11450

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/19UE/LSC/2015/0004
Property	:	The Old Rectory, Shroton, Blandford Forum, Dorset DT11 8RF
Applicant	:	Mr S Morris (flat 5) Mr L Grant (flat 2) Mr S Parsons (flat 3) Mr D Lawrence (flat 1a)_
Applicant's Representative	:	Mr S Morris
Respondent	:	Spectrum Housing Group
Respondent's Representative	:	Capsticks Solicitors
Type of Application	:	Section 27A Landlord and Tenant Act 1985 (reasonableness of service charges)
Tribunal Members	:	Judge J Brownhill (Chair) Mr P. D. Turner-Powell FRICS
Date of inspection	:	8th July 2015
Date of Decision	:	9th July 2015

DECISION

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1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.

2 The Applicants apply to the Tribunal for a determination of the reasonableness of their services charges pursuant to section 27A of the Landlord and Tenant Act 1985 (hereinafter referred to as 'the 1985 Act').

3 Initially Mr Morris alone made an application to the Tribunal for a determination of the reasonableness of the service charges. It subsequently transpired that, with the exception of heating charges (oil), Mr Morris did not pay for any of the items of expenditure listed in the service charges documents or in his initial application. By letter dated 05/02/2015 Mr Morris accepted that this was the case, but advised that he had since been appointed by the tenants of flats 1a, 2 and 3 as their representative and that they did pay the other items of expenditure and that they wished to challenge those charges pursuant to section 27A of the 1985 Act. As is recorded on the face of the Tribunal's directions dated 10/02/2015 Mr Lawrence of flat 1a, Mr Grant of flat 2; and Mr Parsons of flat 3 were joined to the application.

4 The issues to be determined by the Tribunal were identified in the directions dated 20/01/2015 and in the further directions of 28/04/2015 as follows:

a. 2012/2013 service charge year

    i. Repairs to common parts £1,306.23

    ii. Fire stickers £75.00

    iii. Door mats £199.03

    iv. TV Aerial £336.00

b. 2013/2014 service charge year

    i. Grounds maintenance and an alleged 'overcharge' of £3,935 (given the Applicant's letter of 10/02/2015 this relates to charges for 2012/2013 and 2013/2014 and the 14/15 budget figure)

c. Window cleaning

d. Cleaning of communal areas

e. Oil charges:

    i. 2012 - 2015 Heating (oil) delivery charges.

    ii. 2014/2015 service charge year

        1. Heating Costs £6,000

    iii. 2015/2016 service charge year

1. Costs of oil consumption (see paragraph 4 of the directions dated 28/04/2015)

f. Whether an order under Section 20C of the 1985 Act should be made.

g. Whether an order for reimbursement of any applicant/ hearing fees should be made.

Preliminary matters

5 The Tribunal notifies the parties that the Tribunal Judge Mrs J Brownhill has been instructed in the past, in her capacity as a Barrister, on various different cases by Messrs Capsticks Solicitors (who act for the Respondent in this matter) and Mr Clive Adams of the same firm. The Tribunal does not consider that there is any prejudice or bias or any appearance of the same, such as to impact upon Mrs Brownhill's ability to properly remain a member of this Tribunal. In reaching such a conclusion regard has been had to the fact that Mrs Brownhill is known to Mr Adams of Capsticks on a professional basis only, and that Mrs Brownhill is only one member of the Tribunal, and the decision of the Tribunal is taken by its members jointly.

Inspection

6 The Tribunal had the benefit, on 08/07/2015, of an inspection of the external areas of the property, and a limited inspection of some of the internal areas of the building. Mr Morris of the Applicants attended at the inspection. No other parties attended the inspection.

7 The property is a detached stone and slate roofed house, with a brick and slate annex. The main property consists of three stories. Originally constructed in circa 1850, it has subsequently been converted into 6 flats. There appeared to be 3 main entrances (or front doors) to the property.

8 The property is set back from the road, with its own drive and car parking area. There are extensive grounds to the side and rear of the property and a small area of lawn and shrubs to the front of the property between the drive and the road.

9 The Tribunal noted that there were three external aerials on the roof of the building, plus a satellite dish attached to the rear elevation of the main building. The Tribunal were told by Mr Morris that 1 of the 3 aerials was a 'private' aerial having been installed by and belonging to one of the other tenants, the others were communal aerials.

Paper Determination

10 Having inspected the property the Tribunal reached its decision on the basis of the papers before it, the parties having consented to a paper determination: see the Tribunal's directions of 28/04/2015 paragraphs 8 and 9.

