**Y TRIBIWNLYS EIDDO PRESWYL**

**RESIDENTIAL PROPERTY TRIBUNAL**

**LEASEHOLD VALUATION TRIBUNAL**

Reference: LVT/0011/05/19

In the Matter of Flats 5 and 10, Manchester House, The Square, Aberbeeg, Abertillery NP13 2AB
In the matter of an Application under Section 27A of the Landlord and Tenant Act 1985

APPLICANT: Mr William Neild

Respondents: (1) Bells Management Limited
(2) Crown Management UK Limited

Before: Tribunal Judge E. W. Paton (Legal Chair)
Mr. R. Baynham (Surveyor Member
Ms. J. Playfair (Lay Member)

Sitting at the Residential Property Tribunal, Oak House, Celtic Springs, Cleppa Park, Newport NP10 8BD

On 9th January 2020

For the Respondent Mr. Jonathan Wragg, instructed by PDC Law
The Applicant appeared by his representative Mr.Keith Collier

**ORDER**

IT IS ORDERED AS FOLLOWS:-

1. It is determined that the sums payable by the Applicant in respect of service charge (including both “Maintenance Expenditure” and “Insurance Expenditure” under the leases) in respect of Flats 5 and 10 are as follows, per flat:-

   2015 £586.65

   2016 £516.25

   2017 £489.09

   2018 £613.51

   Total per flat = £2205.50

   Overall total sum payable = £4411

2. The Applicant's application under section 20C Landlord and Tenant Act 1985 is dismissed.

Dated this 30th day of January 2020

E W Paton
Chair

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## DECISION

1. The Applicant Mr. Neild is the registered leasehold proprietor of two flats, numbers 5 and 10, in Manchester House, The Square, Aberbeeg. By an application originally made on 5th November 2018 on behalf of a Mr. David Walker, the proprietor of Flat number 2, to which Mr. Neild was then joined as a further party, the Applicant sought a determination of the reasonableness of, and amount payable as, service charge under the flat leases for the years 2015, 2016, 2017 and what was then then the future year of 2018. Mr. Walker was later removed as an Applicant following the forfeiture of his lease, leaving Mr. Neild as the sole Applicant. The Tribunal has permitted Mr. Collier to conduct the application and appear as Mr. Neild's representative, on being satisfied that he has authority to do so. Mr. Collier in fact lives in Flat 2 as an assured shorthold tenant.

2. The service charge and related provisions in the leases are in a common form. By clause 2, the flat in each case is demised to the lessee, for a term of 999 years from 19th March 2010, upon the lessee paying both the Rent and the

"Insurance Rent". At clause 3, referring to the Seventh Schedule, the Lessee covenants (amongst other covenants) as follows:-

- at paragraph 1, to pay the Rent and Insurance Rent
- at paragraph 4, to pay the costs charges and expenses of the Lessor (including legal costs) incurred as a result or in connection with any breach of the Lessee's covenants
- at paragraph 12, to pay the "Maintenance Contribution" to the Lessor at the times and in the manner provided.

3. The "Maintenance Contribution" is defined as 1/10th of the Lessor's "Maintenance Expenses", which are defined in the Fifth Schedule. The "Insurance Contribution" is defined as 1/10th of the Lessor's sums expended in performing its covenant to insure set out in the Eighth Schedule, paragraph 3.1.

