**Y TRIBIWNLYS EIDDO PRESWL**

**RESIDENTIAL PROPERTY TRIBUNAL**

**LEASEHOLD VALUATION TRIBUNAL**

**Reference: LVT/0006/05/20**

**In the Matter of Meridian Quay, Trawler Road, Swansea, SA1 1PL**

**And in the Matter the Landlord and Tenant Act 1985**

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|---|---|
| **Applicant:** | **Christina Jehoratnam** |
| **Applicant's Representatives:** | **David Mariampillai of David Benson Solicitors Limited** |
| **Respondent:** | **Meridian Quay Management Company Limited** |
| **Respondent's Representatives:** | **Simon Allison of counsel** |
| **Tribunal:** | **Colin Green (Chairman)**<br>**Kerry Watkins (Surveyor Member)**<br>**Juliet Playfair (Lay member)** |
| **Date of Hearing:** | **15th October 2020** |

**DECISION**

**(1) The Applicant's application for an adjournment of the hearing is dismissed.**

**(2) As at 15 October 2020, the amounts payable by the Applicant to the Respondent in respect of the service charge years 2015 to 2020 are as follows (payments made by the Applicant to the Respondent are not taken into account):**

a. **2015: £2,686.76**
b. **2016: £3,049.02**
c. **2017: £3,369.72**
d. **2018: £3,118.12**
e. **2019: £3,167.76 (advance payment only)**
f. **2020: £3,983.96 (advance payment only)**

**REASONS**

**Preliminary**

1. This matter arises out of an application by the Applicant under s. 27A of the Landlord and Tenant Act 1985 for determination as to whether service charges are payable for the service charge years 2015 to 2020 in respect of her lease of 101 Meridian Way ("the Flat"). The service charge year runs from 1 January to 31 December and therefore is coextensive with the calendar year.

2. The Flat is a 2-bedroom flat on the third floor of a block forming part of Meridian Bay, which together with Meridian Wharf and Meridian Tower comprise seven blocks collectively known as Meridian Quay ("the Development"). There are 291 flats in the Development, a mixture of 1, 2 and 3-bedroom properties, and seven commercial units.

3. The Applicant's lease ("the Lease") is dated 8 December 2008 for a term of 150 years (less three days) from and including 25 December 2007. The Applicant acquired the Lease in 2009 and was registered as proprietor at the Land Registry on 11 March 2009. The freehold of the Development is owned by Swansea City Council. The reversionary headlease was originally owned by Ferrara Quay limited but in June 2019 it was acquired by Meridian Quay Limited, which currently is the Applicant's immediate landlord.

4. The Respondent is a party to the Lease as the management company for the Development and its appointed managing agent since 2006 has been CRM Residential Limited, since renamed: CRM Students Limited, ("CRM") which manages a number of properties including the Development. In summary, the service charge provisions in the Lease, which are in all material respects identical to other leases of properties within the Development, are as follows. The Applicant's proportion of the Maintenance Expenses is 0.3924% ("the Relevant Proportion"), the proportion payable by all 2-bedroom flats at the Development. Schedule 6 to the Lease contains the service charge mechanism:

    a. that the Applicant must pay on 1 January each year the Relevant Proportion of the amount estimated by the Respondent (or CRM) as the Relevant Maintenance Expenses;

    b. that the Applicant must pay any balancing charge within 21 days of service by the Respondent on her of a copy of the Maintenance Expenses for the service charge year in question, accompanied by a certificate from the Respondent's accountant as to the total amount of these expenses for the year, to be served by 30 June in each year.

5. Directions were made by the tribunal on 4 June 2020 ("the Directions") which provided a timetable for the following matters:

    a. disclosure of relevant documents by the Respondent;

    b. the Applicant's case in the form of a Scott Schedule, any alternative quotes or other relevant documents, and a statement setting out the Applicant's case and any relevant evidence in support. The Applicant provided a Scott schedule and some supporting documents, but no statement in support.

    c. Similar provisions in respect of the Respondent's case. The Respondent served a Scott Schedule, responding to the Applicant's comments, and a lengthy Statement of Case with supporting documents, and two witness statements, all dated 13 August 2020.

d. Provision was made for the Applicant to serve a brief supplementary reply by 27 August, but none was served.