Summary of conclusions

11 The Tribunal has made the following findings:

a. 2012/2013 service charge year;

   i. Repairs to common parts - not charged through service charges therefore £0.00

   ii. Fire stickers - withdrawn by the Respondent- £0.00

   iii. Door mats £199.03 was a reasonable cost

   iv. TV Aerial £167.04 was a reasonable cost

b. Grounds maintenance

   1. 2012/2013 £1,195.46pa was a reasonable cost

   2. 2013/2014 £1,195.46pa was a reasonable cost

   3. 2014/2015 £1,195.46pa is a reasonable **budgeted** figure

   4. 2015 £600 is a reasonable **budgeted** figure

c. Cleaning of communal areas

   i. The costs claimed through the service charge were reasonable

d. Window cleaning

   i. The costs claimed through the service charge were reasonable

e. Oil charges:

   i. 2012 - 2015 Heating (oil) delivery charges

      1. The Tribunal finds that the costs claimed in the service charges are reasonable in respect of this item.

   ii. 2014/2015 service charge year, the budgeted costs for oil of :

      1. Non communal oil costs £6,500

      2. Communal oil £nil

      are reasonable. It is to be noted that these are **budgeted** costs only.

   iii. 2015/2016 service charge year, the budgeted costs of oil consumption of

      1. Non communal oil costs £6,500

      2. Communal oil £1,500

      are reasonable. It is to be noted that these are **budgeted** costs only.

f. An order under Section 20C of the 1985 Act should be made.

The Tenancy agreements

12 The Tribunal noted, and accepted, the evidence of the Respondent as detailed in paragraphs 5, and 6 of its witness statement. The Tribunal notes, as is stated above, that Mr Morris is liable only to pay the oil costs through this tenancy agreement, and none of the costs of the other services provided. The other Applicants are, under the terms of their tenancy agreements liable to contribute to the costs of such services. The reason for the difference in treatment arises from a change in the Respondent's policy: at the time of Mr Morris's tenancy agreement only oil costs were reclaimed through the service charge provisions. By the time the other Applicants were, subsequently, granted their tenancies of the property the Respondent's policy had changed and the costs of all services provided was to be recouped through the service charge. The Tribunal note that Mr Morris on his behalf and also as a representative of the other applicants accepts that this is an accurate statement of the position.

The Law

13 The statutory provisions primarily relevant to applications of this nature are contained in sections 18, 19 and 27A of the 1985 Act. A copy of those provisions is attached as an appendix to this judgment.

14 The parties agree that the service charges being considered by the Tribunal are variable service charges within the meaning of section 18 of the 1985 Act, despite the Respondent's reference to Mr Morris's service charges being 'fixed' (paragraph 35 of the Respondent's witness statement).

15 The Tribunal noted Mr Morris's comment in his original application about him and his fellow tenants being on low incomes and his questioning whether it was reasonable to request tenants with low incomes to pay such service charges. Mr Morris should note that the Tribunal are not able to look at an individual's finances and circumstances in connection with the affordability of the service charges. The Tribunal has to consider the terms of the lease, and whether in that context the amounts claimed for specific items are reasonable.

16 The Tribunal considered each of the matters under consideration in turn.

The 2012/2013 Service charge year

Repairs to common parts

17 The Applicants complained in their application that the cost of £1,306.23 under this heading was unreasonable, given the work which was done. The Tribunal note the Respondent's explanation for this charge, namely that the cost was initially included in the service charge accounts in error.

18 At [pink 58] there is a copy letter from the Respondents dated 20/09/2013 attaching a copy of the service charge accounts for the 2012/2013 service charge year. That document shows this item within the actual expenditure column. However another document [pink 78] showing the actual expenditure for the 2012/2013 service charge year does not include any such figure or

entry within the actual expenditure column. The Tribunal also notes that there was no provision in the 2012/2013 budget for such an item of expenditure.

19 The Respondent states at paragraph 30 of its witness statement that "...refers to an earlier budget statement issued around February 2014 in which the Finance Team had included a budgeted cost for works to repair a communal path. .....The Respondent's Housing Management Team picked up this error and the charge was removed and a fresh schedule issued. Accordingly the residents have not been charged for these works and therefore there is nothing for the Tribunal to determine."

20 The Tribunal notes that the 'budget statement' containing the error was seemingly issued in September 2013 and not February 2014. Further that the spreadsheet covering pages [pink68] to [pink 71] relates to such a charge, and lists various items of works as contributing to the total cost of £1,306.23, only one item of which was re-bedding five paving slabs (presumably the aforementioned works to the path). Other items referred as making up the cost of £1,306.23 included gutter clearing, blocked communal drains and works concerning the TV aerial – for which see below.

21 The Tribunal noted that Mr Morris accepted that the entire charge of £1,306.23 had in fact not been recovered through the service charge (Mr Morris's letter of 10/02/2015). The Tribunal were satisfied that despite the seeming discrepancies in the Respondent's description of the work covered by this charges, that the Applicants had not, in fact, been charged £1,306.23 for general repairs through the service charge, either as a budget figure or through the final actual costs. There was therefore no issue between the parties on which the Tribunal needed to make a determination in this regard.

Fire stickers

22 The Respondent originally claimed £75 through the 2012/2013 service charge for the cost of 'fire stickers' within the 'fire alarm and fire fighting equipment heading [37].

23 The Respondent indicated in their witness statement at paragraph 29 that they were withdrawing this cost from the service charge accounts. There is therefore no issue between the parties on which the Tribunal needed to make a determination.

Doormats

24 The Applicants complain that the cost of replacing two coir door mats at a cost of £199.03 is unreasonable. The Tribunal had the benefit during the inspection of the property of seeing the mats in question. They are both of very different sizes: one is very much larger than the other and appears to have been cut around the contours of the porch. The second mat (in the other porch/entrance door) is much smaller and set within a tile surround. Both mats are set (recessed) into the floor, so as to prevent a tripping hazard.

