

12061



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00AC/LSC/2016/0216

**Property** : Ground floor flat, 11 Albert Road,  
London NW4 2SH

**Applicant** : Barbara Helen Glass

**Representative** : Ms Sarah Walker, counsel,  
instructed by Spalter Fisher LLP

**Respondent** : Rodney Voyce and Eleanor Voyce

**Representative** : Ms Voyce in person and Mr Matt  
Browne

**Type of Application** : For the determination of the  
reasonableness of and the liability  
to pay a service charge

**Tribunal Members** : Mr Charles Norman FRICS (Valuer  
Chairman)  
Mr Anthony Harris LLM FCI Arb  
FRICS  
Mrs Rosemary Turner BA

**Date and venue of  
Hearing** : 10 Alfred Place, London WC1E 7LR  
6 October 2016

**Date of Decision** : 4 December 2016

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**DECISION**

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### **Decisions of the tribunal**

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision and in the appended Scott Schedule and finds that £8,646.67 is payable by the respondent less the £5,718.48 paid.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that not more than 80% of the landlord's costs of the Tribunal proceedings may be passed to the lessee through any service charge.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2007-2016 inclusive. The relevant legal provisions are set out in the Appendix to this decision.
2. A Case Management Conference took place on 25 March 2016 where Ms Sarah Walker Counsel appeared for the applicant and Mr Matt Browne for the respondent. Directions were issued on the same day. Completion of a Scott Schedule was directed.
3. At the hearing of 6 October 2016, Ms Walker made a separate application for dispensation under section 20ZA which the Tribunal will deal with as a separate Decision.

### **The hearing**

4. Ms Sarah Walker, counsel, appeared again for the applicant. Ms Voyce appeared in person with her husband Mr Matt Browne.
5. Immediately prior to the hearing the Ms Walker handed up a skeleton argument. During the hearing, Mr Browne handed up some photographs. During the hearing the Tribunal directed that an up to date Scott Schedule be prepared by the applicants and sent to the Tribunal after the hearing, which was supplied. The sums claimed total £10,369.30 on that Schedule.
6. The Tribunal has relied on that document (with some formatting corrections and additions) which is appended to this Decision.

## **The background**

7. The subject property is a ground floor flat in a pre-first world war terraced house which Mr Browne said dated from 1900. The property is of brick construction under tiled pitched roofs. There is one other flat in the building. Photographs of the building were provided in the hearing bundle and better copies handed up at the hearing. Neither party requested an inspection and the Tribunal did not consider that one was necessary.
8. The applicant previously brought proceedings in relation to disputed major works but following intended enlargement of those proceedings, the original proceedings were withdrawn and this application brought instead.
9. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
10. The respondent paid £5,718.48 on 31 July 2015 in respect of major works. The payment was made, in effect, under protest and the respondents have always disputed that charge.

## **The Lease**

11. The respondents hold the property on a lease for a term of 99 years from 25th of December 1983. The relevant covenants are referred to below.
12. The demise at clause 1(1) includes "the doors and door frames windows and window frames exclusively serving the demised flat". By clause 2(k) the lessee covenants to repair renew...paint...the flat and "keep all glass and windows and window frames...in good and substantial repair".
13. Clause 2 (m) states "at all times during the said term to pay to the lessor in addition to the rent as hereinbefore reserved 50% of the reasonable expenditure incurred by the lessor or in any accounting period of 12 months carrying out his obligations under clause 6 hereof (hereinafter referred to as "the contribution") which monies shall include such monies as the lessor shall set aside by way of a reserve under clause 6 (8) to meet the maintenance expenditure of subsequent years... Such contributions to be recoverable in default as rent in arrear." Clause 2(q) obliges the respondent to make on account payments in advance. By clause 2(r) at the end of the the accounting year, the sums expended by the applicant will be balanced against the sums paid by the respondents and further demands served or credit given. Clause 2(t) provides that the reasonable costs and expenses of the lessors shall include (i) the cost of discharging the obligations of the lessors contained in clause 6

and (ii) the fees charged by any managing agents employed by the lessors.

