9235

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case numbers	:	**CAM/00MG/LSC/2012/0165** **CAM/00MG/LSC/2012/0166**
Properties	**165**	2–30 (even numbers) Albion Place, Campbell Park, Milton Keynes, Buckinghamshire MK9 4AB
	166	109–139 (odd numbers) Columbia Place, Campbell Park, Milton Keynes, Buckinghamshire MK9 4AF
Applicant	:	Sinclair Gardens Investments (Kensington) Ltd
Representative	:	Mr Asela Wijeyaratne (counsel), instructed by P Chevalier & Co, and Mr Mark Kelly (of Hurst Managements)
Respondents	**165**	Mr F Iqbal & others
	166	Mr M J & Mrs L J Skeffington & others
Representative	:	Mr Bernard Wales FIoD FIRPM ARICS & Ms Linda Fisk (both of B W Residential)
Applications	:	For determination of liability to pay service charges for the years ending 25th December 2009–2012 [LTA 1985, s.27A]
Tribunal Members	:	G K Sinclair, G F Smith MRICS FAAV REV & L L Hart
Date and venue of Hearing	:	Monday 29th July 2013, at Milton Keynes Magistrates Court
Date of Decision	:	3rd September 2013

DECISION

Summary

1. The applicant is the owner of the freehold reversion in two blocks of flats which are broadly similar in size and construction, are located in adjoining streets in the Campbell Park area of Milton Keynes, and managed for it by the same managing agent : First Management Ltd, of Bognor Regis, West Sussex (trading as Hurst Managements). As the management regime, charging structures and problems experienced with each block are similar, a number of leaseholders have flats in both blocks, and those leaseholder respondents who have chosen to participate in the proceedings are all represented by Mr Wales, it was considered appropriate to deal with both cases together.

2. These applications were brought following lengthy correspondence between the applicant and individual respondents, although a number were represented by the same law firm, City Law Ltd of Milton Keynes. The tribunal's directions for trial were issued on 18th and 19th December 2012 respectively, but neither party complied. Following a pre-hearing review held at the tribunal offices on 25th April 2013 (for which date hearing bundles were delivered just the day before) further directions were issued. Compliance was late, but a further hearing bundle was delivered in time for the hearing. It comprised solely documents relating to Columbia Place, but as the issues raised by Mr Wales were common to both properties and the documents merely illustrative of matters of principle, the tribunal managed with just the final bundle provided for this hearing.

3. As the applications were originally brought before the end of the service charge year expiring on 25th December 2012 the amount for which a determination was sought in respect of that year was only the advance service charge, but as the year has now concluded no argument was heard about either the estimated or actual charges incurred. That year has therefore been ignored, although the principles discussed below will be relevant to any final service charge demand in respect of that year, when served.

4. Although the respondents had put in issue the reasonableness of the insurance premiums levied, at the outset of the hearing Mr Wales confirmed to the tribunal that he could see nothing objectionable about them. He did not represent all of the respondents, but as no other had filed and served any evidence to challenge that provided by the applicant, and none appeared in person at the hearing, the tribunal determined that it would not admit any evidence on the point. Quite a substantial section of Mr Kelly's first witness statement and supporting evidence could therefore be taken as read.

5. For the reasons set out below the amounts disallowed as payable by way of

service charge in respect of the years ending 25th December 2009, 2010 and 2011 are set out in the Schedule annexed. In addition, under rule 13(1)(b) as limited by transitional provisions, the Applicant shall pay the Respondents the sum of £284 by way of penal costs.

Material lease provisions

6. The sample lease provided is dated 8th April 2009 and concerns flat 109 Columbia Place. Leases for Albion Place and Columbia Place are substantially the same, save that the "service charge proportion" means one fifteenth of the total service charge in the case of Albion Place but one sixteenth in the case of Columbia Place, due to the differing layouts producing a different number of flats in each block.

7. The apartment or flat is described in the First Schedule as including

   (a) the internal plastered coverings and the plasterwork of the walls bounding the apartment and the doors and door frames and window frames fitted in such walls (other than the external surfaces of such walls doors frames and window frames) and the glass fitted in such window frames... [and]

   (e) all conduits which are laid in any part of the building or the estate and serve exclusively the apartment

8. The "service charge" is defined as meaning "the expenditure incurred by the landlord in complying with its covenants in the Sixth Schedule hereof which is (or is intended) to be chargeable (in whole or in part) to the tenants of the building".