25 The Applicants have suggested that a standard coir mat could have been obtained from Homebase at a cost of £8.99 (see Applicant's bundle, which is

not paginated) and it would have been reasonable for the Respondent's to do this as opposed to incurring the cost that they did.

26 The Respondents state, at paragraph 28 of their witness statement, that "The doormat is a bespoke, made to measure commercial grade doormat and sits within a recess so that it does not move about or cause people to trip". The Tribunal noted the invoice at [85] showing the cost of £199.03 consisting of the supply and fitting of two 'entrance matting, natural coir 17mm' and including 18mm plywood to pack up the mat well. The Tribunal noted that despite the difference in size between the two mats the cost was not significantly different, with one mat (supply, fitting and packing) costing £83.50 and the other costing £82.36. Thus suggesting that the actual cost of the coir mat itself was not significant, and that the majority of the cost was in the fitting.

27 The Tribunal considered that given that the mats were to be installed at the entrances of multi occupancy flats, with doubtless some level of heavier traffic that one might usually expect in a private domestic setting this justified the Respondent opting for a commercial grade of matting. Further the Tribunal considered that the mats did properly need to be fitted into the recessed floor areas in order to avoid causing a tripping hazard. The Tribunal therefore concluded that the costs incurred in this regard were reasonable.

Aerial.

28 The Applicants allege that the cost claimed for aerial repairs in the sum of £336 is not reasonable. The Applicants make a number of points in this regard, taking each in turn. Firstly the Applicants allege that most of the tenants in the property have their own aerials and do not use the communal aerial. It is alleged that only one tenant uses the communal aerial.

29 Mr Lawrence's tenancy agreement states at clause 3(27)(ii)(h) that the tenants are to be responsible for internal repairs including "...all aerials excluding communal facilities.". This means only that if there are internal aerials within individual flats that they are the tenant's responsibility. This does not mean that the tenant is not liable through the service charge for the costs associated with a communal aerial provided as a service through the provisions of the lease. In the Tribunal's view the Respondent is entitled to claim through the service charge the cost of providing (including repairing) a communal aerial. Just because some tenants have chosen to install and rely on their own aerials, rather than the communal aerial(s) does not impact on the Respondent's ability to provide such a service and to claim the costs of the same through the service charge.

30 The Applicants further take issue with the amount claimed for the aerial repairs, saying that the engineer did not go onto the roof of the property. In his letter of 10/02/2015 Mr Morris does though confess that he "..does not know what he (*the engineer)* did." Yet despite this, during the inspection Mr Morris alleged that all the engineer had done was to replace fuses. Mr Morris included within his bundle a print out from "Action, Aerials & Satellites" which refers to the cost of TV aerial installation as being from £49.97, and that this included a free home survey. This is clearly not a comparable quote for

repairs to an existing aerial(s). Also in his letter Mr Morris states that "...a diagnostic callout is free with no obligation from most aerial repair companies." Mr Morris has not produced any evidence in support of this contention.

31 The Respondent deals with this topic at paragraphs 26 and 27 of their witness statement. They state that within the 2013/2014 financial year it was necessary for an engineer to be called out twice to repair the aerial. It is said that this is shown at page 64 of the disclosure bundle [pink 64]. That document is merely the service charge account showing the actual cost for aerials within the 2013/2014 service charge year. There is no invoice covering this work, no detail as to precisely what work was done, and why it was necessary for there to be two call outs, whether it was the same problem each time or a different one, nor the period between the two calls outs, or why the fault was not properly remedied during the initial attendance by the engineer. The Tribunal note that the Respondent states that the fault was an electrical fault prompting both call outs. The Respondent alleges that the minimum call out charge is £167.04, thus as there were two call outs the cost was £334.08.

32 The Tribunal notes that the figure included in the actuals column for this item in the 2013/2014 service charge year was indeed £334.08 and not as stated in the Applicants' application £336.

33 Despite the absence of an invoice the Tribunal accepts that works to the aerial were undertaken – indeed this is seemingly admitted by Mr Morris and the other Applicants. However the Tribunal note that at [pink69] there is an entry seemingly showing that on the 29/01/2013 there was "Routine – TV aerial – tenants have no picture – communal aerial – mreported by number4 - ...." value £230.44. This would seem to suggest that there was only one call out, and that it cost £230.44. The Tribunal cannot find, within the papers before it, any explanation for this figure. It may be that this covers a separate call out and for different works to the aerial, but it is far from clear. It does not appear to equate of £167.04 + vat.

34 In all the circumstances, the Tribunal are satisfied that one call out from an aerial engineer is reasonable. The Tribunal is not satisfied on the basis of the information currently before it that two call outs were reasonably required. The Tribunal is satisfied that £167.04 is a reasonable fee for a call out to remedy an electrical fault to an aerial. The Tribunal therefore allow £167.04 only in relation to this item.

Grounds maintenance

35 The Applicant challenges the gardening costs for 2012/2013 and 2013/2014 alleging that they are unreasonable especially when seen in light of the current gardening / grounds maintenance charges of £600. The Applicants agree that the £600 is reasonable (see Mr Morris's letter of 31/05/2015).

