service Charge itself.

Issue 9 – Broken Window

82. The relevance of the clearing up of the broken window to these proceedings was whether it was an indication of poor management. In the event the Applicants accepted that common sense dictated that the contractor should have cleared up the glass following the accidental breakage by one of its workforce. It should not have been left to the Respondent's Maintenance team alone.

Summary

83. The Tribunal determined that the Estimated Service Charge for 2015/16 should be adopted for 2016/17 for the items of Fire Detection and Smoke Equipment (Emergency Lighting) and External Repairs and there should be no increase. The increase in estimated costs for Building Insurance and Management Fee are reasonable. The Tribunal reduced the deficit to the actual deficit for 2014/15 of £213.64.

84. The table identifying the estimated Service Charge per flat for the year ending 31st March 2017 as determined by the Tribunal is set out below. Where the costs determined to be reasonable by the Tribunal differ from the original figures different they are shown in bold.

Description	Estimated Charge for 2015/16 £	Estimated Charge for 2016/17 £	Change in Charges £
Light & Power	20.73	22.37	1.64
Water Charges	1.22	1.65	0.43
Rubbish Clearance	4.85	6.93	2.08
General Cleaning	57.05	56.44	-0.61
Grounds Maintenance	36.49	36.71	0.22
Fire Detection	35.71	**35.71**	**0**
Door Entry Phone	14.38	9.58	-4.80
TV & Satellite	14.38	9.58	-4.80
External Repairs	56.63	**56.63**	**0**
Internal Maintenance	39.12	19.17	-19.95
Building Insurance	109.12	123.38	14.19
Management Fee	196.00	241.00	45.00
Audit Fees	0	0	0
Reserve Fund	250.00	250.00	0
Surplus/Deficit Brought forward	-125.73	**87.91**	**213.64**
Annual Charge	710.02	**957.06**	
Monthly Charge	59.17	**79.75**	
Increase			**20.58**

Application under 20C Landlord and Tenant Act 1985

85. An application was made by the Applicant for the limitation of the Service Charge arising from the landlord's costs of proceedings and an order that the fees should be reimbursed.

87. Notwithstanding the Respondent's agreement not to seek reimbursement of the costs through the Service Charge arising from these proceedings and to reimburse the fees, for the avoidance of doubt the Tribunal is obliged to make a reasoned Order. The Tribunal found the increases between the estimated Service Charge for the year ending 31st March 2016 and 31st March 2017 were based upon expenditure on items for the year ending 31st March 2015 without an analysis of how that expenditure had been incurred and whether it was likely to be repeated. This had led to what was to the Applicants a very significant increase that was not justified by the likely expenditure for the year in issue (i.e. year ending 31st March 2017). The Tribunal therefore found the Application justified. In addition the Tribunal felt the proceedings might have been avoided but for the hiatus in communication caused by the reorganisation. Therefore the Tribunal makes an Order under section 20C of

the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant and the fees in relation to the present proceedings should be reimbursed.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.