9. By clause 3 the tenant covenants with the landlord to perform and observe the obligations set out in the Fourth Schedule, of which paragraph 10 provides :

   To pay to the landlord within seven days of demand the service charge proportion of :–

   (i) such of the costs charges and expenses which the landlord shall incur in complying with its obligations set out the Sixth Schedule hereto which the landlord (acting reasonably) designates as being a service charge item [sic]

   (ii) the costs charges and expenses which the landlord shall incur in doing any works or things to those parts of the estate and buildings utilised by the tenants of the building for the maintenance and/or improvement thereof

10. Mr Wijeyaratne also drew the tribunal's attention to a number of provisions set out in the rather lengthy paragraph 11 in the same Fourth Schedule, including the obligation in 11(e)(3) to pay in advance on 24th June and 25th December in each year one half of the amount estimated as prospectively payable for that year until the total amount actually incurred has been calculated.

11. However, by paragraph 13 the obligation placed upon the tenant is :

    Within twenty eight days after receipt of a copy of the certification

provided for in the Sixth Schedule hereto to pay to the landlord the net amount (if any) appearing by such notice to be due to the landlord from the tenant

12. What therefore is payable within 7 days and what within 28? And what items of expenditure might be included within paragraph 10(ii) yet not fall within the service charge, other than "improvements", the nature of and limitation to which are not specified?

13. The Sixth Schedule includes a landlord's usual obligations to keep in good repair and decorative condition the structure and exterior of the building, to insure it, and to keep proper books of account and in each year prepare a certificate of the total amount of service charge costs and of the proportionate amount due from each flat.

Relevant statutory provisions

14. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, as :

> 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...

15. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
    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.

16. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

17. Insofar as major works are concerned, ie those in respect of which the contribution of any tenant liable to pay towards the service charge will exceed £250, then section 20 provides that the relevant contributions of tenants are limited to that amount unless the consultation requirements have been either complied with in relation to the works or dispensed with by (or on appeal from) a leasehold valuation tribunal. The consultation requirements, in the instant case, are those appearing in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003[1] (as amended).

Burden of proof

18. In his first witness statement, at paragraph 5.1 [bundle section A, page 4] Mr

[1] SI 2003/1987

Kelly states that the burden of proof lies upon the tenant, citing the rather old case of *Yorkbrook Investments v Batten*[2]. This pre-dates the acquisition by the tribunal of its current jurisdiction to deal with service charge disputes, when such matters were dealt with by the court upon the basis of formal pleadings.

19. However, more recently in *Schilling v Canary Riverside Development PTD Ltd*[3] His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

> I have felt more difficulty in regard to the question whether a service charge which would be payable under the terms of the lease is to be limited in accordance with s.19 of the Act of 1985 on the ground either that it was not reasonably incurred or that the service or works were not to a reasonable standard, is to be treated as a matter where the burden is always on the tenant. In a sense the limitation of the contractual liability is an exception in respect of which Lord Wilberforce in *Nimmo v Alexander Cowan & Sons Ltd* [1968] AC107 at p.130 stated "the orthodox principle (common to both the criminal and the civil law) that exceptions etc. are to be set up by those who rely upon them" applies. I have come to the conclusion, however, that there is no need so to treat it. If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the *Yorkbrook*[4] case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.

20. This application was brought by the freeholder's managing agent, seeking a determination that the sums claimed are payable. Insofar as claims for payment of service charges are concerned, therefore, the burden lies upon the freeholder to show not only that these costs were incurred but also that they were reasonably incurred to provide services or works of a reasonable standard.

Inspection and hearing

21. The tribunal inspected Albion Place first. Built transverse to the prevailing slope, the building is faced in a pale brick under a shallow pitched, flat tiled roof with wide, unpainted soffits and comprises three floors of five flats each, with a central entrance lobby and staircase approached from the communal car park via a porch comprising a small flat roof supported by two metal posts rising from dwarf walls on either side. There is no lift. Electricity meters for all the flats are contained in a large room, accessed by numeric keypad, at basement level.

