



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

Case Reference : **MAN/00BL/LSC/2017/0063**

Property : **11 Ceres Chase, Farnworth, Bolton
BL4 9EW**

Applicant : **Natalie Ann Fitzgerald**

Respondent : **Finlay Park (Farnworth)
Management Company Limited**

Representative : **Ashley O'Brien – Managing Estates
Limited**

Type of Application : **Landlord and Tenant Act 1985 – s27A**

Tribunal Members : **Deputy Regional Valuer N Walsh
Judge J Holbrook**

**Date and venue of
Hearing** : **22 March 2018, Manchester**

Date of Decision : **15 May 2018**

DECISION

DECISION

In respect of each of the service charge years identified in the first column of the following table, the Applicant is liable to pay service charges to the Respondent in the amount specified in the second column of the table below.

Service charge year	Amount payable by Respondent
23-4-2010 – 31-12-2010	£301.36
1-1-2011 – 31-12-2011	£992.68
1-1-2012 – 31-12-2012	Provisional - £622.70
1-1-2013 – 31-12-2013	£1,015.58
1-1-2014 – 31-12-2014	£1,397.11
1-1-2015 – 31-12-2015	£1,150.58

Given the limited information available to the Tribunal the determination in respect of 2012 should be viewed only as provisional and is not binding on the parties. The Tribunal leaves it open to the parties to decide how best to resolve this but ultimately, if requested within 3 months from the date of this decision, the Tribunal will provide a final determination in respect of 2012 if provided with the necessary information.

REASONS

Background

1. On 14 July 2017 the Tribunal received an application, dated 12 July 2017, from Ms Natalie Fitzgerald under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”). The Applicant is the long leasehold tenant of flat 11 Ceres Chase, Farnworth, Bolton BL4 9EW, (the Property). The Respondent is Finlay Park (Farnworth) Management Company Limited. Its directors and shareholders are the long leaseholders of the flats contained within this and adjacent blocks on the Finlay Park Estate, and the management company was created for the purpose of managing and maintaining the development within which the Property is situated.
2. The Tribunal is required to make a determination as to whether the service charges in respect of flat 11 Ceres Chase, Farnworth, Bolton BL4 9EW are payable and/or reasonable. The periods in respect of which a determination is required are for the service charge years commencing on 1 January 2010, 1 January 2011, 1 January 2012, 1 January 2013, 1 January 2014 and 1 January 2015.
3. Following a case management hearing in Manchester on 12 September 2017, the Tribunal issued directions for a hearing covering the provision of information, the preparation and exchange of statements of case, and the filing of evidence with the Tribunal. The Applicant provided a statement of case and a bundle of supporting documentary evidence. The Respondent provided a short statement of case in response. Both the Applicant and Respondent complied with the Tribunal’s Directions.

4. The hearing was held on 22 March 2017 at 12:00 noon at the Tribunal Offices, 1st Floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester M1 4AH.
5. The Respondent was directed at the hearing to provide additional information, particularly to provide a breakdown of the items contained within the demanded service charges and the percentage apportionment applied to calculate the Applicant's service charge liability. This information was supplied to the Tribunal and the Applicant on 16 April 2018. The Tribunal allowed the Applicant 7 days to make any representations in respect of this additional information. No further representations were made.