14. Clause 6 sets out the lessors' obligations. Clause 6(4) states that the "lessor will maintain repair decorate and renew (a) the main structure the foundations and in particular roof chimney stacks gutters and rainwater pipes of the building and (b) the gas and water pipes drains and electric cables and wires in under upon the building and enjoyed or used by the lessee in common with owners and lessees of the upper flats (c) the boundary walls and fences of the building (d) the main entrances passages landings and staircases of the building and the common pathways so used by the lessee in common as aforesaid". Clause 6 (5) states that the lessor will so often as reasonably required decorate the exterior of the building and the interior common parts. Clause 6 (8) states "as and when the lessor shall deem necessary to set aside (which setting aside shall for the purposes hereof be deemed an item of expenditure incurred by the lessor) such sums of money as the lessor shall reasonably require to meet such future costs as the lessor shall reasonably expect to incur of replacing maintaining renewing and decorating those items which the lessor has hereby covenanted to repair replace maintain renew or decorate."

### **The issues**

15. Counsel in her skeleton argument summarised the remaining issues as follows:
- (i) The reasonableness of the management fees (2016-2007);
  - (ii) The Applicant's entitlement to recover a reserve fund and the reasonableness of the sums demanded (2016, 2013 and 2012);
  - (iii) The reasonableness of the surveyors' fees (2013, 2012);
  - (iv) Whether the sums demanded for repairs and maintenance were incurred in fact, and the reasonableness of the same (2012); and
  - (v) The recoverability and/or reasonableness of the sums relating to major works (2013).
16. Having heard evidence and submissions from the parties and considered all the documents provided, the Tribunal has made determinations on the various issues as set out on the appended Scott Schedule.

### **Application under s.20C**

17. At the hearing, the respondent applied for an order under section 20C of the 1985 Act. The Tribunal has determined that of the £10,369.30 in dispute on the amended Scott Schedule, £8,646.67 is payable (83.3%). Of this, £5,718.48 was paid, under protest, on 31 July 2015. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the applicant may not pass more than 80% of its costs incurred in connection with the proceedings before the Tribunal through the service charge. The Tribunal makes no finding on the question of whether such costs are recoverable under the terms of the lease.

**Name:** C Norman FRICS

**Date:** 4 December 2016

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;



- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**The Service Charges (Consultation Requirements) (England) Regulations 2003**

**SCHEDULE 4 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES**

**PART 2 CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED**

*Notice of intention*

1.—(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
- (c) invite the making, in writing, of observations in relation to the proposed works; and
- (d) specify—
  - (i) the address to which such observations may be sent;
  - (ii) that they must be delivered within the relevant period; and
  - (iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

*Inspection of description of proposed works*

2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

- (a) the place and hours so specified must be reasonable; and
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

*Duty to have regard to observations in relation to proposed works*

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

*Estimates and response to observations*

4.—(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

- (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
  - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
  - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
- (a) each tenant; and
  - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
- (a) specify the place and hours at which the estimates may be inspected;
  - (b) invite the making, in writing, of observations in relation to those estimates;
  - (c) specify—
    - (i) the address to which such observations may be sent;
    - (ii) that they must be delivered within the relevant period; and
    - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

*Duty to have regard to observations in relation to estimates*

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

*Duty on entering into contract*

6.—(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
- (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

**Schedule: Disputed Service Charges**

Please note that costs quoted have been divided by two, as the full amounts were shared equally between the two flats which comprise 11 Albert Road.

S/C year ended December 2016

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges	£1,649.50		This is an estimated charge for the year 2015-2016 – final figures to be confirmed when the 2016 accounts are prepared.			
Management Fees	£368	<p>We do not understand why the fee has increased by 40% since 2010. Wages certainly have not risen at that rate, and we have not received an enhanced service by Trust Property Management Group ("TPMG") to warrant the raise.</p> <p>Furthermore, TPMG has not been providing us with any services other than to issue paperwork asking us to pay the service charges. As far as we're concerned, we have always dealt with any day-to-day issues regarding maintenance by ourselves. We have leased other properties in the past where the management agents were accessible, present and responsible. We wish for alternative property management agents to be appointed; and to be refunded a substantial portion of what we have been paying over</p>	<p>Trust complies with the terms of the Lease and the RICS Residential Service Charge Code – Second Edition at pages 82-162. All Tribunals will be familiar with the Code and will be conscious of the extensive responsibilities it places of managing agents. They will be aware of the numerous policies, processes and procedures a managing agent has to have in place to comply with the Code. It will be aware of the onerous provisions within the Code for compliance which apply equally to a property of two flats (as in the subject case) as it does to one with many hundreds. However low the unit numbers the Code has to be complied with. There is therefore, by the very nature of compliance with the Code, a level of overhead that applies to each and every building a managing agent has under management.</p> <p>The fee agreed is £368 per flat, i.e. £736 for the house inc VAT. This is an extremely low fee, reflecting the level of business Mrs Glass provides to Trust. Most managing agents will have a minimum fee of £2,500 and even if that were to be halved by negotiation, it would still be a significantly greater sum than the fee being</p>	<p>As the accounts make clear, the services provided are limited. These include insurance, repairs and maintenance, drainage, gutter clearing and arranging accountancy.</p> <p>Conversely, the Tribunal accepts that compliance with the RICS Residential Service Charge Code imposes onerous obligations on the managing agent.</p> <p>The Tribunal notes that the fee in 2007 was £235 per flat. The Tribunal considers that this was reasonable but that its subsequent rate of increase is unjustified. The Tribunal considers that the charges in</p>		

