

A HIGHLY CHARGED BATTLE

■ The Leasehold Valuation Tribunal is about to rule on a dispute between Mayfair residents and a managing agent over claims of overcharging. **Mark Shepherd** reports

THE PAVEMENTS OF JERMYN STREET IN CENTRAL London are not lined with gold, but the street's affluence resonates with each footstep taken by its well-heeled residents. Fortnum & Mason is the local corner shop and the street boasts jewellers and tailors of fine suits.

But at the Bank Chambers apartment block on Jermyn Street, the landlord of which is the Royal Bank of Scotland, a war is being waged by residents who claim successive managing agents have overcharged them by nearly a quarter of a million pounds.

Following a three-year campaign spearheaded by Patric Walsh, the chairman of the Bank Chambers Residents' Association, the Leasehold Valuation Tribunal (LVT) is about to rule on whether the residents have been the victims of overcharging.

Walsh claims that between 2001 and 2004, Fineman Lever, DTZ and then Nelson Bakewell handed residents excessive bills for services that included a porter, lift maintenance, a washing machine, interior cleaning and window cleaning. Walsh carried out an investigation into the service charge levels with the help of an accountant, and claims that over four years the residents could have been overcharged by as much as £238,609.

In a final written submission to the tribunal, presented on 4 March, David Gibbons of 3 Stone Buildings, counsel for the Bank Chambers Residents' Association, said the case involved 'substantial and serious overcharging over a prolonged period of four years' and that 'the conduct of managing agents and/or auditors has fallen below acceptable standards and/or has contributed to the necessity for bringing this action'.

At the time of going to press, the tribunal was expected to announce its decision on 15 April.

Bank Chambers at 25 Jermyn Street comprises 38 luxury flats. Studio flats sell for as much as £225,000 and one-bedroom flats go for up to £450,000. The largest flats in the building are likely to command around £1m.

The three-day tribunal hearing which started in February at the offices of the Residential Property Tribunal Services at Alfred Place, was contested by Nelson Bakewell, which was appointed by the Royal Bank of Scotland in April 2003 to manage Bank Chambers.

Nelson Bakewell admitted before the hearing took place, having reviewed the figures, that 'adjustments' in favour of the tenants of £104,000 should be made to the service charge figure for the four-year period, only the last year of which covered Nelson Bakewell's period of management.

In a letter sent to the residents of Bank Chambers on 20 January 2005, two weeks before the hearing was due to take place, Nelson Bakewell said: 'We have reviewed the audited service charge expenditure over the years in question to determine expenditure that has been validly incurred.'

'Three of the four years predate our period of management. As a result, it is acknowledged by our client, the Royal Bank of Scotland, that adjustments should be made to the audited expenditure for all the years under scrutiny.'

CHANGE OF TONE

However, the conciliatory tone changes in the final paragraphs, where Nelson Bakewell appears to suggest that if the residents proceed with their application to the tribunal, any costs incurred by the Royal Bank of Scotland in defending the application would be passed back to the residents through service charges.

The letter states that 'the Bank is entitled to recover as part of the service charge any costs it incurs defending the application'.

It continues: 'It will seek to recover the costs it incurs with effect from Tuesday 1 February (including counsel's brief fee) should the residents association decide to proceed with the hearing of the application'.

Under tribunal rules, parties are prevented from recovering costs from one another regardless of the final decision.



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JERMYN STREET, LONDON, W1: SERVICE CHARGE

Service charge years ending March 2001 to March 2004.

The Bank Chambers Residents Association made an application to the Tribunal (LVT) for the determination of the liability to pay service charges.

We entered discussions with your appointed advisors, Hurford Salvi Carr, subsequent to withdrawal of their instructions, our dialogue has been with the Residents Association. However, we have been unable to reach an agreement. Accordingly the LVT hearing of the 2 & 3 February 2005.

We reviewed the audited service charge expenditure over the years in question and the expenditure that has been validly incurred. Three of the four years predate our management. As a result of our review it is acknowledged by our Client, the Royal Bank of Scotland plc (the Bank), that adjustments should be made to the audited expenditure for the years under scrutiny.