The Property

6. The Tribunal carried out an inspection of the Property on the morning of the hearing. Ms Natalie Fitzgerald, the Applicant, and Mr Ashley O'Brien, the managing agent, attended the inspection.
7. The Property is a first floor 2 bedroom flat situated in a three-storey block of brick construction under a slate pitched roof, incorporating dormer windows, with upvc doubled glazed windows throughout. The Property forms part of the Finley Park residential estate in Farnworth, Bolton. Finley Park Estate ("the Estate") was built by Miller Homes Limited between 2006 and 2009 and comprises a development of 65 flats (in 6 blocks) and 32 houses, all of which have been sold on long leases.
8. Pedestrian access to the Property is available from the front of the block and from the rear car park, which is tarmacadamed and contains allocated parking for the residents. The rear area also contains two bin stores, one for general waste and a separate recycling area. There is very limited planting and shrubbery within the rear car parking area itself and a small grassed area bordered by a privet hedge between the front of the block and the public pavement. The Tribunal was also advised that the leaseholders have the maintenance liability for a small open space across the road from the block, which is laid principally to grass but also contained some trees and shrubbery. Generally, some minor weeding was required but overall the grass, borders and hedge were reasonably well kept.
9. One or two covers to the external gas utility boxes were noted as being cracked and broken. The management agent advised that these were, under the terms of the leases, the responsibility of individual leaseholders. A small amount of litter was also observed at the front of the Property around the hedge and the adjoining pavement, not untypical of any built up and relatively densely populated area.
10. At the time of the inspection both bin stores were open. We were advised that the general bin store was due to be emptied the following day. The Tribunal noted that the general waste bin store was particularly full, with bags of rubbish overflowing from the bins and a number of bags had been placed on the ground surrounding the bins. We also noted some green mould to the upvc frames of the dormer windows on the third floor. We were informed by Mr O'Brien, that removing the mould would require the erection of scaffolding

which currently was felt to be disproportionately expensive a cost for the leaseholders to incur.

11. The Tribunal internally inspected the common parts of the block which contained the subject Property. The Applicant and managing agent confirmed that this was typical and representative of all the internal common parts throughout the block. The Tribunal noted that the internal communal areas, which had recently been redecorated and had the light fittings replaced, comprised of a carpeted stairwell with a suspended tiled ceiling and painted plastered walls. The electric duplex wall mounted heaters have been disconnected.

The Lease

12. The Tribunal was provided by the Applicant with a copy of her lease dated 23 April 2010, a tripartite agreement made between Miller Homes Limited (1), Finlay Park (Farnworth) Management Company Limited (2) and Natalie Fitzgerald (3) ("the Lease") for the Property. The Lease is for a term of 250 years from 1 January 2007 subject to an annual ground rent of £125.00.
13. The Lease contains a lessee's covenant (at paragraph 4 of the fifth schedule) to pay:

"... the lessee's Proportion of the Maintenance Expenses"
14. The "Maintenance Expenses" are defined in the Lease (at clause 1.22) as follows:

"the Maintenance Expenses" means the money actually incurred or reserved for periodical expenditure by the Lessor at all times during the Term in carrying out the obligations specified in the Seventh Schedule".
15. The "Lessee's Proportion" is defined at clause 1.1 as follows:

"the Lessee's Proportion" means 1.4505% (apart from apartment 10 for which 0.9661% applies) of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Fifth Schedule".
16. In 2012 an application under section 35 of the Landlord and Tenant Act 1987 [MAN/00BL/LVT/2012/0008] was made to the Tribunal by the Finlay Park (Farnworth) Management Company Limited to vary each of the 65 Flat leases by the replacement of the provisions which govern the computation of the service charges payable by lessees. For the reasons set out below in paragraphs 28 and 29 of its decision, and referring also to an earlier application in 2011, the Tribunal varied the leases.
 28. "When the Tribunal considered the previous application to vary the leases in 2011, it accepted the Applicant's submission that each of the Flat leases fails to make satisfactory provision for the computation of a service charge, and hence the Tribunal has power to order a variation under section 35(2)(f) of the 1987 Act. It was also persuaded that it is within the Tribunal's power to vary those of the leases which do not

presently allow for the recovery of management fees and legal costs in order to provide for the ability to recover such fees and costs.

29. We take the same view on this occasion....”
17. The Tribunal’s decision dated 22 October 2012 varied the Lease with effect from the date of the decision. The percentage contribution of the lessees in respect of service charges from that date onwards are helpfully captured and summarised as follows at paragraph 24 of the Tribunal’s decision:
24. “..... to achieve this involves dividing the expenditure itemised in the Seventh Schedule into three parts (buildings expenditure excluding internal common parts; buildings expenditure relating to internal common parts; and estate expenditure), and by specifying individual fixed percentage contributions for each of the three categories of expenditure. Each of the 65 Flats would have attributed to it 1.5385% (1/65th) of buildings expenditure excluding internal common parts; 1.5873% (1/63rd) of buildings expenditure relating to internal common parts (except for the two Flats mentioned above, which have no liability for such expenditure)[which do not include the Property]; and 1.4432% of estate expenditure – this being an equal division between the Flats of the proportion of estate expenditure for which the leaseholders of the houses are not liable.”