36 The charges under consideration are as follows:

a. 2012/2013

i. In his application Mr Morris states that the charge was £2,335.13

ii. In fact, the Tribunal having seen the documentation have established that the;

1. Budgeted figure for gardening for this year was £2,335.13 [7], but that the

2. Actual amount paid was £2,913.96 [37]

b. 2013/2014

i. In his application Mr Morris states that the charge was £3,583.65

ii. In fact, the Tribunal having seen the documentation have established that the

1. Budgeted figure for gardening for this year was £3,583.65 [9], but that the

2. Actual amount paid was £2,222.23 [45]

37 The Respondent addresses this issue at paragraph 15 of their witness statement. They state that after a full section 20 consultation the Respondent entered into a contract with 'The Landscape Group'. At [50] there is a copy of a tender specification for gardening from the Respondent to be sent to potential contractors covering, seemingly all of their properties in Dorset. The Tribunal noted that the tender specification does not seem to include sweeping drives etc. but that there is reference to weed spraying [53]. The Tribunal have not been shown any further documentation in relation to this, but note that the consultation procedure is not an issue taken by the Applicants and so is not a live issue before the Tribunal.

38 The Respondent explains that the reduction in gardening costs in the 2015 budget to £600 is as result in a substantial change in the amount of gardening covered. The Respondent explains that when the Landscape group had been previously attending at the property they had found that the residents had already cut the grass, and thus there was nothing for them to do. The Landscape group were however still entitled to charge the Respondent for the visit under the terms of their agreement.

39 The Respondent states that it was told by "a couple of residents..." that they found cutting the grass therapeutic and wanted to continue to do so." The Applicants do not dispute this. The Respondent stated that when the grounds maintenance contract was being re-tendered in 2014 ready for its renewal in May 2015 they consulted with the residents about removing the property from the main contract for re-tendering purposes. The Tribunal has seen at [59] a letter from the Respondent to Mr Grant referring to this matter. And at [62] a letter from the Respondent to Mr Grant dated 01/04/2015 again referring to this matter. At [64] there is an email of 31/03/2014 again referring to this. And finally at [65] a quotation from Adrian Damon dated 07/01/2015 in which he states he will carry out 8 cuts of the grass per annum at the property

at a cost of £75 per cut and that the hedge is to be trimmed where necessary, equating to a cost of £600pa. The Respondent having, it was said, consulted with the residents then entered into "...a separate contract with a supplier (*Mr Damon*) with considerably reduced specification and frequency of visits."

40 During its inspection of the property the Tribunal noted that while the grass to the side and rear of the property had been cut and that there was some evidence of trimming to the hedges, the grass to the front of the property (between the drive and the road) had not been cut. Mr Morris stated that this was not included within the current gardener's contract.

41 Initially the Applicant's complaint was that there had been a big increase in the gardening costs from 2012/2013 to 2013/2014, specifically that complaint was made in reliance on the budgeted figures for those years. In reality there was a decrease in actual costs paid in the gardening over the two years in 2012/2013 and 2013/2014, namely from £2,913.96 to £2,222.23, as detailed above.

42 Mr Morris in his initial application went onto complain that this was an unreasonable amount given that there had been "...no more than eight grass cuts and a few leaves being swept up on other occasions. Total hours did not exceed 10 hours for the entire year." The difference between what Mr Morris seemingly logged as contractors carrying out, and the requirements under the tender specification can be adequately explained by the information provided by the Respondent in their witness statement: sometimes when the contractors attended the grass did not need cutting as it had already been done by the residents. As stated above, this fact is not disputed by Mr Morris.

43 A more particular concern however arises as a result of an item included within the Respondent's disclosure, and is referred to in the letter of Mr Morris dated 31/05/2015. That document appears at [pink 65] and states as follows: "19/03/2014 confirmation received from Carla and the Landscape Group that grounds maintenance should have been charged to The Laurels, Rectory Gardens, The Old Rectory and General Wolfe Close. However it has only been charged to The Old Rectory and General Wolfe Close and hence these two schemes have paid an incorrect proportion for what seems to be the past three years. The budget cannot be set for the 14/15 period for The Laurels or Rectory Gardens as they have not been consulted on in regard to introducing a new service but I will change the 14/15 budgets for The Old Rectory and General Wolfe Close as per the quote supplied by The Landscape Group as follows:

Area	Cost (3)	Scheme	% split
1	£130	The Laurels	7.48
2 +3	£308	General Wolfe Close	17.74
4	£102.66	Rectory Gardens	5.62
5+6	£1,195.46	The Old Rectory	68.86

	£1,736.12		

44 The numbered areas are shown on a plan at [55]: with area 5 as the drive of the property and area 6 being the grass to the rear and side of the property. The grass at the front of the property between the drive and the road is not clearly numbered.

45 It seems therefore that the Respondents, on their own documentation, accept that they have over charged the cost of grounds maintenance, seemingly for the periods 2013/2014; 2012/2013; and 2011/2012 through the service charge.

46 The Tribunal note that for the year 2013/2014 the actual amount charged to the service charge for the property for this item was £2,222.23. It is not clear where this figure has come from. It is not, £1,736.12 + vat = £2,083.34. Mr Morris in his letter of 31/05/2015 refers to adding 28% VAT, but that is not the applicable rate, which is 20%.