		<p>the years.</p> <p>This property is a simple one bedroom maisonette with no communal areas. The tenants manage the communal garden themselves as part of the lease. Therefore a fair and reasonable amount would be £220 in line with other similar properties in the market place.</p>	<p>charged by Trust on this property.</p> <p>The claimant and its agents have demonstrated they have tried to and intend to manage this building in an efficient manner by ensuring that any necessary works are carried out and more importantly complied with health and safety.</p>	<p>subsequent years should be increased at the rate of £5 per annum.</p> <p><b>This gives a figure of £280 for the year ending 2015 which the Tribunal considers reasonable.</b></p>		
Reserve Fund	£375 (i.e. total of £750)	<p>According to the accounts, there would already have been £1,222.35 in the Reserve Fund. Please explain why an additional £750 needed to be paid in?</p> <p>No reserve fund should be collected in accordance with the lease. Therefore, the £1,225.35 that should be in the reserve fund that has been incorrectly established should be returned to the tenant. And no amount should be paid in during 2016 or any other future year.</p>	<p>The reserve fund has been established to meet the cost of large, non-regular repairs and maintenance work which is expected to arise in the future. The present level you say is £1222 – but to add a small amount every year means that by the time major works are due again you will not have to pay a large amount in one go the reserve fund will be used.</p>	<p>The lease expressly provides for a reserve fund (see decision). The Lessor is entitled to establish a reserve fund. The building is pre-first world war and will need regular work, in the Tribunal's opinion. <b>For those reasons the Tribunal considers that the amount sought of £375 is reasonable and payable.</b></p>		
					<b>£743</b>	<b>£655</b>

## S/C year ended December 2015

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges	£1,645.24					
Management fees	£356.00	<p>TPMG has not been providing us with any services other than to issue paperwork asking us to pay the service charges. As far as we're concerned, we have always dealt with any day-to-day issues regarding maintenance by ourselves. We have leased other properties in the past where the management agents were accessible, present and responsible; and in contract, TPMG have been frankly negligent in their duties. We wish for alternative property management agents to be appointed, and to be refunded a substantial portion of what we have been paying over the years. As we have not yet instructed a solicitor who specialises in these kinds of matters, we are unable to quote a sum which we wish to be repaid.</p> <p>(We understand that the Landlord is unlikely to find fault in the behaviour of TPMG, nor their</p>	See above.	See above. <b>The Tribunal considers that £275 is reasonable.</b> The Tribunal rejects the suggestion that the managing agents have not been carrying out work. It also finds that although there is an admitted connection between the ownership of the freeholder and the managing agents the arrangement is not a sham and does not therefore obviate the lessees from contributing to the management fees. However, the Tribunal does consider that they are too high (see above).		

		unreasonable fees, given the fact her family owns a third of the company's shares. We would therefore feel more comfortable if the management agents appointed were entirely independent and impartial).				
					<b>£356</b>	<b>£275</b>