Law

18. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

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.*

19. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
20. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*

21. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, which provides:

- (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.*

22. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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.

The written submissions

23. The Applicant provided a helpful and detailed bundle of documents which provided the background to her interactions with the previous management agents, Residential Management Group (RMG). Ms Fitzgerald provided copies of the complaints that she has raised over many years and her correspondence with RMG, her local MP and the Property Ombudsman. The correspondence details how Ms Fitzgerald was dissatisfied with the effectiveness of the management provided by RMG, their customer service to leaseholders and specifically the standard of services provided.
24. In her written submissions Ms Fitzgerald provided an itemised breakdown of the service charge items for the respective years and asked the Tribunal to decide the following questions:
 - (a) Were the charges reasonable? And,
 - (b) Was everything on the invoices absolutely necessary?
25. Ms Fitzgerald also made a number of submissions in respect of specific service charge items. As these were specifically clarified and confirmed at the hearing, to avoid repetition these will be set out in detail later in this decision. Ms Fitzgerald outlined that since the new management company was appointed in July 2016 the quality of the services provided has improved significantly, while the cost to the leaseholders has reduced considerably. In particular, Ms Fitzgerald states:

"The maintenance and re-decoration works in the communal hallways have been completed, more energy efficient lights have been installed and the standard of cleaning is much better. The bins no longer overflow and the level of customer service from the new company and the overall general management of the site have drastically improved".

26. The Applicant also outlined that she was incorrectly charged and paid for items that she is not liable for under the terms of the Lease. Ms Fitzgerald outlined that another leaseholder within the development challenged RMG about this and was refunded £900. Ms Fitzgerald outlined that this specifically related to the managing agents' fees.
27. Ms Fitzgerald contends that she should be refunded all the monies that she has paid since purchasing the Property, which total £9,061.39 including a sum of £900 to compensate her for being incorrectly charged for agents' fees prior to the variation of her lease. Additionally, Ms Fitzgerald is seeking an unspecified award for stress, inconvenience, her time and sundry expenses.
28. The Respondent asserts that services were provided to a reasonable standard and while they acknowledge that the Applicant has raised a number of specific complaints, these, they maintain, are not indicative of "long standing service delivery issues".
29. In respect of the high electricity charges for 2014, the Respondent outlined that as the usage is metered these accurately reflect the electricity consumed by the blocks. Subsequently, the heaters have been disabled by having the fuses removed and communal electricity usage is being closely monitored.
30. The Respondent declined to make any representations concerning the implications for this application of the lease variation, save to ask the Tribunal to make a determination as to the recoverable costs under the original lease for the periods in question.

The hearing & oral submissions

31. The Applicant represented herself at the hearing. The Respondent was represented by Mr Ashly O'Brien of the current managing agents, Managing Estates Ltd.
32. The Tribunal clarified with the Applicant at the outset that her specific complaints were:
 - a) The high electricity charges that arose through the misuse of the communal heaters.
 - b) That the electricity maintenance and general repairs were unnecessary in the early years of a new build development such as this.
 - c) There should be no maintenance charges incurred for the grounds because there are "hardly any grounds" in the development.
 - d) There was a significant and unjustified increase in management fees between 2010 and 2011, and inconsistency in the amounts charged in later years.
 - e) The standard of cleaning generally was very poor under RMG, especially the window cleaning. The window cleaners have not cleaned the green mould from around the window frames on the third floor.
 - f) The landlord was meant to have redecorated the common parts and hadn't. This only happened when the current management agents took over from RMG in July 2016.