22. The external casement windows are double glazed sealed units mostly in wooden frames, although some have been replaced by brown wood-effect PVCu. Above

2 [1985] 2 EGLR 100

3 LRX/26/2005; LRX/31/2005 & LRX/47/2005 (His Honour Judge Rich QC, 6th December 2005)

4 *Yorkbrook Investments Ltd v Batten* [1985] 2EGLR 100

a number of these windows, and beside some others, can be seen short overflow pipes which, from the fixings that remain in place, were at one time much longer. The result is that some can be seen to be currently – and for some time – leaking water to such extent as to cause severe staining to the brickwork. In other cases past discharge has occurred above windows, not only staining the brickwork but also leaving a white deposit the full length of the glazing, and lifting the varnish or paint from the frames. In most cases the staining to the brickwork takes the form of effloresence, but in one or two the continuing discharge of water has caused long green or dark brown stains of algae.

23. Immediately inside the front door is an entrance lobby with mailboxes (some damaged) to the right and on the left a noticeboard and buttons to call each flat (plus a service button to open the inner door). Beyond the secure inner door a short flight of steps leads down to the meter room and, on the right, there is a short corridor leading to the stairs leading to the first and second floors and to a fire door, beyond which lies the corridor giving access to five flats. This is replicated on the two floors above. The windows on the stair half-landings open, and it is evident from the large number of cigarette butts covering the porch roof that these half landings provide the venue for illicit smoking indoors. The stairs and floors are covered with a serviceable grey carpet, but the standard of cleaning could be improved.

24. According to a BCS roster sheet just inside the front door the premises and windows were last cleaned on 24th July, and gardening was last done on 12th July. Apart from the single observation "smells of smoke" on 19th March 2013 the comments section of the form was left entirely blank. Unless the occupants are particularly heavy smokers it is doubtful if the flat porch roof (accessible with a short step ladder) has been cleaned for a very long time. There were some empty beer cans in the grass surrounding the building, although nowhere near as many as at Columbia Place, which the tribunal inspected next.

25. Columbia Place comprises three square, four-storey blocks with four flats per floor. The buildings and their respective parking areas are laid out in a staggered, V-pattern, with the subject building being the central block. Also built on a slope, this time the slope falls away from front to back, and behind a low hedge to the front is a steep slope dropping perhaps a metre. The bottom of each window at ground floor level is therefore at about pavement level, while at the back of the building the ground slopes away so much that the windows are out of reach.

26. The building is of a similar brick and tile construction, with the same type of open, flat-roofed porch. Windows too are the same, but here the overflow pipes – in this case of copper – extend at least a metre to then discharge down the side and not the front of the windows. At the front of the building one ground floor pipe was discharging water continually, creating a lake in the beer can strewn garden below but next to the front entrance (just over the low hedge) and right against the front wall of the building. This appeared to have been running for a long time without anyone doing something about it.

27. The internal layout here was different. There is no internal security door. The electricity meters are placed in cupboards on each landing, but these were not secure. Mr Wales pointed out the poor quality of the cleaning, some trip and fire

hazards on the landings, and in particular an abandoned mattress underneath the main staircase at lower ground floor level. With no fire doors subdividing the staircase this was a clear and serious fire hazard. The handrail to that section of staircase had also come off – complete with its fixings – and could be seen lying in a corner.

28. Externally the discharge of water form overflows again caused staining to the main walls of the building, both where the water discharged but also where it splashed back where it hit the ground. A bundle of cabling for a large number of private satellite dishes fixed to the wall could be seen snaking around the side and rear walls of the building. The presence of many empty beer cans behind the front hedge has already been noted. In the car park at the side of the building, near the rear wall, communal rubbish bins were observed to be overflowing. The smell was quite strong.

29. The hearing at the local magistrates court began at 11:30, and Mr Wales freely conceded at the outset that the cost of insurance was not a matter he wished to dispute. That removed a large part of Mr Kelly's evidence, so the tribunal could concentrate on straightforward management issues. Mr Wijeyaratne then stated that only the actual service charges for 2009, 2010 & 2011 were what the tribunal should be concerned about. Actual costs for the year ended 25th December 2012 would be dealt with some other time.