6. The hearing took place by way of a virtual hearing on 15 October. Although the Applicant was able to connect using video at the outset, she experienced technical difficulties and thereafter participated by way of telephone. The tribunal was satisfied that this did not present any impediment as there was a hearing bundle to which all concerned had access. The tribunal is grateful to the parties, their witnesses and those providing technical support for the smooth running of the hearing. It heard evidence from the Applicant, and Andrew Averill-Richards and Anne-Marie O'Leary on behalf of the Respondent. All witnesses were cross-examined and asked questions by the tribunal.

7. After the conclusion of the hearing the tribunal considered whether a site visit would be required but determined that it was not necessary for the purpose of properly determining the issues in dispute between the parties.

**Adjournment of the hearing**

8. By an email to the tribunal sent after close of business on 14 October 2020, David Mariampillai of David Benson Solicitors Limited, acting on behalf of the Applicant, requested an adjournment of the hearing. The tribunal decided to deal with such application by way of a preliminary issue at the beginning of the hearing and heard submissions from Mr. Mariampillai (who was appearing pro bono), the Applicant, and Mr. Allison, counsel for the Respondent.

9. When dealing with such an application the relevant provision is regulation 15 of the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004, the relevant parts of which provide as follows:

> *(1) Subject to paragraph (2) the tribunal may postpone or adjourn a hearing or pre-trial review either on its own initiative or at the request of a party.*
>
> *(2) Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to —*
>
> *(a) the grounds for the request;*
>
> *(b) the time at which the request is made; and*
>
> *(c) the convenience of the other parties."*

10. The wording of paragraph (2) makes it clear that an oral hearing must not be adjourned unless the tribunal considers that it is reasonable to do so, the burden being on the

party seeking the adjournment. In considering whether to adjourn the hearing the Tribunal had regard to the following matters.

a. The grounds on which it was sought were that Mr. Mariampillai did not accept instructions on the Applicant's behalf until the previous day and had not been afforded a sufficient opportunity to properly prepare his representation. Notwithstanding such limitation however, the Applicant indicated that she was confident that she could present her case as set out in her comments in the Scott Schedule. This proved to be the case.

b. The Applicant had not provided a witness statement in support of the contentions in the Scott Schedule, as required by the Directions to enable her to give testimony in the proceedings. Mr. Mariampillai submitted that an adjournment would be required in order to prepare and serve the same. The tribunal considered that this deficiency could be overcome by allowing the Applicant to confirm her Schedule comments and adopting those as her evidence. The Respondent's counsel had not prepared for cross-examination of the Applicant but could be afforded the opportunity to do so. (In fact, he was able to use the luncheon adjournment to prepare.)

c. There were additional matters and "contrary evidence" that the Respondent wished to raise concerning the service charge. The example given by Mr. Mariampillai concerned the service of accounts on the Applicant. The tribunal considered that the Applicant had been provided with ample opportunity to not only seek legal advice but to raise any additional matters as provided for under the Directions timetable, including the service of a Reply. She was on notice of the importance of adhering to that timetable by the concluding warning in the Directions, set out in bold type:

> **"WARNING**
> **It is important that these Directions are complied with. Failure to do so may result in the Tribunal being unable to consider important evidence or documents which could prejudice your case."**

In addition, the example given by Mr. Mariampillai was mentioned later by the Applicant in her evidence, and her complaint was not that the accounts had not been served but rather that she considered the format adopted to be unclear.

d. Clearly, the request for an adjournment was made at the last possible moment. It would appear that the Applicant had been seeking the services of a solicitor on a pro bono basis for some time. The tribunal had regard to the difficulties that the pandemic and associated restrictions have had on normal business life but was of the view that the Applicant, having had notice of the hearing for

some time, could have obtained a solicitor, even pro bono, at a much earlier date.