Bank Chambers - Service Charge				Residents Association
Y/e	Audited	Response to LVT	Adjustment	
2004	82,972.08	77,002.56	5,969.52	55,770.93
2003	70,247.20	62,830.42	7,416.78	32,878.36
2002	84,166.00	71,717.82	12,448.18	33,198.74
2001	116,750.00	37,695.50	79,054.50	14,957.00
Total	354,135.28	249,246.30	104,888.98	136,805.03

Your information and guidance we attach herewith the relevant correspondence submitted to the LVT supporting the figures highlighted above. This includes the correspondence prepared by your advisors at the time, Hurford Salvi Carr, and the Bank's responses to these letters submitted by their solicitors, Spectely Bircham in November 2004.

We attach herewith a schedule for your premises which shows the resulting credit balancing figures for each year arising from the adjustments in the audited expenditure incurred over the years in question.

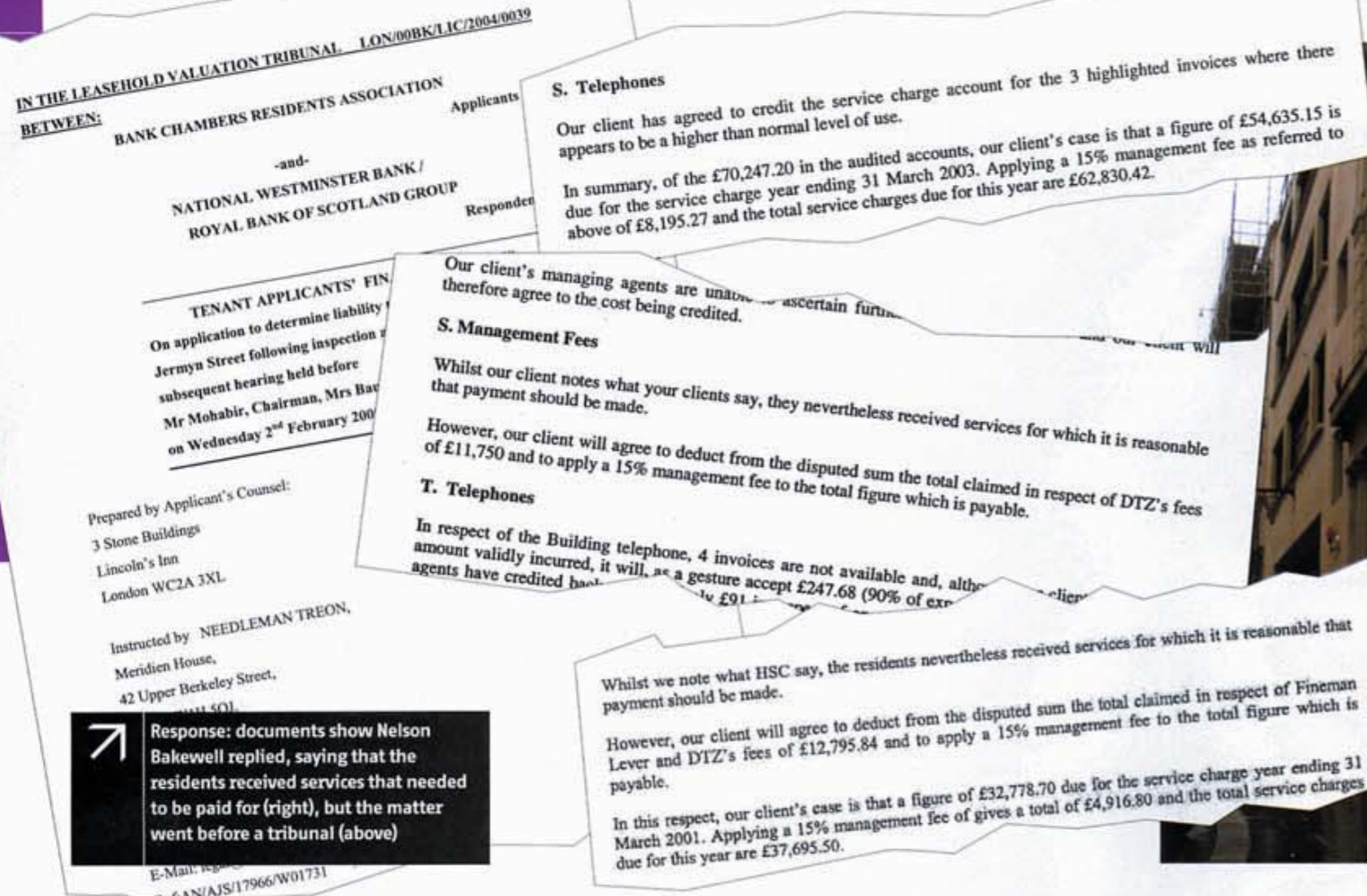
Finally, we must also point out that the Bank is entitled to recover as part of the service charge, any costs it incurs in defending the Application. In this respect, given the adjustments which have had to be made to the service charge accounts, the Bank will bear the costs it has incurred to date in doing so to date.