47 It appears to the Tribunal therefore, that on the basis of the information currently before them, that the appropriate amount to be allowed in relation to the gardening maintenance is £1,195.46pa for 2012/2013 and 2013/2014 service charge years. The Tribunal consider this to be a reasonable amount, given the information we have about the contractual obligations of the Landscape Group, and indeed that the contract was entered into subsequent to a section 20 consultation. The Tribunal do not accept Mr Morris's comments on the frequency of the Landscape Group's visits, as, in all the circumstances, meriting a reduction in the figure found to be reasonable, for the reasons set out above. The Tribunal trust that the Respondent will also apply the correct figure in this regard to the previous year's service charge (i.e. 2011/2012 – that not being a year included within the Tribunal's considerations).

48 In relation the 2014/2015 service charge year, the Tribunal notes that there is only a budgeted figure included in the documentation before us [pink 78] being £1,836.23. No actual costs were available, but the Tribunal has worked on the basis that this is the final year of the Landscape Group's contract. The Tribunal considers that once more the appropriate figure for the **budget** is £1,195.46. This figure may in fact alter once the actual costs are known and have been properly calculated, with only the correct proportion being charged to The Old Rectory.

49 Similarly the figure for the 2015/2016 **budget** is £600 and appears at [pink48]. This is agreed by the Applicants to be reasonable and in line with Adrian Damon's quotation as referred to above.

50 The Tribunal note that Mr Morris's letter of 31/05/2013 was sent to the solicitors for the Respondent prior to 10/06/2015 (see Mr Morris's email of 10/06/2015). Yet the Respondent has chosen not to submit any further response in relation to such issue. The Tribunal considers it is appropriate to decide this issue on the basis of the information currently before it: the Respondent's knew from Mr Morris's letter of 31/05/2015 that he sought to

raise this issue; and this is an issue which is explicitly acknowledged and referred to in the Respondent's own disclosure.

Window Cleaning and cleaning of communal areas

51 Mr Morris refers, in passing, in his letter of 10/02/2015 to these costs saying "Before I took it upon myself to challenge these charges there were also two other charges for stair cleaning £65pw for 15 minutes and £200 for window cleaning that amounted to a splash once a year." These are not issues which are referred to on the face of the original application, however given the directions of 28/04/2015 the Tribunal have considered the same.

52 The Respondent has addressed these issues in some detail in their witness statement at paragraphs 31 and 32.

53 The Tribunal accept that Universal Cleaning Limited were previously engaged by the Respondents to clean the communal areas of the property. In 2011 the weekly total charge for cleaning the property was £47.24. Copies of those invoices appears at [86 – onwards] dating from 29/04/2011 to 30/12/2011. There are no copy invoices for 2012. However it appears from [96] (the January 2013 invoice) that from September 2012 the cleaning was being carried out fortnightly at a cost of £51.96 per fortnight. The Respondent in their witness statement at paragraph 31 refers to this being the situation "...from 2013 onwards.", yet the January 2013 invoice suggests that this was the position from September 2012 onwards. Further [pink 59] appears to show for the 2012/2013 service charge year a budget cost of £2,524.60 against an actual cost of £2,307.01. The lesser actual cost may well reflect a change in September 2012 from weekly to fortnightly cleaning but this is not easily calculable as being the reason for the difference.

54 Mr Morris in his letter suggests that the cleaning which was done only took 15 minutes. He does not explicitly state that what was done was insufficient: only that it was done quickly. Further the Tribunal notice that the change in September 2012 concerning frequency of cleaning visits would not suggest that the cleaning which was being done was inadequate: otherwise presumably the contractor would have been changed. It also appears from the Respondent's evidence, which is not disputed by the Applicants in this regard, that the change to fortnightly cleaning was a result of discussions with tenants and an attempt to reduce cleaning costs. Just because the cleaning services were in September 2012 reduced to fortnightly does not mean that weekly cleaning was, per se, unreasonable or that the costs of that weekly cleaning were unreasonable.

55 In the Tribunal's view, and based on the information currently before it, the costs of £47.24pw, and later £51.96 per fortnight for cleaning of the communal areas were reasonable.

56 The final clean performed by Universal Cleaning was carried out on 04/04/2014 [pink 109]. From this point onwards the cleaning of the communal areas was performed, by agreement, by the tenants themselves. This is reflected in the 2015/2016 budget at [pink 64] which shows £0.00 in

relation to this item. Similarly in the 2014/2015 budget appearing at [pink 66] there is a nil cost in respect of communal cleaning.

57 Turning next to consider window cleaning costs. These are dealt with in paragraph 32 of the Respondent's witness statement. Included in the bundle at [110] are a series of invoices from Totalis dating from 31/12/2010 (though there are a number of gaps where invoices are missing) up to 30/08/2012.

58 The invoice at [110] refers to 'window cleaning (general needs section), suggesting the cost of works was £116.25pcm + vat covering a 12 month contract. There is no reference on the face of that invoice to the property in particular. By [118] the invoice for 30/03/2012 shows a breakdown of the £116.25pcm figure, illustrating that only £16.00 + vat pcm was attributable to the property. The remainder of the £116.25pcm was attributable to other properties within the Respondent's housing stock.

59 The Tribunal considers that £16.00+vat pcm is a reasonable cost for window cleaning, having seen the type and number of windows spread over three stories at the property. 12 x £16 = £192 + vat at 20% = 192 + 38.40 = £230.40.