e. If the hearing were adjourned to a later date, Mr. Allison estimated that the Respondent's costs of preparation which would be thrown away were in the region of £8,000.00 to £10,000.00. Even assuming that the tribunal could make an order for costs against the Applicant under the relevant statutory provisions, this could not exceed £500.00 which would be scant compensation for the Respondent's wasted expenditure, or for the tenants of the Development who might ultimately have to bear that cost.

f. The tribunal also had regard to the prospect that there could be considerable delay if the hearing were adjourned in order to ensure that parties, witnesses, and legal representatives were coordinated for a fresh date. On the other hand, the tribunal was of the view that no substantial prejudice would be caused to the Applicant by proceeding with a matter she been conducting from the outset.

11. In the light of the above, the tribunal did not consider that it would be reasonable to grant an adjournment and dismissed the application. The hearing then continued with the Applicant representing herself.

**Nature of the dispute**

12. Section 27A(1) of the 1985 Act (liability to pay service charges: jurisdiction) provides as follows:

> *"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."*

Section 19 (limitation of service charges: reasonableness) 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."*

13. In respect of each of the service charge years in question, based on the schedule which appears at pages 377-78 of the hearing bundle, the Applicant's liability for each of the relevant service charge years, as at the date of the hearing, was as follows.

2015:

| | |
|---|---|
| Advance Charge | 2,349.94 |
| Balancing Payment | 336.82 |
| | 2,686.76 |

2016:

| | |
|---|---|
| Advance Charge | 3,441.7 |
| Balancing Credit | (392.68) |
| | 3,049.02 |

2017:

| | |
|---|---|
| Advance Charge | 3,106.68 |
| Balancing Payment | 263.04 |
| | 3,369.72 |

2018:

| | |
|---|---|
| Advance Charge | 3,095.77 |
| Balancing Payment | 22.35 |
| | 3,118.12 |

2019:

| | |
|---|---|
| Advance Charge | 24,602.36 |
| Credit | (21,434.60) |
| | 3,167.76 |

2020:

| | |
|---|---|
| Advance Charge | 3,983.96 |

| | |
|---|---|
| | 3,983.96 |

In respect of the year 2019, as at the date of hearing no reconciliation accounts had been prepared or demand served so that there is no balancing payment or credit that currently can be taken into account. The extremely high advance payment for 2019 incorporated the costs of addressing substantial fire safety building defects at the Development. The building warranty provider later agreed to and paid a significant part of the anticipated costs so that they were then credited back, hence the credit of £21, 434.60.

14. The Applicant's completion of the Scott Schedule identifies various items which she challenges. There is nothing to distinguish any particular year amongst those items and the sums attributed to each are global figures that cover the entirety of the item over the six-year period, with no alternative sums provided. In other words, the Applicant's case is that such items should be discounted entirely from the service charge during that period. There was some difficulty matching the Applicant's descriptions and figures with specific items of expenditure, but CRM prepared a schedule (page 379) which sets out what was considered to be the correct amounts attributable to the disputed items over the relevant period. CRM's schedule shows a total of £17,582.50 in respect of the Applicant's service charge liability, a figure which the Applicant agreed during the hearing was a more accurate calculation of the sums in issue.

**Disputed items**

15. To avoid unnecessary repetition the full details of the nature of each dispute will only be mentioned where deemed necessary. The full exposition of each party's case appears in the comments in the Scott Schedule and the Respondent's Statement of Case.

16. The Applicant did not dispute that the heads of expenditure in issue fell within the scope of the service charge provisions in the Lease, and the tribunal was satisfied that in principle such expenditure, actual or anticipated, was permissible. As to whether the expenses were reasonably incurred or services or works were carried out to a reasonable standard, in the first instance the onus is on the Applicant to raise some kind of case to question such matters that might lead to a financial adjustment. As seen below, many of the Applicants' complaints concern management issues rather than the amount of particular service charge items and therefore do not lead to any such adjustment.