However, in light of the concessions made by the Bank, and the credit made to the Residents Association, we do not seek to reach an agreement in settlement to the Bank based on the figures provided by the Residents Association. We do consider the figures set out here reflect fair and reasonable expenditure incurred over the years in question.

We also point out that the Bank is entitled to recover as part of the service charge any costs it incurs in defending the Application. In this respect, given the adjustments which have had to be made to the service charge accounts, the Bank will bear the costs it has incurred to date in doing so to date.

However, in light of the concessions made by the Bank, and the credit made to the Residents Association, we do not seek to recover the costs it incurs in defending the Application. In this respect, given the adjustments which have had to be made to the service charge accounts, the Bank will bear the costs it has incurred to date in doing so to date.

↑ Correspondence: an extract from Nelson Bakewell's letter (above) sent to residents of 25 Jermyn Street (left) to outline its position, including the suggestion that the cost of defending the application would be passed back to residents through the service charge



Response: documents show Nelson Bakewell replied, saying that the residents received services that needed to be paid for (right), but the matter went before a tribunal (above)

This part of the letter dismayed one of the residents, Stephen Potel, a former head of Knight Frank's international hotels division, who is now in private consultancy. He says: 'It seriously frightened some of the older people in the building, who had sleepless nights over it.'

It was given attention on the final day of the hearing. Gibbons asked whether, in hindsight, it was an 'appropriate' letter for Nelson Bakewell to have sent.

Stephen Bailey replied for Nelson Bakewell that the letter was sent to tenants to outline the position as it stood.

Gibbons added in his written final submissions that the Royal Bank of Scotland would only be entitled to recover legal costs under the service charge where there was 'a clear provision for doing so under the lease' or where the costs were in connection with the recovery of service charge contributions.

Gibbons concluded: 'That does not cover the situation where the costs were incurred on an application initiated by the Bank Chambers Residents' Association.'

In the months leading up to the hearing and the sending of the Nelson Bakewell letter, there was a spate of correspondence between Speechly Bircham, the solicitor acting for Nelson Bakewell, and the residents' association's property adviser, Hurford Salvi Carr, and its solicitor Needleman Treon.

These letters, which have been seen by *Property Week*, shed further light on the alleged overcharging at 25 Jermyn Street. Hurford Salvi Carr, the property consultant, wrote to Speechly Bircham on 20 September 2004, outlining the objections of the residents to the service charges for the year ending 31 March 2001.

There was a charge for that period of £75,092 from Fineman Lever, the managing agent that preceded DTZ and Nelson Bakewell. The residents 'disputed' £50,721 of this figure. They said missing invoices made it difficult to quantify the exact level of the service charge they should be required to pay.

ROOM FOR DOUBT

The letter states: 'There are some items of expenditure for which no invoices are available, but which our clients [the residents' association] believe could possibly be paid; however, our clients are concerned that where no invoices are available for inspection, there has to be doubt about the services provided.'