30. The documentation before the tribunal comprised :
    a. The application, dated 6th December 2012
    b. Mr Wales' initial response to the application, dated 27th March 2013
    c. A witness statement from Mr Mark Kelly dated 10th April 2013 [in section A of the bundle], with copious documents [in section B]
    d. A witness statement by Mr Bernard Wales, dated 2nd May 2013, with documents and photographs annexed [all in section C]
    e. A witness statement by Mr Kelly in reply to that of Mr Wales, dated 2nd July 2013, with documents annexed [all in section D]

31. The service charge accounts for the year ending 25th December 2009 appeared at page B25, those for 2010 at B48, and for 2011 at B111.

32. The principal issues raised were :
    a. Whether there had been a valid alteration of the service charge accounting year, and proper notice given?
    b. The quality of management provided by an agent based 128 miles away from the properties, and the size of the management fee, especially in the first year (2009)
    c. The nature, purpose and required regularity of fire risk assessments
    d. Reliance upon the cleaning & gardening contractor to report problems to the managing agent, and lack of supervision
    e. The reliability of the accounting evidence, with accounts being signed off on 29th December, only days after the year end, and one accountant's invoice being stamped as paid before the date appearing on the invoice
    f. In 2010, the exterior redecoration and associated administration fees, use of contractors only from West Sussex, and whether a proper section 20 consultation process had been undertaken

g. Whether an insurance claim should have been submitted for soffit repairs instead of simply adding the cost to the service charge (and whether the cost was reasonable, bearing in mind that scaffolding was there already)
h. In 2010, additional gardening costs that should have been included within the standard charge
i. In 2011, the cost of installing emergency lighting (recommended in a fire safety risk assessment in October 2009).

33. The case proceeded on the basis of the written evidence and oral submissions, plus some questions from the tribunal. There was no other cross-examination.

34. On behalf of the applicant it was pointed out that on 14th August 2009 a letter was sent to lessees [page B226] informing them of the applicant's acquisition of the freehold, and that the accounting date would change from June to December, etc. but that the dates for payment of service charge remained unchanged.

35. Mr Kelly considered the management regime more than adequate, as inspection reports were produced regularly [see B156–178, August 2009 to November 2012], and the cleaning & gardening contractor was asked to notify Hurst of any problem seen by its staff between inspections. However, the applicant was prepared to concede that the fee charged in the first part-year (2009) should be reduced to £1 982 (Albion) and £1 898 (Columbia), in each case on a pro rata basis and including VAT. This is the rough equivalent of £252 per year plus VAT.

36. Mr Wales was very unimpressed with the quality of management undertaken at long distance, was dismissive of the rather cursory "bullet point" inspection reports, said that asking unqualified cleaning contractors to monitor problems was wrong in principle, and even if they did report anything (eg discharges from overflow pipes) nothing constructive was ever done as a property manager to solve it. Mr Kelly had, he said, achieved very little despite all the paperwork. Had he been in charge he would have had the cleaners out at 06:00 that morning to ensure that by the time of the tribunal's inspection cigarette butts and beer cans were gone, the grass cut and the interior clean and free from fire hazards (such as the mattress under the stairs).

37. The applicant argued that the fire risk assessment had been carried out properly, at a reasonable cost, and that as there is no prescribed time limit for review a frequency of 4–5 years is reasonable. Mr Wales retorted that the purpose of a fire risk assessment is prevention, and that this should be under constant review as a matter of course. Mr Kelly's seeming lack of concern about the mattress under the stairs seen on inspection was something he found troubling, Further, why was the emergency lighting only installed in 2011 when it was specifically identified as an issue in the fire risk assessment conducted in 2009?

38. On the subject of accountancy, the applicant accepted that use of the word "audit" was wrong; accounts were merely certified. The fee for that was reasonable. Mr Wales wondered how accounts could be signed off on the first working day after the Christmas Day year end, even before December's bank statements would be available from the bank. How could all that work be done, typed up and signed off in a single day? How also could Spofforths' invoice dated 3rd February 2010 [B53] be paid by cheque number 018330 on 27th January, and be entered on the

computer on 13th January [B49]?