17. The tribunal also accepted that in respect of advance charges it is limited to considering whether the payments sought on-account are reasonable in the circumstances pertaining at the time the relevant budgets were set, not with the benefit of hindsight, see: *Knapper v. Francis* [2017] UKUT 2 (LC).

18. *Cleaning* – This relates to the cleaning of the common parts of the buildings in the Development, such as entrance halls and hallways, and the Applicant's contention that two cleaners working 52 hour a week is insufficient. The issue of cleaning is addressed in the statement of Mr. Averill-Richards, the Respondent's building manager for the

Development from December 2015 until shortly before the hearing, which sets out in some detail the cleaning regime that has been in operation. Over the yeas there have been few complaints about cleaning. Obviously, it cannot be said that the cleaning services have been of no value at all and the tribunal is satisfied that such services have been reasonable. In so far as the Applicant is suggesting that more cleaners should be retained, or work longer hours, this would lead to an increase in the service charge, not a reduction.

19. A number of flats in the development are sub-let to students, and the Applicant also makes complaint about their activities and irresponsible approach to keeping the Development clean and tidy. The tribunal does not consider that this is something for which the Respondent, or CRM, can be held responsible, even though CRM has changed its name to include a reference to "students" (it manages other properties besides the Development). Under paragraph 30 of Schedule 5 to the Lease, subletting of part is prohibited but otherwise no landlord's consent is required for a tenant to sublet the whole of a flat other than during the final 7 years of the term (still over a century away). Therefore, it is for the flat owners, many of whom are investors, to determine whether they should sublet to students and neither the management company nor its agent have any control over such matters.

20. *Fire equipment and training* – the Applicant complains that this was only introduced in 2017 and that the staff have not been properly trained. This is really a management rather than a service charge issue and is addressed in some detail in paragraphs 38 to 45 of the Respondent's Statement of Case. The tribunal is satisfied that the cost of the measures taken are reasonable. Although the Applicant has complained that there are no fire drills, there is no requirement for this in her block which operates a "stay put" policy in the event of fire.

21. *Commercial cleaning* – the Applicant complains that the car park is subject to water pooling, that the area near the beach is dirty and there has been a decline in the management of such areas since 2017. Again, this is more a management than a service charge issue and the tribunal considers that no case has been raised to adequately query the costs of such services, particularly as a public right of way runs outside the Development which can contribute to litter.

22. *Lift Maintenance* - Although the Applicant asserts that the lifts constantly breakdown, for which students are responsible, the tribunal accepts that there is a lift maintenance contract with Otis that includes remote monitoring and two-way communication to an emergency response centre in the event of breakdown, but which does not cover misuse or vandalism. Records from 2015 to 2020 show that there have been twelve callouts to repair broken down lifts at the Applicant's block, two of which were found to be running on arrival. The tribunal does not consider that there is any genuine concern with the maintenance arrangements that have been made, and the Respondent cannot be held responsible for the actions of the occupants of flats or their visitors.

23. *Door entry maintenance* – A fob system is employed with a different fob for each block. In July 2019 there was an issue with the door closing mechanism in the Applicant's block, and new parts were ordered and fitted the following month. Even assuming this was due to student misbehaviour it is an expense that the Respondent is obliged to incur.

24. *Window cleaning* – The Applicant's complaint is that the external window cleaning has not been carried out three times a year. The Respondent accepts that in changing window cleaning contractors the number of cleans were reduced to two a year. The tribunal is satisfied however, that the service charge element for this item only include actual cleans so that the Applicant has not been overcharged.

25. *Bin hire and cleaning* – Once more, the Applicant's complaints concern management issues rather than anything that would lead to an adjustment of the service charge.

26. *Communal electricity* – This item concerns lights having been left on for extended periods, but the tribunal accepts that lighting in communal areas is controlled by motion-operated sensors, checked regularly by security staff.

27. *Building insurance* – Again, the alleged failure of the Respondent to provide the Applicant with a copy of the Building Insurance schedule is not something that impacts on the service charge or the amount charged for such insurance, and the tribunal accepts a copy was provided to the Applicant within 21 days of her request.