4. Without setting out the Fifth Schedule in full, it contains 19 paragraphs setting out categories of Maintenance Expenditure for which the Maintenance Contribution is therefore recoverable, including e.g. :-

   - at paragraph 1, the cost of "repairing rebuilding repointing improving or otherwise treating as necessary and keeping the Maintained Property and every part thereof in good and substantial repair order and condition and renewing and replacing all worn or damaged parts thereof"

   - at paragraph 16, "Generally managing and administering the Maintained Property and protecting its amenities and for that purpose employing a firm of managing agents and (in so far as the Lessor thinks fit) enforcing or attempting to enforce the observance of the covenants on the part of any of the owners or occupiers of any part of the Estate"

   - there are also specific provisions relating to fire fighting equipment and door entry systems (paragraph 14), and the levying of a sum towards a reserve fund (paragraph 19)

5. The Sixth Schedule sets out the process for demand and payment of the Maintenance Contribution. The accounting year ends on 31st December each year. The Lessor is required within three months of the year end to produce a certified account of the Maintenance Expenditure for that year (paragraph 1). By paragraph 2, the Lessee is to pay in advance on the 1st day of each month one-twelfth of the Lessor's estimated expenditure for the year ending on the next 31st December (2.1). After the year end, and production of the certified account, the Lessee must pay within 21 days any shortfall between the payments made in advance based on the estimate and sums finally due as a proportion of the actual expenditure. Where the advance payments have exceeded the net Maintenance Contribution due as a proportion of actual expenditure, the excess is to be credited towards the sum payable for the next year (2.2).

6. In the Eighth Schedule, paragraph 3, the Lessor makes various covenants in relation to insurance of the Building. These include:-

   - the primary covenant at paragraph 3.1 “to insure the building in an insurance office of repute” against a list of common specified risks and such others as the Lessor may deem prudent, for the full reinstatement cost plus allowance for fees incurred in rebuilding

   - covenants to note the Flats and their mortgagees on the policy “(in general rather than specifically)”, and to produce on demand a copy of the policy, a receipt for the premium and evidence that the policy is in force (paragraphs 3.2 and 3.3).

   The Eighth Schedule also includes the covenant to settle utility bills for the Building, on the Lessee paying his/her “Utilities Contribution” (defined as 1/10th of those costs).

7. In this case, it is common ground that Mr. Neild has paid nothing, in advance or at the year end, towards service charge (i.e. the Maintenance Contribution, and the “Insurance Rent”, which comes within the definition of “service charge” in section 18 Landlord and Tenant Act 1985) for the years 2015 to 2018 inclusive.

8. The Lessor, who is the Respondent Bells Management Limited, acting by its agent Crown Management UK Limited, issued monthly invoices for the Maintenance Contribution, Utilities Contribution and Insurance Rent, based on estimated expenditure for each of the years in question. The amounts of those invoices were as follows:-

| Year | Estimated annual expenditure | Monthly invoices |
|---|---|---|
| 2015 | £6900 | £91.67 (1st 10 months), then £57.50 (last 2 months, invoices dated 11/7/16 – following 2016 Tribunal decision – see below) |
| 2016 | £6900 | £57.50 |
| 2017 | £7500 | £62.50 |
| 2018 | £7970 | £66.42 |

   The invoices for 2018 were not in evidence before us.

8. Certified accounts, setting out the actual expenditure by the year end for each of those years, were produced. The figures were as follows:

   2015 – initially stated in document in bundle as £2891, but for reasons not explained to us, this appeared either to be a mistake or else to relate to just half of that year. A fuller version was actually attached to the application, in which the figure was stated as **£6116.47**.

   2016 - **£5762.52**

2017 - **£5140.88**

2018 - **£6435.13**

9. It is common ground that Mr. Neild paid nothing in advance when invoiced, for either of his flats in any of the above years. It is also common ground, and clear from the Sixth Schedule, that his net liability for each of those years is to pay for each flat 1/10th of the actual expenditure incurred.

10. Mr. Wragg referred us to the Upper Tribunal case of Knapper v. Francis [2017] UKUT 3 (LC), in support of a submission that the exercise with which we were concerned was the determination of the reasonableness of the on-account advance demands based on estimates, in relation to which exercise we were not entitled to have regard to subsequent events such as the actual expenditure incurred. But that was a case in which the FTT had been concerned solely with on-account demands, and in which (paragraph 45) the final balance of account between the parties was "wholly unclear" and in which the final year accounts for the relevant year (2015) had not yet been produced. All that was decided in that case was that the lessees could not point to the fact that certain anticipated works had not been carried out in that year as a ground on which to challenge the reasonableness of the on-account demand made for that year.