60 Looking at [pink 66] the budgeted cost for 2012/2013 for window cleaning were £223.15. The actual costs incurred for this item are noted as £124.94. The comments of Mr Morris in relation to this item suggest that the window cleaning that was done was no more than a 'splash of water' once a year. The Tribunal are not satisfied, on the basis of the evidence before them, that this is an accurate description of the window cleaning which was carried out at the property over the relevant period. There is no documentary evidence before the Tribunal in which contemporaneous complaints about the window cleaning service are raised by any of the tenants. It appears that this, like the cleaning of communal areas, was reduced in order to save costs for the tenants in the property, rather than as a result of inadequate work/service. The Respondent states that they have now agreed with the tenants of the property that they will carry out their own window cleaning, and therefore this service is not being provided through the service charge. The Tribunal are satisfied, on the balance of probabilities, that the contracted window cleaning was being carried out to a reasonable standard by Totalis and that the costs charged were reasonable.

Oil costs

61 There are a number of aspects to the Applicants challenges to the oil costs incurred and budgeted by the Respondent. However the Tribunal make clear at the outset that they are <u>not</u> considering, within this application, any issue relating to the suitability of any potential new system being proposed/contemplated to replace the existing boiler.

The boiler is inefficient

62 The Applicants allege that the current boiler is inefficient and therefore uses more oil than a more modern system would, thus resulting in an increased cost to the tenants through the service charge which they allege is unreasonable.

63 The Respondent explains in its witness statement that the boiler is now some 20 years old and is reaching the end of its economic/anticipated lifespan. Mr Morris indicated at the inspection that he had seen the boiler, and agreed it was some 20 or so years old.

64 The fact that a boiler is nearing the end of its anticipated life and/or economic life span and is, compared to more modern boilers or options, inefficient, does not result in the cost of oil consumption for such a boiler being unreasonable. A landlord is not expected to update its boiler every time a more modern or efficient boiler is available. There is no obligation on the landlord to improve the boiler system.

65 The Tribunal note that the Respondent is currently undertaking a section 20 consultation process on a new replacement boiler/ system. No decision has yet been reached by the Respondent as to what system it will install to replace the existing boiler. As stated above the Tribunal is not considering the suitability or reasonableness of any new system proposed or being contemplated by the Respondent within this application.

66 The Tribunal find that the fact that the current boiler in situ at the property is 20 years old and that there are more efficient boilers available (at a capital cost) which would reduce oil consumption if installed does not mean that the oil charges included under the service charge are unreasonable.

There is a £0.125per litre additional cost

67 The Applicants allege that there is an additional charge of £0.125per litre applied to the cost of oil because the Respondents "...have a planned delivery..." service – see the original application. The Applicants complained in their initial application about this as "...we the tenants, have to notify Spectrum when the 'low oil warning light is on'. It makes no sense whatsoever."

68 Later in his letter of 10/02/2015 Mr Morris states:

> "A planned delivery (12.5p per litre more) means at no time does anyone need to telephone to report low oil, as the fuel suppliers ensure we do not run out. I understand the planned delivery only applied to Northover Fuels. Since then we have changed to CPL petroleum, but are now operating on a 48hr delivery. Meaning, they promise to deliver within 48 hours of ordering. However, this is another premium service according to Mr Stone, and costs 12p per litre more. I have spoken to CPL today and they inform me from the time of order, they will deliver in 7 working days. Even when the low oil light comes on, there is about 7 days before the oil runs out, so I am alleging, we do not need to be paying the 12p per litre premium."

69 The Applicants therefore seem to complain that there was a £0.125 per litre additional charge applied to the Northover Fuel costs, and an additional £0.12 per litre applied to CPL oil costs, as a result of delivery agreements entered into with the respective companies by the Respondent. The Applicants seem to argue that in neither case were such additional charges reasonable as the level of the oil could be managed by the residents themselves notifying the

Respondents when the low level warning light came on outside the boiler room.

70 The Tribunal saw, at the inspection, that immediately inside the property to the right of one of the porches there was indeed a boiler room with a sign and light on the wall which stated "Warning heating oil low please phone xxxx". This is clearly visible from one of the entrances to the property.

71 The Respondent deals with oil costs at various places in its witness statement. However in relation to this issue at paragraphs 18 and 20 it states "The Applicants' complaint is that the Respondent's current oil supplier CPL Petroleum charge an additional £0.12 per litre compared to the previous supplier, Northover Fuels." The Respondent then goes onto set out a problem with they had with Northover Fuels in 2011, when the oil ran out and that had to wait 10 days for a new delivery, resulting in tenants having no heating or hot water for 10 days. This is illustrated by [pink 5] where it can be seen in August 2011 Northover Fuels delivered 3,000l of oil, which is apparently the entire capacity of the tank at the property.

72 It is clear from this incident in 2011 that whatever system was then in place was not working. As the Respondent itself points out it is entirely unacceptable for the tenants of the property to be in a position where they are without heating or hot water for 10 days. The Respondent is entitled to choose who to use in the supply of its oil. It does not necessarily have to choose the lowest quote/supplier, especially if there are justifiable reasons for choosing a more expensive quote – for example considering delivery times.