- g) The bin stores were very untidy with overflowing bins and rubbish left on the ground, which led to a serious rat infestation.
 - h) The Applicant was left for over 3 months with no television reception and believes that the response time, customer service and the speed in resolving the issue by RMG were extremely poor.
33. The Tribunal advised Ms Fitzgerald that it did not have jurisdiction to make an award for damages in respect of stress and inconvenience. The Tribunal is limited to determining the service charges payable and the Applicant would need to pursue any other claims through the County Court.
34. Ms Fitzgerald contended that the windows were never cleaned to an acceptable standard and that this is evidenced by the photographs submitted. These show a spider's cobweb and a bird dropping stain on a window pane, which were allegedly still present after the windows had been cleaned. While Ms Fitzgerald does not dispute that the window cleaners turned up on a regular basis, she maintains that the standard of their work was poor and often windows were missed out completely and left uncleaned.
35. Ms Fitzgerald drew the Tribunal's attention to the complaint correspondence and photographs in her bundle as evidence of the poor service that had been provided by the previous management agents, RMG. She stated that under the newly appointed agents the level of service was not only much better but also at significantly reduced cost. Her annual service charge has fallen from c. £1,200 to approximately £850 per annum. An example of how this was achieved was the cleaning charge, which was over £8,000 p.a. for many years but now had been reduced to c.£6,000 p.a. Ms Fitzgerald outlined that the current managing agents had been able to curb unnecessary spending and contracts generally.
36. In respect of the high electricity charges incurred for the communal areas Ms Fitzgerald accepted that the electricity had been used and did not dispute the meter readings. However, she believed that the managers had failed to take regular readings, identify the issue early enough and take appropriate action to curb the abuses that occurred.
37. Ms Fitzgerald also alleged that she had been charged for items, specifically management fees, which were not allowable under the terms of her lease. She advised the Tribunal that another tenant had complained and had been refunded approximately £900 in total and she would like a similar refund.
38. Mr O'Brien stated that in his opinion RMG provided a reasonable service to an acceptable standard. He did acknowledge that the standard of service provided by RMG could have been better in areas but nevertheless the services delivered were to a reasonable standard overall. He understood that RMG undertook quarterly site visits to inspect the development and the standard of the services delivered.
39. While some of the costs had been reduced dramatically, for example cleaning which reduced from c. £8,000 to c. £2,000 at one stage, this was not a like for like service. The cleaners had previously visited weekly and this had then been moved to fortnightly. Additionally, the gardening and cleaning expenses had

been reduced further by stopping the maintenance contract and by employing a part-time caretaker/handyman.

40. Mr O'Brien advised that the communal heaters had been abused by the residents and that is why the electricity charges spiked so dramatically in 2014. Unfortunately, because the meter readings were estimated and were paid on the basis of the estimated readings, inevitably the scale of the problem took longer than anyone would have liked to identify and remedy.
41. Towards the close of oral submissions Ms Fitzgerald also challenged that it was not reasonable that she should be charged for repairs to the door entry intercom system. She expressed the view that a more robust and better quality system should have been installed at the time of construction, which would have avoided the ongoing maintenance and repairs costs incurred. Mr O'Brien stated that this was the system in place at the time of the Applicant purchasing her property, and accordingly the management agents have no alternative but to maintain it and seek to recover the cost of repairs through the service charge.

Determination

42. The Tribunal must apply a three-stage test to the application under section 27A:
 - (1) Are the service charges recoverable under the terms of the Lease? This depends on the common principles of construction and interpretation of the Lease.
 - (2) Are the service charges reasonably incurred and/or services of a reasonable standard under section 19 of the 1985 Act?
 - (3) Are there other statutory limitations on recoverability, for example consultation requirements of the 1985 Act as amended?
43. The Tribunal inspected a copy of the Lease provided and has also noted the previous decision of this Tribunal in 2012, varying the terms of the Lease, and its finding that the Applicant was not liable for management fees prior to the variation of the Lease. The original Lease entitled the Respondent to demand contributions from the Applicant towards the costs of providing services, with the exception of management fees, at a rate of 1.4505% of the monies expended. Following the variation of the Lease three different percentages are applicable to three distinct elements of the service charge; building expenditure excluding internal common parts (1.5385% or 1/65th); building expenditure relating to common parts (1.5373% or 1/63rd) and remaining estate expenditure (1.4432%).
44. Having reviewed the 2012 decision, the Tribunal can find no reason why it should not apply the findings of this decision in determining the service charges payable from 22 October 2012 (this being the date of the decision). Prior to this date, and again in line with the Tribunal's previous decision, we also find that the Applicant is not liable to pay towards the cost of management fees and is required to contribute at a rate 1.4505% overall. Having reviewed the other items of expenditure in dispute, the Tribunal is not