28. *Insurance excess* – The Applicant complains that certain matters have not been explained to her. Paragraph 75 of the Respondent's Statement of Case provides an explanation.

29. *Lift Insurance* – The issue is that the insurance cover is only basic, and the Applicant also complains that it does not cover out of hours maintenance. As seen above, emergency cover is provided for and if the annual insurance charge were to be greater this would result in a higher contribution to the service charge. The issue cannot result in a reduction to the charge.

30. *Directors' and officers' insurance* – This insurance cover is affected to provide cover for the volunteer directors of the Respondent. The Applicant states that she has not been consulted about such matters, possibly the appointments themselves, but does not challenge the actual figures. In that case this is a management not a service charge issue.

*31. Risk assessments – The Applicant complains that she was never properly informed of risk assessments. The evidence shows that risk assessments took place in 2016, 2018 and 2020 and no major deficiencies were found beyond known construction defects. There can be no adjustment in respect of this item.*

32. *Accountant's fees* – It would seem that the Applicant's concern is not with the fees themselves but with the presentation of material that has been provided to her. The tribunal did not consider that such issues would warrant any reduction in the fees.

33. *Managing agent's fees* – The Applicant's complaint here seems to be concerned with the failure of CRM's director to have any direct involvement with her, though she accepted that she has had conversations with Mrs. O'Leary, the director of property services of CRM. There is a very general criticism of the service which the Applicant feels she has received from the Respondent, acting by CRM, but after reading the correspondence at ALM4 and having heard Mrs. O'Leary give evidence and the Applicant being cross-examined on such matters the tribunal is satisfied that reasonable efforts have been made to address the Applicant's concerns and meet with her to discuss them further. It is also apparent that the Applicant has refused to enter into any kind of mediation, as provided for by paragraph (3) of the Directions, which would have been a far more satisfactory manner of resolving most, if not all, of the issues she has raised in the Scott Schedule.

34. *Electrical Repairs* – The Applicant is concerned about the high costs of repairs and matters of electrical safety, but her contentions are no more specific than that. The tribunal understands her concern but there is no material before it that could lead to any change in the figures included in the service charge.

35. *Reserve funds* – the Applicant's case is that reserve funds have not been deployed to address matters she considers of importance. This does not concern the amount raised in respect of the reserve fund but how it has been spent or ought to be applied, which does not alter the service charge contributions.

36. *Construction defects* – As mentioned in paragraph 13 above, there are substantial remedial works required relating to the remediation of construction defects at the Development arising out of the defective façade installation, water ingress issues, and defective compartmentation generally. It is hoped that the cost of such works will be met by the building warranty provider, or those who undertake liability in default of that provider, and interim payments have been received of about £2.5m.

37. Other than a general concern that the Applicant, along with other flat owners, will have to meet some of such costs by way of service charge, there are no specific complaints raised by the Applicant. The tribunal accepts that the major items of expenditure are covered by insurance, but there are additional management and legal charges which do form part of the service charge, relating to matters that fall outside CRM's standard responsibilities, for which work it is making an additional charge. The Tribunal agrees that these fall outside CRM's usual management duties as set out in the schedule exhibited at AML2 to Mrs. O'Leary's statement.

38. *Lift landing carpets* – The Applicant complains that although she has paid her service charge for thirteen years, these carpets have not been changed. There have been charges for carpet replacement elsewhere in the Development, and it is in the nature of service charges such as that found here that costs are borne by all the tenants in a

fixed proportion irrespective of whether their flats have benefitted from the expenditure. The Respondent does not consider that fresh carpets are required in the Applicant's block at present but will review matters in 2021. Since the expense has not yet been budgeted for or incurred however, there can be no reduction in the service charge.

39. *Decorating* -- the Applicant complains about the alleged need for paintwork in common areas. Irrespective of whether this is correct again, it is a question as to whether the work needs to be carried out, at what cost and whether funded from a specific charge or reserves, which are management issues. No alteration can be made to the service charge in relation to work for which there has not yet been a contribution.