73 The Tribunal consider that it is reasonable for the Respondent to want to ensure that it is able to respond to a need for oil rapidly. It is entirely acceptable for the Respondent to have decided that it did not wish to rely only on tenant notification when considering its arrangements for ensuring that there was sufficient oil in the tank at the property; especially as the warning light system is only visible from one of the entrances to the property. Similarly it is also entirely reasonable, in the Tribunal's view, for the Respondent to have decided to use a supplier who is able to guarantee delivery within 48 hours of a request being made. The example given about the Respondent's experience with Northover fuels and its having to wait for 10 days for a delivery amply illustrates the Respondent's legitimate concerns in this area.

74 The Applicants state that when Mr Morris spoke to CPL he was told that they will delivery within 7 days of a request. The Tribunal however accept the evidence of the Respondent in this regard (paragraph 20 of the Respondent's witness statement), that, as a result of their bargaining power they have been able to secure an agreement under which CPL will deliver to the property within 48 hours of a request for more oil being made.

75 The Respondent in its witness statement does not explicitly state that there is any additional charge for this 48 hour delivery agreement it has with CPL. Indeed it frames the Applicants' complaint at paragraph 20 as "..the Applicant's complaint is that the Respondent's current oil supplier, CPL Petroleum, charge an additional £0.12per litre compare to the previous supplier, Northover Fuels."

76 Having considered the documentation before it the Tribunal can find no evidence of a premium, or additional charge for the 48 hour delivery service which has been secured by the Respondent.

77 The Applicant has failed to produce any evidence establishing that the delivery service costs an additional £0.125 or £0.12per litre. There is no reference to such a premium being applied on any of the invoices which are included in the bundle.

78 What the Tribunal do note from the invoices before them is that the cost of oil (pence per litre) charged by CPL has varied dramatically, and this is in seeming accordance with the general fluctuations in international oil prices. So for example in:

a. August 2011 Northover Fuels were charging £0.6590 per litre [pink4]

b. October 2011 CPL charged £0.8848 per litre [pink 6]

c. August 2012 CPL charged £0.8958 per litre [pink12]

d. November 2012 CPL charged £0.8249 per litre [pink 14]

e. December 2012 CPL charged £0.8012 per litre [pink 15]

f. May 2013 CPL charged £0.7935 per litre [pink 20]

g. January 2015 CPL charged £0.6202 per litre [pink30]

79 This illustrates only that the cost of oil was fluctuating over the period being considered, and such fluctuation was reflected in the cost charged by CPL to the Respondent.

80 The Applicants have failed to produce any comparables, by which the Tribunal could access, over the same period, whether in fact oil was available at significantly lower prices elsewhere. The fact that the Applicants can say in August 2011 the cost was £0.6590pre litre, and by October 2011 the cost was £0.8848per litre, does not assist them unless they are able to show that oil was available at a much lesser price at the same time, elsewhere. There is no evidence before the Tribunal on which it could properly reach such a conclusion. Nor is there any persuasive or documentary evidence supporting the assertion that the Respondent was paying an additional fixed premium charger per litre in order to secure a 48 hour delivery service.

81 In all the circumstances the Tribunal were satisfied that the oil costs charged by CPL were not outside the reasonable range of such costs. Therefore the costs will be allowed as per the figures included in the service charge for each year.

The budgeted costs for oil for 2014/2015

82 The Applicants allege that the budgeted costs for oil for 2015 of £6,000 are unreasonable (see original application and directions of 20/01/2015). The original application states that Mr Morris has asked the Respondent whether this figure is for oil or woodchip (presumably on the basis of the potential

alternative new systems being considered) but that his query has not been responded to. The Applicants do not give any other particulars of their arguments in this regard. The fact that the budgets refer to oil costs, should in the Tribunal's view, provide Mr Morris with an answer in this regard.

83 In fact the budgeted figure for oil consumption for 2014/2015 was higher than £6,000:

a. [pink 78] Budget for 2014/2015 non-communal oil costs is said to be £6,500.

1. There being no communal oil costs included in the budget as at that time it was thought that the communal radiators had all been turned off at the tenants' request in order to save costs (paragraph 13 of the Respondent's statement). This budget was set when the actual figures for 2012/2013 showed: Non- Communal £8,873.45 and Communal £2,218.36

b. [pink 78] (there appears to be a mis-numbering of pages here – this reference refers to the earlier page [pink page 78]), showing figures for the Budget for 2014/2015 as:

i. Non- communal £10,648.15

ii. Communal £2,662.03

The Tribunal accepts the Respondent's evidence (paragraph 33 of the Respondent's witness statement) that a budgeted amount for communal oil costs was reinserted as the Respondent found that in fact residents had turned back on the communal radiators in the property.

84 The Tribunal considers that the 2014/2015 budgeted oil costs for communal oil of £nil, was reasonable as at the time that the budget was set, it was believed that all of the communal radiators had been turned off and were not being used by the tenants. As stated above the Tribunal accepts however the Respondent's evidence that in fact, on a number of occasions, these communal radiators had been turned back on: though this would not have been known at the time the budget was set.

85 It is important to note that the figures for 2014/2015 which the Tribunal is being asked to consider are only budgeted figures. If, once the actual amounts are known, it is clear that there has been an over estimation, or indeed an under estimation this will be reflected in the final service charge accounts and, if appropriate, with balancing charges being carried forward into future years or surpluses being refunded.