aware of any suggestion that these should not be recoverable items either under the terms of the original Lease or as subsequently varied by the Tribunal.

45. The Tribunal did not receive any submissions from the parties claiming any individual items of expenditure or agreements entered into exceeded the thresholds that require the management company to consult with the lessees, in accordance with Section 20 of the 1985 Act. The Tribunal therefore does not find that there are any statutory limitations on recoverability.

46. The Tribunal notes and is pleased that the Applicant is satisfied with the level of service that she is now receiving from the current management agents, Managing Estates Limited. Ms Fitzgerald however raised a number of specific queries concerning individual items of expenditure and it is appropriate that we explicitly address these:

a) Electricity charges arising from the misuse of communal heaters

There is no dispute between the parties that the electricity was consumed nor that the high levels of consumption arose because some of the occupants were misusing the communal heaters in 2014. The Applicant considers that the then management agents should have prevented this from happening and therefore she should not be liable to contribute towards the cost of the electricity used. It is reasonable to expect that regular meter readings should be provided to an electricity supplier but how frequent these readings should be and the number of estimate bills accepted, without instigating a cross check against the meter reading, is a difficult question for the Tribunal to answer. It is inevitable that there will be some lag between consumption, accepting an estimate bill or two and an inspection on site. This could be anywhere between 3 and 6 months and still not be unreasonable in the Tribunal's opinion.

- The Tribunal finds that the lessee is liable to contribute towards the cost of the electricity which has been consumed on a communal basis. The extent to which the management agents should have detected this issue sooner is one which is more appropriate to consider later when reviewing the level of management fees charged.

b) Electricity maintenance and general repairs

The Applicant considers that it is unreasonable that she should have to meet repair costs in the early years of a new development because if constructed properly, no repairs should be required. A similar argument was also advanced by Ms Fitzgerald in respect of the door entry intercom system. The fact that the property is in disrepair gives rise to the lessee's liability under the terms of the Lease. Even with a relatively newly built property or development one can expect some maintenance work to be required. The level of maintenance and repairs are usually linked to the quality of the original construction and the materials used, and these are factors which the leaseholder should have considered prior to entering into the contractual agreement of the Lease.

- The Tribunal finds that the amounts in question are within the range of expenditure which it would be reasonable to incur in undertaking such repairs and maintenance.

c) No maintenance charge justifiable for grounds/landscaped areas.

The Applicant maintains that there are insufficient “grounds” to warrant a maintenance charge. On inspection the Tribunal found that there are sufficient landscaped areas to justify this maintenance work. Not to do so would adversely impact visually on the appearance of the block. Indeed, the Applicant herself complained that the hedge to the front of her block had not been properly maintained prior to 2016. No alternate costings were produced by the Applicant to suggest that the costs incurred were excessive. The Respondent advised that the recent reduction in costs for grounds maintenance happened because the contract was terminated and the service provided on a different and not like for like basis. Having reviewed the photographic evidence submitted by the Applicant, while we do understand that these may not have met the standard expected by Ms Fitzgerald, the Tribunal did not consider them on balance to be indicative of an unreasonable standard of maintenance.