11. With respect to Mr. Wragg, that is not quite the position in the present case. Here, sums have been demanded on account, none have been paid, but the landlord has now completed and certified in accounts the actual expenditure for each of those years. In each case it is slightly less than the anticipated expenditure on which the estimates and advance invoices were based, but not by a great amount. If all he (on behalf of the landlord Respondent) seeks is a decision that those advance demands were contractually valid and reasonable, then we are content to hold that they were, and no point is taken on their validity (there being evidence of compliance with the statutory requirements as to the summary of rights and obligations). It would, however, be a somewhat odd and pointless exercise now to decide that the Applicant was first liable for the sums demanded in advance, starting in 2015, but then that he was entitled to credits for the following year against the next year's liability, and so on through to 2018. Where the Tribunal has the final figures for actual expenditure available, certified by the landlord's accountant, it should where possible deal with those figures and assess their reasonableness to the extent challenged: see e.g. Countrywide Residential (South West) Limited v. Roberts [2017] UKUT 0386 (LC).

12. On that basis, we will therefore deal with the reasonableness of the service charges before us year by year, on the footing that we have the certified accounts of actual expenditure for each of those years, which are the sums whose reasonableness we can and should now assess.

13. By way of further preface, the reasonableness of the service charges for leasehold flats in this building came before this Tribunal, for the years 2012, 2013, 2014 and the then anticipated expenditure for 2015, in reference number LVT/0049/03/15 (in which the six applicants included Mr. Neild, the present applicant). This was the subject of a decision on those and other points dated

28th June 2016. In that decision, the Tribunal determined the reasonableness of the amounts of matters such as management fees charged by the landlord for those years, as well as some other specific items relating to insurance and other matters. While not being strictly bound by that decision, we nevertheless have some regard to it where similar issues are raised in this application.

14. One aspect of that decision which does bear on the present case is that at that time, the anticipated expenditure for the year 2015 was set at £11,000, on the back of which the landlord issued monthly invoices in the sum of £91.67. The Tribunal in 2016, while noting that the final 2015 accounts would soon be prepared so that "to a certain extent this part of the decision is academic" (paragraph 152 – and see the paragraphs above), held that this estimated figure was too high (paragraphs 152 to 162) and that a reasonable estimate/"on account" figure was £6900, equating to £57.50 per month. The landlord's final monthly invoices for that year were therefore later adjusted to reflect that figure. As stated above, however, we now have the actual expenditure figure for that year (£6116.47), so the issue now before us for that year is whether that is a reasonable sum, of which the Applicant should pay 1/10th for each of his flats (having paid nothing in advance).

**2015**

15. As stated above, the actual expenditure figure for this year was £6116.47. The largest items within that figure, and the only significant items challenged, were the "Management Fees" of £2000, and the Insurance Premium of £1666. We find in any event that all of the other items for that year, including an Asbestos Survey costing £360, and a series of maintenance invoices from Dawn Construction, were all properly and reasonably incurred, and reasonable in amount. No issue was taken with recurring items such as electricity charges and the £500 a year towards the reserve fund.

16. As to the insurance, Mr. Collier, for this and the other years, continued to take issue with it, on the alleged basis that the cover obtained was defective, and/or that the landlord was in breach of its insurance covenants under the lease. There is no doubt, and there was clear evidence before us, that the premium for this and other years has been paid, and a policy obtained which on its face appears to cover the risks against which the landlord is required to insure. As far as we could follow the submission being made, it appeared to be that the landlord was potentially in breach of the conditions of the policy, in that it was said to be in breach of general conditions 3 and 4 of the policy in relation to notification to the insurer of "unoccupied property" and condition 4 as to "security of unoccupied property". It was said that individual flats in the building had at times been unoccupied, that the landlord had failed to inform the insurer of this, or had failed to secure them. We had no evidence before us for these years of any complaint by the insurer or dispute as to payment of any claim by it, on these or any other grounds. Indeed, we had no witness evidence before us at all from either party.