**S/C year ended December 2014**

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges						
Surveyors' fees	£1215 £607.50 each	<p>The survey report was vague and unsubstantiated; and given the close links between Benjamin Mire Chartered Surveyors, TPMG and the Glass family, we question whether the report may have been designed to find an excuse for as much work to take place as possible.</p> <p>We wish for the Tribunal to assess (a) whether the work recommended by the surveyor was in fact necessary; (b) whether TPMG were reasonable in their response to our queries about the survey report; and (c) whether it would be reasonable for us to receive a refund for the surveyor's fees.</p> <p>Additional points to those already made. £1,215 is not in line with 'industry norms usually on the basis of the former RICS recommended</p>	<p>Fees are charged in line with industry norms usually on the basis of the former RICS recommended scale of fees – this particular charge was for the preparation of the detailed specification of works. Numerous previous tribunals have accepted the principle that it is quite reasonable for a management company to be associated with a surveying practice – the issue being are the leaseholders being charged more than they would be if the companies were not associated.</p> <p>No evidence of alternative fee quotes has been provided and it is submitted that the surveyors' fees are entirely reasonable and in line with market levels.</p>	<p>This relates to surveyors' costs of dealing with the major works.</p> <p>The Tribunal rejects the tenant's suggestion that the reference point is the RICS reports to which he refers. These are produced for different purposes and do not relate to the management of a works contract.</p> <p>The successful tenderer was Eastbay Painting &amp; Decorating with a contract sum of £8010 (£9612 including VAT). Surveyors' costs included supervision of the contract. The surveyors' fee represents 13% of the contract sum which is within the range that the Tribunal would expect. However, the Tribunal finds that £1190 (exc. VAT) of the contract sum related to window repairs. The Tribunal finds that the responsibility for such repairs lay with the</p>		



		<p>scale of fees' as this was removed in February 2000, according to RICS. Therefore one should look at more modern fee scales such as those suggested by the government website <a href="http://www.moneyadvice.service.org">www.moneyadvice.service.org</a> where it states that: A) a RICS Condition Report costs 'around £250' B) a RICS Home Buyer Report 'start at around £400 on average' which will 'find out if there are any structural problems, such as subsidence or damp, as well as any other unwelcome hidden issues inside and out' C) a Home Condition Survey with a 2, 2, 3 rating system (which was not even used for the property) where the 'typical cost is around £400-£500' D) a building or full structural survey 'typically costs upwards of £600' and 'it's very extensive'. All point to the fact that the superficial report the tenant received was simply that, superficial as it did none of the things that the RICS Homebuyer report does for £400, let alone the £1,215 charged by the landlord. It also did not look at the roof and yet said it needed repairing. Furthermore, we suggest this</p>		<p>tenant as the windows fall within the lessee's demise which are the responsibility of the tenant (see the main decision Paras 12 and 13). Accordingly, the cost of such window works was not reasonably incurred. Adjusting the surveyors pro rata would give £8010- £1190 i.e. £6820 plus VAT.</p> <p>13% of such reduced amount is £886.60 plus VAT (£1063.92) which the Tribunal considers reasonable and payable. <b>The respondents' share is therefore £531.96 plus VAT.</b></p> <p>-</p>		
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		<p>maybe allocated against the incorrect year, as the major works we think this belongs to was carried out the previous year in 2013. In light of the above, and the superficial report submitted by the surveyor, the tenant suggests that £250 would have been fair and reasonable, even though we doubt it would have met the requirements of a RICS Condition Report where this amount has been derived from in the first place and subtract that from the £1,215 charged, meaning that £965 should be returned to the tenant by the landlord as settlement for this point.</p>				
Management fees	£336.00	Please see comments for 2015	Please see above.	<b>For the reasons given above the Tribunal considers that the reasonable management fee is £270.</b>		
					<b>£943.50</b>	<b>£801.96</b>

**S/C year ended December 2013**

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges	£1,522.59					
Reserve Fund	£185.67 (ie. total £371.33)	Please explain why this was considered necessary this year? What exactly was the money intended for?	Please see above.	<b>The Tribunal considers this reserve of £185.67 reasonable and payable</b> for the reasons set out for the year ending 2016 above.		
Management fees	£321.00	Please see comments for 2015.	Please see above.	<b>For the reasons given above the Tribunal considers that the reasonable management fee is £265.</b>		
Major works	£5718.58	<p>We were presented with a bill for this sum (which we paid), over and above the usual service charges. We query whether the major works were necessary in the first place. The only evidence put forward by the landlord was an unclear survey report. TMPG refused to answer our queries regarding the survey report.</p> <p>We paid the sum not because we considered it reasonable, but because we were being threatened with court action if we did not pay.</p> <p>Given the fact the so-called "major works"</p>	Please see all attached correspondence in relation to the major works, all evidence has been provided, cyclical works are required under the terms of the lease.	<p>See above under "surveyors' fees".</p> <p>The specification followed a report by Benjamin Mire Chartered Surveyors. Whilst the report can be criticised, at no point in time have the respondents commissioned their own surveyor's report. The Tribunal would have preferred to have received expert evidence from both parties. In the event, neither party adduced such evidence.</p>		