- The Tribunal finds that the amounts in question are within the range of expenditure which it would be reasonable to incur in undertaking such maintenance.

d) Cleaning generally and window cleaning

The Applicant contends that the cleaning and window cleaning provided to the development was not undertaken to a reasonable standard and at a reasonable cost. While Ms Fitzgerald does not dispute that the cleaning was undertaken and paid for by the management company, she does not consider it reasonable that she is asked to contribute towards the cost. The Tribunal has taken note of Ms Fitzgerald’s long running complaints in respect of the cleaning services provided and considers it likely that there have been isolated instances when some windows were not cleaned properly and/or cobwebs remained. On balance though, the Tribunal is not persuaded that the examples cited are sufficient to find that these services were not delivered to a reasonable standard. If anything, they are more indicative of a lack of effective management of contractors by the management agents. The Tribunal has also noted RMG’s response and assurances in its letter dated 10 April 2014 (although the correct date for this letter appears to have been 10 April 2015) to the Applicant, in respect of the window cleaning service. The Tribunal has not been presented with any alternate costings and estimates on a like for like basis. The Tribunal has also had regards to the Respondent’s submission that the removal of green mould from the frames of the third-floor dormer windows go beyond routine window cleaning and would require either the use of scaffolding or a ‘cherry picker’. As this has not been done, this has not been charged for in the service charges demanded for the years in questions.

- The Tribunal therefore considers that the cleaning services and the costs incurred by the management company to be reasonable.

e) The lack of redecoration of common parts

The Tribunal noted that the internal common parts have been redecorated in 2017 following the appointment of the new management agents. As neither party has suggested that the lessees were charged through the service charge for work not undertaken, the Tribunal does not need to

consider this matter for the purposes of determining the appropriate service charges for the years in question. The Tribunal however understands why the Applicant made this point, which was to illustrate that she has not received the level of service and maintenance from the Respondent that she expected and considers to be reasonable.

f) Bin store and rat infestation

The Tribunal noted on the day of its inspection that the general waste bin store was full, somewhat untidy and that bags of rubbish had been placed on the ground as the bins were at full capacity. In contrast the recycling bin store was neat, tidy and had plenty of capacity remaining. While we noted that a bin collection was due the following day, this would suggest to the Tribunal that this was more a capacity / design issue rather than a management failing per se.

g) Television aerial reception

Ms Fitzgerald was left with no television reception for over 3 months, which was a very significant inconvenience for her. She is understandably frustrated that it took so long to restore her television reception. We note that the management agents needed to access the adjoining flat to be able to restore her television reception and had difficulty arranging access. Given the considerable delay and impact on the lessee, we do consider that this should have been dealt with in a more expeditious fashion, rather than solely relying on letters for arranging access. We therefore consider that this should be a factor which we take into consideration when reviewing the reasonableness of the management fees charged.

h) Management fees

While the Applicant is not liable to contribute towards the cost of management fees prior to the variation of the Lease, she is after this date, 22 October 2012, and it was during this period that many of Ms Fitzgerald's complaints arose. As outlined above, while overall the services were delivered to a reasonable standard, the management of the development, the day to day oversight of contractors and communal services, especially in respect of the communal electricity and the television aerial, could and should have been more proactive. The Tribunal considers that it is appropriate to reduce the management fees allowable by 10% from the sums claimed in each of the years from 2013 onwards.

- Having made a 10% deduction, the Tribunal considers these reduced management fees to be reasonable.

47. The Respondent has helpfully provided a breakdown of the component parts of the service charge, under the relevant headings which enable the correct respective percentages to be applied from the date of the variation of the Lease. This was not challenged by the Applicant and is therefore taken by the Tribunal as agreed for the purposes of calculating the amounts payable by Ms Fitzgerald.
48. The Tribunal therefore determines that the service charges payable by the Applicant towards the incurred expenditure in respect of the items allowable under the original and varied Lease to be as follow:

<u>2010</u> – Estate and Service Charge total expenditure	£34,699.00
Less management fees	<u>£9,459.00</u>
	£25,240.00
Multiplied by percentage contribution	<u>1.4505</u>
Equals	£366.10
Adjusted as purchased on 23 rd April 2010	<u>0.7780</u>
2010 service charge payable	<u>£284.85</u>

Service charge payable including the reserve contribution of £16.51 totals £301.36