86 In terms of the non-communal budgeted costs for 2014/2015, the Tribunal considers the cost of £6,500 to be reasonable, when assessed against, falling oil prices; the historical consumption figures for non-communal oil and the fact the Respondent has indicated in its witness statement at paragraph 34 that it was not seeking to recover the shortfall sustained in 2013/2014. It would appear that the £10,648.15 figure which at one stage appears in the budget

comes from £6,500 + £4,787 odd deficit from the previous year. The Respondent pointed the Tribunal to [pink 64] as evidence showing that the £4,147.88 over spend on oil from the preceding year was being written off and it was not sought to recover this from the tenants of the property.

Budgeted oil costs for 2015/2016

87 Finally the Tribunal is tasked (by virtue of the directions dated 28/04/2015) to consider the reasonableness of the budgeted oil costs for 2015/2016. The document at [pink 64] shows a budget for the year 2015/2016 being set at:

i. Non- Communal £6,500

ii. Communal £1,500

The Tribunal accepts the Respondent's explanation as set out in paragraph 33 of its witness statement, concerning the reasoning behind the budget being set at such a level: namely that "The decrease from previous years reflects for [*sic*] global reduction for [*sic*] the price of oil."

88 As noted above, the actual cost of oil consumption for previous years has been significantly higher than £6,500. However with global oil prices having significantly decreased, the Tribunal considers that the budget for 2015/2016 sets a reasonable figure in all the circumstances. It is particularly worthy of note that the budgeted figure has been set in circumstances where there are ongoing discussions and consultation concerning a replacement heating system being installed at the property. The Tribunal considers it appropriate and reasonable for the Respondent to have set the budget on the basis of current oil prices and historical data about oil consumption, as opposed to on the basis of speculation as the new type of system which may be installed or any particular savings which may be thereby achieved in oil consumption (or indeed the cost of woodchip if an alternative fuel system is used).

89 The figures are a budget for 2015/2016 only. If a new system is installed within, or before that service charge year, and savings are made, then of course these will be ultimately reflected in the final service charge accounts and the actual costs incurred. The Tribunal does not consider it reasonable for the Respondent to try to set a 2015/2016 budget by reference to unconfirmed, or non finalised proposals about future replacement heating systems.

90 Again the Tribunal emphasises that the figures for 2015/2016 which the Tribunal is being asked to consider are only budgeted figures. If, once the actual amounts incurred or spent are known, it is clear that there has been an over estimation, or indeed an under estimation in these budgeted figures this will be reflected in the final service charge accounts and, if appropriate, with balancing charges being carried forward into future years or presumably, with repayments made to tenants if there is a surplus.

91 The Tribunal notes that apparently a 15% management fee was added to the costs charged to Mr Morris and the other tenants. As this has not been challenged by the Applicants the Tribunal makes no comment in relation to the same.

Other matters

92 While the issue of electricity costs was raised on the face of the original application, the directions of 28/04/2015 stipulated that the Tribunal's determination concerning the service charge years for 2012/2013; 2013/2014 and 2014/2015 are limited to those matters referred to in Mr Morris's letter of 10/02/2015. As electricity costs are not mentioned in that letter, the Tribunal has not made any determination on the issue of electricity costs for the years 2012-2014.

Section 20C of the 1985 Act

93 The Applicants have asked the Tribunal to make an order under section 20C of the 1985 Act, to prevent the Respondent from recovering its costs of the Tribunal proceedings through the service charge. A Tribunal may make an order under section 20C if it considers it to be just and equitable to do so.

94 The Tribunal do consider it just and equitable to make such an order. In doing so the Tribunal noted the costs and charges claimed by the Respondent under the service are often opaque and not easily understood: certainly this is the case on the basis of the not inconsiderable documentation before us. The order/ sequence of the numerous documents before the Tribunal were by no means easy to follow, so it was not always clear, without the benefit of the Respondent's witness statement, why or where costs had been altered. The Tribunal also noted that the Respondent has made concessions in course of these proceedings which had not previously been forthcoming – certainly in relation to the fire stickers. Further, the explanations provided in the Respondent's witness statements have not seemingly (on the basis of the correspondence) been provided to the Applicants previously. And while perhaps not successful on the majority of the major items challenged, the Applicants have been successful in challenging both the gardening costs and some of the aerial repair costs.

95 The parties should note that the fact that a section 20C order is made does not involve a consideration or determination of whether the provisions of the leases allow the Respondent to seek to recover the costs of the Tribunal proceedings through the service charge provisions, nor the reasonableness of any such costs.

Whether an order for reimbursement of any applicant/ hearing fees should be made.

96 Neither party has addressed, in its respective submissions, whether the Tribunal should exercise its discretion to order any reimbursement of any application/ hearing fees.

97 The Tribunal's powers in this regard arise as a result of Rule 13(2) of The Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013. Taking into account all of the circumstances of the case, the Tribunal is not prepared to make such an order.

Appeals

98 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

99 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

100 If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

101 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge J Brownhill (Chair)

Dated; 9th July 2015

Appendix

Landlord and Tenant Act 1985

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, 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 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.

.....

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.]

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to an 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.

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

(a) in a particular manner, or

(b) on particular evidence,

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

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