17. A similar issue was raised in the 2016 Tribunal decision, at paragraphs 33 to 36, and the Tribunal then concluded that whatever grievances the applicant (Mr. Forbes) had about an alleged failure to notify lessees of the full terms of the

policy, that was an issue which went if anything to quality of management services rather than the amount of the premium for what was regarded as a normal insurance policy. As the Tribunal said then (paragraph 35) “In any event it is not our role to determine whether the lessor is in breach of covenant but to determine the lessee’s liability to pay”.

18. In the present case as in that case, the landlord has undoubtedly insured the property against the required risks, with an insurer of repute, and paid a premium of £1666 to do so. We are satisfied that this is a reasonable amount for a reasonable and conventional insurance policy, and that it is straightforwardly recoverable via the Eighth Schedule paragraph 3.1 via the lessee’s “Insurance Contribution”.

19. As for the “Management Fees” of £2000 for that year, while we are as stated not bound by the 2016 Tribunal decision, we can to some extent have regard to it, particularly as it held (at paragraph 160) that £2000 for that year was a reasonable estimated figure.

20. Having regard, however, to what was actually done by the landlord in that year, and to the general condition and maintenance/management of the building, we consider that the actual reasonable – and therefore recoverable – figure for that year should be slightly lower. Such evidence as there is suggests that the landlord’s and agent’s management approach is generally a reactive one, in this and other years, once the routine and recurring tasks such as insurance, invoicing and accounting are done. We are not satisfied that £2000 was a reasonable amount to recover by way of management fees for this year for what consisted essentially of arranging some minor maintenance and repair work, renewing the insurance, instructing the accountant (whose £300 fee is not challenged) and sending out ten sets of service charge invoices.

21. Having regard to the general state of the building and the overall picture before us, and drawing on our experience of management fees for buildings of this nature and size, we consider a reasonable figure would be £1750. We agree to some extent with the analysis of the 2016 Tribunal in relation to the then claimed figure for 2014 of £2000 – that “£2000 would not be unreasonable for a well-managed property” (paragraph 118). The Tribunal then identified some specific shortcomings in the management in that year, in reducing the recoverable figure to £1500. In the present case, while there is not similar specific evidence of failings or shortcomings, our general view is that while the building is not badly managed, nor is it particularly “well managed”. As stated, the management is largely functional and routine, and the approach to maintenance and repair generally reactive. While that may be a factor of historic disputes and non-payment, we nevertheless consider that the landlord had not demonstrated enough evidence of a change, or positively good management, to justify a figure of £2000 for this year. £1750 appears to us to be a reasonable figure.

22. There being no other challenges to items in that year, we therefore reduce the figure of £6116.47 by £250 overall, giving a figure for reasonable actual expenditure for that year of **£5866.47**.

**2016**

23. The same points discussed above apply to the figures for this year. The figure for actual expenditure in this year was £5762.52. The insurance premium was £1794, which although we could not locate the actual invoice, are satisfied was paid and was in a reasonable amount for the cover which was undoubtedly continued. For the same reasons set out above, we also reduce the recoverable amount for management fees in this year from £2000 to £1750.

24. There is one further item which we disallow, because of the absence of evidence supporting it – an "insurance excess" sum of £350. We would have expected to see details of the claim to which this related, and the basis for calculation and payment of this excess. We have no evidence at all on that, so have decided that we should not allow its recovery.

25. The figure for this year is therefore reduced by a total of £600, from £5762.52 to a figure of **£5162.52**.

**2017**

26. The same points discussed above for 2015 apply to this year. The only item we reduce is therefore the management fee of £2000, reduced again to £1750. The actual expenditure figure of £5140.88 is therefore reduced by £250, so that the reasonable and recoverable amount for this year is **£4890.88**.