39. In 2010 a tender exercise was undertaken for the redecoration of the exterior to Columbia Place. All those contractors invited to tender were from West Sussex; none from Milton Keynes or its surrounding area. Notices to lessees were sent to each flat (strictly in accordance with the service provisions of the lease, but notwithstanding the fact that most if not all were buy-to-let), addressed only to the tenant/lessee. Even this, and the flat number, were handwritten. Copies were also sent, it was said, to those private lessee addresses of which Hurst was aware. These were addressed personally. There was evidence that some lessees had received letters so addressed, but others had no recollection of doing so. Why all letters could not be addressed to the lessees by name, with copies put in the letter box for each flat as well, was not explained. Mr Wales had tested the tender prices by asking a contractor based in north Hertfordshire to quote after the event, and it was cheaper. In response, Mr Kelly said that it was not that much cheaper, and his Sussex contractor did not charge for travel.

40. Mr Wales complained that when soffit repairs were required, due to a large panel hanging loosely above the car park at the front of the building because of wind damage, a contract was agreed at a price which included scaffold access even though scaffolding was already there in connection with a redecoration contract. Further, no attempt was made to make an insurance claim for the cost of this repair. Mr Kelly responded that it could not be claimed as an insurance loss because there was no insured event of which they had evidence. Mr Wales found this attitude surprising, as managing agents will often spot problems only when reported or on their next inspection. That does not stop them making a claim, even if it might later be rejected.

41. In respect of these contracts Mr Wales complained of the management fee being charged on top by Hurst. In the case of redecoration this was partly justified by the need to prepare a specification of works, but that in the bundle was entirely generic. No effort had been required beyond cut-and-paste from the front pages of another specification.

42. He also argued, in the context of a section 20 consultation exercise, that when assessing the value of a major works contract it was wrong for the contractor's charges to be separated from the management cost. He referred to the case of *Philips v Francis*[5] on this point.

43. The question of separate and additional charges for specific items of gardening work in 2010 which ought to have been included in the general contract cost was dealt with by Mr Wales in his written evidence but not really touched upon at the hearing.

Findings

44. The tribunal found the two buildings to look shoddy and uncared for. Externally, the brick exterior was seen in a number of places to be stained by efflorescence where there had previously been more than temporary discharge from overflow pipes, and by wet, dark green or brown algae where water continues to flow uninterrupted. At Columbia House this also created a small lake right by the

5 [2012] EWHC 3650 (Ch)

brick wall, where the overflow had been observed as long ago as 2009 but still had not been brought under control. While Mr Wales' suggestion that the water supply to the flat be cut off so as to provoke a reaction from the lessee might be a little drastic, there was no reason why the property manager should not seek entry under the lease to carry out what was probably a very simple repair. The tribunal was not impressed by Mr Kelly's assertion that because the window frames and overflows are part of the lessees' demise and not common parts "they are not our responsibility". Managing the building, keeping the exterior in good repair and ensuring that lessees comply with their obligations are all part of the manager's job. These overflows, particularly at Albion Place, have damaged many windows, thus increasing the cost to all of their redecoration rather sooner than the guaranteed lifetime of the product.

45. It is not sufficient for a property manager to delegate the task of identifying and reporting problems to its cleaning contractor. Problems should be identified during regular periodic inspections and then dealt with promptly. In this case the inspection reports were brief "bullet points", the reports did not follow the same order or provide detail and specific action points, so it is not so easy to identify where a problem has been noticed before but either has not been dealt with or has, but is a recurring issue.

46. The tribunal is puzzled by when and how the accounting documents have been prepared and paid for, but they seem accurately to record what costs have been incurred in the relevant period, and the accountancy charge is reasonable.

47. The tribunal agrees with Mr Wales' submissions on fire risk assessment. There is a continuing need to monitor any risks that might present themselves. The apparent lack of concern about smoking on the stairways (and absence of any No Smoking signs apart from one at the entrance) and accumulations of combustible material in corridors – especially the mattress under the stairs, and the delay in the installation of emergency lighting recorded in the fire risk assessment in October 2009 are troubling.