40. Applicant's complaints and service charge review – The Applicant has raised a number of the above issues with CRM and provided an alternative budget, but it is clear from the evidence of Mrs. O'Leary that the Applicant has not assisted in bringing them to a conclusion, in so far as that would have been possible.

41. Debt recovery action – Although threatened no proceedings have yet been issued by the Respondent in respect of ground rent and service charge arrears, pending the outcome of this application.

42. No admittance to a meeting – This was a meeting on 14 January, but consideration of this issue falls outside the tribunal's jurisdiction. Similarly, with the Applicant's complaint that emails and text messages have been sent to her demanding payment of the service charge.

**Statutory requirements**

43. Under paragraph (2) of the Directions, additional matters were raised concerning whether the service charge demands complied with certain statutory requirements.

44. Section 21B(1) of the 1985 Act requires that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges, the form and content of which is prescribed by regulations made under section 21B(2). In the present case, the relevant provisions are the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007. As seen from documents in the bundle and confirmed by the evidence of Mrs. O'Leary, every demand was accompanied by two double-sided typed sheets, one in Welsh the other in English. One side of the sheet contains the prescribed information in respect of service charges, the other such information in respect of administration charges. The 2007 regulations set out the prescribed information in Welsh first, then in English. According to Mrs. O'Leary the order in which the sheets are extracted from the envelope sent to each tenant would be dependent on the tenant so that they might look at the Welsh or English version first. The tribunal does not consider that there is any material deviation from the 2007 regulations by providing the prescribed information in this way.

45. The tribunal is also satisfied that the demands complied with sections 47 and 48 of the Landlord and Tenant Act 1987 in that they contained a statement at the top of the demand setting out the name and address of the Applicant's landlord at which notices may be served.

46. The tribunal raised the issue that many of the demands, for both advance and balancing service charge payments, were made after 1 January and 30 June each year, the dates provided by the timetable under Schedule 6 to the Lease. At the date of hearing no reconciliation account had been prepared or demand served in respect of a balancing payment for 2019. The tribunal agrees with the submission of Mr. Allison that there is nothing in the provisions of Schedule 6, or elsewhere in the Lease, that makes time of the essence concerning the service of service charge demands; nor is there anything to suggest that the Applicant has made time of the essence in respect of any of those demands. Therefore, notwithstanding that some have been served after the relevant dates that will not invalidate such demands which will have triggered an obligation to pay, subject to consideration of section 20B of the 1985 Act.

47. Section 20B (limitation of service charges: time limit on making demands) provides:

> *"(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
>
> *(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."*

The balancing charge demand for the year 2017 was made on 27 November 2018 and the balancing charge demand for 2018 was made on 19 March 2020. Potentially therefore, such demands could include costs incurred more than 18 months previously, that is, before 27 May 2017 and 19 September 2018, respectively. Nevertheless, the tribunal accepted that it was more likely than not that the expenditure that gave rise to the balancing payments would have been incurred after those dates. 27 May is less than halfway through the 2017 service charge year and one would expect any additional expenditure – that is, expenditure which could not be met from the advance service charge payments – to be incurred sometime after that date, towards the end of the year. Similarly, the relatively modest balancing payment for 2018 would probably have been incurred after 19 September, towards the end of that service charge year.

**Conclusion**

(2) In the light of the above, the tribunal does not consider that it can make any adjustments to the service charge sums set out in paragraph 13 above and accordingly, finds that the service charge payments due for the years in question are properly represented by those figures. It should be noted however, that no credit has been given for payments that have been made towards the service charge by the Applicant. It was agreed by the parties at the conclusion of the hearing that payments and appropriation were matters that could be dealt with by agreement. The tribunal expresses the hope that such matters, along with agreement in relation to payment of the arrears, can be dealt with in a mutually satisfactory manner.

DATED this 10th day of December 2020

C Green
Chairman