**2018**

27. The issues and figures for this year are largely the same, save that:-

    i) the claimed management fee for this year was now £2200; and

    ii) Mr. Collier, for Mr. Neild, challenged a sum of £230 for "legal fees", on the basis that these fees should have been recovered only from the lessees to which they related, rather than generally via maintenance expenditure.

28. Taking that last point first, to some extent Mr. Neild might have to be careful what he wishes for, because one of the two £115 legal invoices – issue fees for County Court claims for unpaid arrears – related to him personally. We are satisfied, however, that it is within the landlord's discretion to recover such sums generally via service charge/maintenance expenditure (under the Fifth Schedule paragraph 16, as costs of "enforcing or attempting to enforce the observance of the covenants on the part of any owners or occupiers of any part of the Estate") rather than seeking to rely on the lessee's direct covenant (at the Seventh Schedule paragraph 4) to pay legal costs of, amongst other things, incurred as a result of any breach of covenant. It is a matter of discretion in each case. The landlord may take the view that it is more likely to recover the sum incurred from all lessees proportionately, rather than from one lessee who has also failed to pay other sums.

29. As for the management fees, we take the view, doing the best that we can, that a slight rise in the reasonable recoverable amount for these was appropriate by the year 2018. There was slightly more evidence in this year of the landlord attending to maintenance and other work, and as stated it also had to initiate some legal proceedings for arrears against two lessees. We consider, however, that a sum of £2200 is still slightly too high and is not reasonable. A reasonable figure for management fees in this year is, in our judgement, £1900.

30. The actual expenditure figure for this year was £6435.13. We therefore reduce that by £300, arriving at a figure of **£6135.13**.

**Conclusion**

31. The reasonable recoverable actual expenditure for each of the years in question is therefore as follows:

    2015 £5866.47
    2016 £5162.52
    2017 £4890.88
    2018 £6135.13

32. The Applicant Mr. Neild, who owns both flats 5 and 10, is therefore liable to pay one-tenth of those figures in respect of each of his flats, namely:

    2015 £586.65 (x 2)

    2016 £516.25 (x 2)

    2017 £489.09 (x 2)

    2018 £613.51 (x 2)

33. As stated at the outset, in relation to Mr. Wragg's submission, we are content also to hold for the avoidance of doubt that the advance demands for service charge in each of the years 2016 to 2018, based on then estimated figures and invoiced monthly, were reasonable and valid. The 2016 Tribunal of course determined that £6900 was a reasonable estimated figure for the 2015 advance demands. We consider, for what it is worth, that the estimated figures of £6900, £7500 and £7970 for the next three years were also reasonable, although the eventual actual expenditure was in each case less than that. For the reasons set out above, since Mr. Neild has paid nothing, and we have the actual figures for those years before us, this issue is to some extent academic.

**Costs: section 20C Landlord and Tenant Act 1985**

34. In our judgement the applications by the Applicant have been largely unsuccessful. He has paid nothing by way of service charge for any of the years under consideration, in respect of either of his flats. In our judgement such a refusal to pay was unjustified and unreasonable. We have reduced by a small amount the amount of "management fees" reasonably recoverable by the

landlord for each of the four years, and disallowed one item for which there was no satisfactory supporting evidence. Those reductions were small, and part of the Tribunal's general discretion under its jurisdiction. They were worth a total of £1400 over the whole of the four years, so £140 per flat to the Applicant (£280). In the final analysis he owes significantly over £2000 per flat (so over £4000 in total) in unpaid charges for those years.

35. In those circumstances, we decline to exercise our jurisdiction under section 20C Landlord and Tenant Act 1985 to disallow them as relevant costs to be taken into account in determining the amount of service charge payable by the Applicant; it having been indicated by him through Mr. Collier that he wished to make such an application.

Dated this 30th day of January 2020

E W Paton
Chair