48. The property manager chooses to write to lessees in a very odd way. It would be far easier to write to each by name, at his or her proper address, and if necessary leave a copy in the letter box for each flat as well. However, the evidence about whether a proper section 20 consultation was undertaken is ambivalent. In his statement Mr Wales recorded the answers given to him by lessees to specific questions. From these it appears that some recall receiving a notice about the redecoration tender exercise but others do not. Those that had received it still did not bother to reply, if only to recommend a painter and decorator rather closer to Milton Keynes than those selected by Hurst.

49. Mr Wales argued that for major works the cost of contract supervision by the managing agent should not be separated from the rest of the cost of the contract. The tribunal agrees that if a separate architect or other contract supervisor were engaged then such fees should be added to the contractor's charges to reach the global figure about which consultation is required. A managing agent's charges for such additional work would, however, feature in its fees agreed at the outset of its management contract (in all likelihood a qualifying long term agreement) and would not, in this tribunal's view, form part of the major works themselves.

50. In any case, even if wrong about that, the tribunal is mindful that what *Phillips v Francis* was seeking to prevent was the avoidance of proper consultation by sub-dividing the work into separate elements, each of which fall below the statutory threshold. In this case there was a consultation exercise of sorts, and while the tribunal is mindful of *Phillips v Francis* it is even more mindful of the outcome in *Daejan Investments Ltd v Benson & others*[6]. The most important aspect of a failure to consult is the prejudice to lessees, if any, that flows from it. If that can be cured then the landlord will obtain exemption from compliance under section 20ZA, albeit on terms. In this case the tribunal is not prepared to say that there was a failure to consult. What is evident is that there was a failure by lessees to reply. While puzzled by the manager's persistent use of contractors from its own small part of West Sussex, even though the properties are well over a hundred miles away by road, the tribunal also bears in mind that the choice of contractor is ultimately that of the landlord, unless wholly unreasonable. It need not select the cheapest, and indeed might often be safer not to.

51. The tribunal does, however, accept Mr Wales' points about Hurst's failure both to require the firm doing the soffit repairs to use (and not charge separately for) the scaffolding that was already on site for another job and to make a claim for the repair cost against the buildings insurance policy. Such claim may or may not have been rejected, but Hurst did not even think of making an attempt. That is not what one would expect of a competent managing agent.

52. The tribunal sees no proper reason why the additional gardening charges are not included in the basic contract price for the period in question. The excess is disallowed.

53. Overall, the tribunal is troubled by the poor level of management – and failure to react to identified and persistent problems - displayed by Hurst. The fees it has sought to charge have, according to Mr Kelly's written evidence, been based on what it charges for other comparable properties, unidentified market rates, annual uplifts for inflation and also for above-inflation increases in fuel and mileage costs. Mr Wales gave a very different view about appropriate costs based on regular attendance at the properties to ensure that firm management was imposed and problems decreased. He thought that £300 would be required now to deal with a problem estate, but once under control £200 per unit would be sufficient – but only if the work was properly done and with reasonably frequent visits. He based this on his experience of properties at Watford, and on his appointments in the past by LVTs in London to manage blocks. He was very clear that he would not want to manage these blocks.

54. In the tribunal's determination the difficulties with the soffit repair contract and failure to make an insurance claim justify a reduction in the service charge. How that is to be assessed is difficult, as there is no guarantee that an insurance claim would have been successful, and the value of the scaffold aspect is unquantified. The best the tribunal can do, also bearing in mind Mr Wales' justified criticism of the generic specification for redecoration that Hurst produced, is to disallow all management fees for such additional and/or major works and at the same time mark its displeasure at the poor standard of management by reducing the annual unit fee for each year in question to £100 plus VAT.

6 [2013] UKSC 14

55. Mr Wales said that Hurst was seeking to charge RICS rates when none of its staff are RICS qualified, and the work done was not to RICS standard. This tribunal agrees.

56. The documentation presented at the hearing only dealt with Columbia Place. Just before the pre-hearing review in April 2013 two large bundles were delivered to the tribunal office. One was for Albion Place and the other Columbia Place. At that stage Mr Wales was hopeful that with constructive dialogue the number of issues between applicant and respondents could be reduced substantially, and the hearing bundle too. The tribunal rather assumed that this was the case when a single bundle was delivered in time for the substantive hearing. That was optimistic. With no documentation for Albion Place properly before the hearing, and no separate argument about specific items, the best the tribunal can do is adopt the same approach to the very similar issues. Management fees shall be substantially reduced and any additional gardening charges shall be removed.