	<p>may not have been necessary, and in practice only amounted to exterior paint-work, we believe it would be reasonable to be reimbursed by the Tribunal. (Please note we have not yet instructed any experts who are qualified to provide us with a precise figure.)</p> <p>As set out in the Witness Statement of Elena Voyce, we were not merely dissatisfied with the charges themselves and the lack of clarity and credibility of the survey report – but we are very unhappy with the attitude and behaviour of TPMG in relation to the events of 2013-15.</p> <p>Major Works (2013-14)</p> <p>In August 2013 I received a Notice of Intention (dated 14 August 2013) drafted by TPMG, stating that maintenance work was required, and that Benjamin Mire Chartered Surveyors (“BMCS”) would “prepare the formal specification of works, obtain tenders and supervise the works”. As the Notice of Intention was delivered via the mail and not in person, the 30-day notice period was not stated correctly. Because the letter was dated 14.08.13 and the expiry date was listed as 13.09.13 which is less than 30 days when allowing for a few days for the letter to be delivered.</p> <p>The surveyor duly surveyed the property on 27 June 2013; and his survey report is dated 2 July 2013. Following the tender process for finding a suitable maintenance company, the job was awarded by TPMG to East Bay Painting &amp; Decorating Ltd. My</p>		<p>Therefore, the only document prepared by a firm of chartered surveyors relating to the necessary works is that of the landlord’s surveyor.</p> <p>The Tribunal considers that the report is adequate as a basis to commence a section 20 procedure. It was common ground that no significant work had taken place at the property since 2007 at the latest. In relation to the roof, the Tribunal was told that 20 tiles and 10 slates had been replaced, so it is clear that there were defects. The building is pre-first world war and will require regular maintenance.</p> <p>For the reasons given above, the cost of £1190 in respect of window works is disallowed.</p> <p>The landlord explained that it first issued a Notice of Intention dated 31 July 2013 with a consultation period expiring on 3 September 2013. However, this Notice contained typographical errors in that the paragraphic numbering was incorrect.</p> <p>Consequently, the landlord served a second Notice of Intention dated 14 August</p>		
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	<p>husband (Mr Matthew Browne) and I queried whether the work was actually necessary in the first place, and we requested a copy of the survey report. This was provided by TPMG on 18 February 2015. On 25 February Mr Browne wrote to TPMG stating there were questions we wished to raised; and on 27 February he provided them with his analysis of the surveyor's report, alleging the report was not sufficiently detailed and lacked clarify; and requesting further information.</p> <p>On 19 may 2015 TPMG informed Mr Browne that the surveyor had in fact made a full inspection; that Mr Browne's points had not been backed up by an independently appointed surveyor; and that the matter was therefore closed.</p> <p>My husband repeatedly asked whether he could liaise directly with the Managing Director of TPMG in order to obtain a full explanation of why the work was required, and to hopefully come to an amicable agreement – but such access was denied. In a state of exasperation I eventually agreed to pay the full sum of £6,319.98 on 19 May 2015. The stress was making me ill, and I did not know what else to do at the time.</p> <p>To our dismay a further invoice for £2,245 (this time for service charges) was rendered by TPMG only six months later, in November 2015. I emailed TPMG on 25 November 2015 emphasising that the amount invoiced for the service charges was excessive. On 28 January 2016 TPMG's credit controlled issued me with a request</p>		<p>2013. In her submission, Ms Walker stated that the landlord accepted that this second notice of intention was defective insofar as the consultation period was slightly too short. However, Counsel denied that this amounted to a failure to comply with the regulations on the basis that the Initial Notice could be relied upon in any event. In this regard, Ms Walker cited <i>Mannai Investment Co v Eagle Star Life Assurance Ltd</i> [1997] 3All ER 352.</p> <p>In addition, Ms Walker made a section 20ZA application in relation to this matter which is the subject of a separate Decision.</p> <p>The Tribunal firstly finds, applying <i>Mannai</i> that no reasonable tenant would have been misled by the Initial Notice. It was quite clear that the Notice was a Notice of Intention and its subject matter. The Tribunal therefore finds that the Initial notice was valid as a matter of law.</p> <p>As to the second notice of intention, the Tribunal notes that the regulation (appended to the main Decision) in</p>		
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		<p>for the payment to be made within 7 days.</p> <p>In order to try and bring this point to a conclusion the tenant can only agree on the paintwork being carried out to the main front door and the windows at the front and back. Given the modest size of this work we fail to see how it could possibly take more than two man days. Which we estimate at £150 per day plus £50 for materials for a total of £350. This means that the landlord should refund to the tenant £5,969.98.</p>		<p>Article 2(1) defines relevant period as</p> <p>“the period of 30 days beginning with the date of the notice;”</p> <p>The regulations go on to say any observations must be delivered within the relevant period.</p> <p>The Tribunal accepts that the notice was not received on 13 August 2016 and therefore was in breach of the regulations.</p> <p>However, as the Tribunal has found that the first notice was valid, it finds that the section 20 procedure was complied with.</p> <p>Nevertheless, as the s 20 notices had been prepared with errors it considers that the £500 administration fee is too high. It reduces this by 50% to £250 (plus VAT).</p>		
				<p>The amount payable is therefore</p> <p>Works £6820</p> <p>Professional fees (on account) £2000 plus</p> <p>Admin. Fee £250</p> <p>Subtotal £8470</p>		