<u>2011</u> – Estate and Service Charge total expenditure	£73,606.00
Less management fees	<u>£ 11,134.00</u>
	£62,472.00
Multiplied by percentage contribution	<u>1.4505</u>
	<u>£906.16</u>

Service charge payable including the reserve contribution of £86.52 totals £992.68

<u>2012</u> – Estate and Service Charge total expenditure	£48,842.00
Less management fees	<u>£ 11,528.00</u>
	£37,314.00
Multiplied by percentage contribution	<u>1.4505</u>
	<u>£541.24</u>

Service charge payable including the reserve contribution of £81.47 totals £622.70

Note: In respect of 2012, the lease was varied by order of the Tribunal with effect from 22 October 2012. Calculating the service charge accurately for 2012, requires compliance with the new terms of the varied lease from the 23 October 2012. However, the Tribunal is unable to undertake these calculations because it has not been supplied with the differentiated totals in respect of the building and communal service charge from 23/10/2012 to 31/12/2012. Please see the closing paragraphs of this decision as to the Tribunal's recommended approach in this respect.

<u>2013</u> – Estate charge	£14,312.00
Less a 10% reduction in management fees	£473.40
Multiplied by Lessee's Proportion	<u>1.4432%</u>
Sub total	<u>£199.72</u>
Service charge for buildings	£14,958.00
Less a 10% reduction in management fees	£714.00
Multiplied by Lessee's Proportion	<u>1.5385%</u>
Sub total	<u>£219.14</u>
Service charge for common parts	£31,302.00
Less a 10% reduction in management fees	N/A
Multiplied by Lessee's Proportion	<u>1.5873%</u>
Sub total	<u>£496.86</u>

Service charge payable including the reserve contribution of £99.86 totals £1,015.58

2014 – Estate charge	£12,679.00
Less a 10% reduction in management fees	£487.60
Multiplied by Lessee's Proportion	<u>1.4432%</u>
Sub total	£175.95
Service charge for buildings	£16,867.00
Less a 10% reduction in management fees	£735.40
Multiplied by Lessee's Proportion	<u>1.5385%</u>
Sub total	£248.18
Service charge for common parts	£55,010.00
Less a 10% reduction in management fees	N/A
Multiplied by Lessee's Proportion	<u>1.5873%</u>
Sub total	£873.17

Service charge payable including the reserve contribution of £100.17 totals £1,397.11

2015 – Estate charge	£12,468.00
Less a 10% reduction in management fees	£502.20
Multiplied by Lessee's Proportion	<u>1.4432%</u>
Sub total	£172.69
Service charge for buildings	£22,215.00
Less a 10% reduction in management fees	£757.50
Multiplied by Lessee's Proportion	<u>1.5385%</u>
Sub total	£330.12
Service charge for common parts	£33,589.00
Less a 10% reduction in management fees	N/A
Multiplied by Lessee's Proportion	<u>1.5873%</u>
Sub total	£533.16

Service charge payable including the reserve contribution of £114.61 totals £1,150.58

49. The correct determination of the 2012 service charge requires a mid-year apportionment to align with the varied terms of the Lease from 22 October 2012. This period equates of c.10 weeks until the conclusion of the service charge year on 31 December 2012. The Tribunal notes that the total service charge for the year is relatively low in comparison to other years, at some £622.70, and additionally after applying the different percentages the benefit to either party and the final financial adjustments are likely to be very minor. The Tribunal therefore leaves it open to the parties to decide to either:

- a) Accept the Tribunal's provisional determination in respect of 2012, as further adjustments are likely not to be proportionate to the time and effort involved by all parties, or

- b) Obtain the necessary breakdowns of expenditure for 2012, providing aggregated amounts for the Estate charge, the Building charge and the common parts charge and either agree the adjusted sum between the parties or refer the matter back to the Tribunal within 3 months for determination.
50. Given the sums involved and the difficulties in obtaining this information, the Tribunal would hope that the parties will adopt a pragmatic approach to resolving this matter.

Deputy Regional Valuer N Walsh
15 May 2018