57. The deductions for Albion Place and Columbia Place respectively appear in the Schedule annexed to this decision. The accountants must then recalculate the sums due, whereupon the landlord's agent can issue fresh demands for payment.

Costs

58. At the conclusion of the hearing Mr Wales submitted an application for costs under rule 13 of the 2013 Procedure Rules, on the grounds that the Respondent had acted unreasonably in its conduct of the proceedings. He referred in particular to the fact that, as encouraged by the tribunal, he had agreed to visit Mr Kelly of the landlord's managing agent, Hurst Management, at its offices in Bognor Regis. Upon arrival, however, he discovered the offices empty, Hurst having relocated elsewhere. He tracked down the new address and saw Mr Kelly, but the latter was unprepared to budge on a single point. Mr Wales considered that his day had been completely wasted. This account was not challenged.

59. Mr Wales also complained about very late disclosure of documents, although here his account was challenged, with Hurst saying that allegations concerning parties' compliance with directions were more evenly balanced, and Mr Wales' candid concession of certain points – including on insurance – was noted. No specific amounts of costs were mentioned or proved at the hearing, so an order was made that Mr Wales provide these to the tribunal and the Applicant by that Friday. He duly supplied a copy to the tribunal but forgot to send one to Hurst on behalf of the landlord. This was later remedied.

60. The tribunal reminds itself that while, under the new rules, the cap on costs has been lifted, the transitional provisions contained in paragraph 3(7) of Schedule 3 to the Transfer of Tribunal Functions Order 2013[7] provide that in any case that began before 1st July 2013 an order for costs may only be made if, and to the extent that, it could have been made before that date. In this case the £500 cap still applies.

61. In their compliance with the tribunal's directions neither party really covered themselves in glory, but one should expect better of a professional managing agent. Under regulation 12(3) of the Leasehold Valuation Tribunal (Procedure)

[7] SI 2013/1036

(England) Regulations 2003 (which then applied) a tribunal at a pre-hearing review should

(b) endeavour to secure that the parties make all such admissions and agreements as ought reasonably to be made by them in relation to the proceedings...

The tribunal urged the parties to meet and seek to reduce the number of points in issue. To that end Mr Wales arranged to meet with Mr Kelly. It was a wasted trip because Mr Kelly refused to budge. Mr Wales does not charge his clients for his travel time but he records a meeting, telephone call with a client and e-mail to Mr Kelly on 14th May 2013, all totalling 1 hour 35 minutes at £100 per hour plus VAT. In addition he claimed £54 for mileage.

62. The tribunal therefore awards the Respondents the sum of £284 costs (inclusive of VAT) against the Applicant under rule 13(1)(b), as limited by the transitional provisions.

Dated 3rd September 2013

Graham Sinclair
Tribunal Judge

SCHEDULE

Items disallowed from service charges — Albion Place

Item	Claimed	Allowed
Part year ending 25th December 2009 [pages B25–27]		
Management fee (inc VAT @ 15%) [15 flats]	£2,113.12	£779.79
Year ending 25th December 2010 [pages B47–50]		
Administration fees and costs (external redecoration)	£2,658.44	£0.00
Management fee (inc VAT @ 17.5%)	£4,441.50	£1,762.50
Year ending 25th December 2011 [pages B102–105]		
Administration fees and costs (major works)	£130.64	£0.00
Management fee (inc VAT @ 20%)	£4,680.00	£1,800.00
Totals :	**£14,023.70**	**£4,342.29**

Items disallowed from service charges — Columbia Place

Item	Claimed	Allowed
Part year ending 25th December 2009 [pages B25–27]		
Management fee (inc VAT @ 15%) [16 flats]	£2,254.00	£831.78
Year ending 25th December 2010 [pages B48–52]		
Administration fees and costs (major works & redec)	£3,090.25	£0.00
Management fee (inc VAT @ 17.5%)	£4,737.61	£1,880.00
Year ending 25th December 2011 [pages B111–114]		
Administration fees and costs (major works)	£130.64	£0.00
Management fee (inc VAT @ 20%)	£4,992.01	£1,920.00
Totals :	**£15,204.51**	**£4,631.78**