				Plus, VAT £1694 Total 10,164 Less £1215 paid for professional fees i.e. £8949 or <b>£4474.5 in respect of each lessee</b>		
Surveyors fees	£180	Please see comments for 2014.	Please see above.	This related to the cost of the initial report by a chartered surveyor to assess the condition of the property and the cost of £180 for the lessee is considered reasonable and payable.		
					<b>£6405.25</b>	<b>£5105.17</b>

As mentioned above, £250 would be fair and reasonable, and this report would probably have not even reached the standards of the RICS Condition Report. Therefore, a £110 refund is requested.

**S/C year ended December 2012**

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges	£1,394.00					
Reserve Fund	£164.34 (i.e. Total £328.67)	Please see comments for 2013.	Please see above.	The Tribunal considers this reasonable and payable for the reasons set out for the year ending 2016 above. <b>£164.34 payable by lessee.</b>		
Repairs and Maintenance	£160.20 (ie. Total £320.40)	We require evidence of what this sum was spent on, and why it was considered necessary. We do not recall being consulted about this.  Why was the sum not deducted from the Reserve Fund?	Invoices attached.  It was deducted from the budget – the reserve fund is accumulated for large projects.	The Tribunal is satisfied that the invoices cover work for which the landlord is responsible under the lease were reasonably incurred and are payable. <b>£160.20 payable by lessee.</b>		
Management fees	£306.00	Please see comments for 2015.	Please see above.	For the reasons given above <b>the Tribunal considers that the reasonable management fee is £260.</b>		
					<b>£630.54</b>	<b>£584.54</b>



**S/C year ended December 2011**

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Service Charges	£1,013.55					
Management fees	£286.00	Please see comments for 2015.	Please see above.	For the reasons given above the Tribunal considers that the reasonable management fee is £255.		
					£286	£255

**S/C year ended December 2010**

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges	£2,234.00					
Management fees	£270.38	Please see comments for 2015.	Please see above.	For the reasons given above the Tribunal considers that the reasonable management fee is £250.		
					£270.38	£250

**S/C year ended December 2009**

<b>Item</b>	<b>Cost</b>	<b>Tenant's comments</b>	<b>Landlord's comments</b>	<b>Tribunal</b>	<b>Amount Claimed for Lessee for year</b>	<b>Amount Determined payable for year</b>
Total Service Charges	£936.28					
Management fees	£258.88	Please see comments for 2015.	Please see above.	For the reasons given above the Tribunal considers that <b>the reasonable management fee is £245.</b>		
					<b>£258.88</b>	<b>£245</b>

**S/C year ended December 2008**

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges	£1,087.51					
Management fees	£240.75	Please see comments for 2015.	Please see above.	For the reasons given above the Tribunal considers that <b>the reasonable management fee is £240.</b>		
					<b>£240.75</b>	<b>£240</b>

**S/C year ended December 2007**

Item	Cost	Tenant's comments	Landlord's comments	Tribunal	Amount Claimed for Lessee for year	Amount Determined payable for year
Total Service Charges	£815.02					
Management fees	£235.00	Please see comments for 2015.	Please see above.	For the reasons given above the Tribunal considers that <b>the reasonable management fee is £235.</b>		
					<b>£235</b>	<b>£235</b>

**Total**

					<b>£10,369.3</b>	<b>£8,646.67</b>
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4 December 2016