In reply on 19 November 2004, Speechly Bircham conceded that 'our client [Nelson Bakewell] accepts that £75,092.37 is not supported by invoices and DTZ inherited this figure from Fineman Lever. Of this amount, our client accepts that £50,721.37 is disputed.'

The residents also said they would refuse to pay Fineman Lever's management fees,

15% of the total service charge, and made a catalogue of complaints against it and DTZ, the subsequent managing agent. These complaints included:

- The porter was not properly supervised and was regularly absent from the building. It also appeared that telephone calls had been made from 25 Jermyn Street to two other buildings the porter was alleged to have been attending.
- DTZ could have obtained better value for money on service contracts.
- DTZ could have had better communication with the lessees.
- DTZ failed to maintain the building to a proper standard by not repairing the ceiling in the lift following a fire in 1999, failing to replace net curtains on five levels and failing to repair malfunctioning radiators.

Nelson Bakewell responded through its solicitor that, despite these complaints, 'the residents nevertheless received services for which it is reasonable that payment should be made'. It said it would accept a final service charge payment of £37,695.50 for that period.

There was a similar exchange of letters detailing the service charge fees for the periods to 31 March 2002 and 31 March 2003.

In a letter sent in November 2004, the residents said they disputed £50,966 of the £84,165 service charge for 2002. In reply, on 30 December 2004, Nelson Bakewell's



THIS STOPPED BEING ABOUT MONEY LONG AGO. THIS IS ABOUT PRINCIPLE

PATRIC WALSH
BANK CHAMBERS RESIDENTS' ASSOCIATION

solicitor said it would accept £71,717.82.

For the period ending March 31 2003, the residents said on 4 October 2004 through their solicitor that they disputed £37,368 of the £70,247 service charge. Nelson Bakewell replied through its solicitor on 30 December 2004 that it would accept £62,830.42.

The residents also refused to pay DTZ's management fees for that period. The residents' solicitor stated in a letter to Speechly Bircham: 'Our clients have spent several thousand pounds in fees to consultants, lawyers and accountants, not to mention a considerable number of hours of work by

officers of the residents' association, to try to get DTZ and the freeholder to comply with their statutory obligations with regard to the accounts and the management of the building.

'There is no other way of obtaining reimbursement for these considerable costs other than by way of deduction from the managing agent's fees.'

The response from Nelson Bakewell was to agree to deduct from the disputed sum the total claimed in respect of DTZ's fees of £18,095.03 and to apply a 15% management fee to the figure that remained.

COURSE OF ACTION

By April 2003, Nelson Bakewell had been instructed by the Royal Bank of Scotland to take over the management of the building. Despite the concessions Nelson Bakewell offered the residents on behalf of the bank in respect of the previous managing agents, the residents felt that an application to the tribunal was their only course of action.

The residents also wish to contest Nelson Bakewell's service charges for the period to 31 March 2004, which stands at £77,002. They are critical of the way Nelson Bakewell has structured the employment of the porter for Bank Chambers. The porter is employed through Sackville Management Resources, a subsidiary of Nelson Bakewell.

RESOLVING SERVICE CHARGE DISPUTES

The Leasehold Valuation Tribunal is part of the Residential Property Tribunal Service and hears disputes between landlord, tenants and leaseholders. It is a panel of three independent, impartial members: a solicitor, a valuer, and a non-specialist lay person.

David Hewett, executive secretary of the Association of Residential Managing Agents, says the tribunal has an ever-increasing role in resolving disputes over service charges.

Many of the cases the tribunal hears involve much smaller amounts of money than the Bank Chambers case, which, says Hewett, represents the 'the upper end of the cases'. But despite the unusual nature of the Bank Chambers case, Hewett says the number of claims against service charges is rising.

'The government has brought in legislation enabling one to go to a leasehold valuation tribunal to have a decision made about whether service charges are reasonable, indicating there must be a problem,' he says.

'The figures involved in the Bank Chambers case are not the norm, but there are a lot of cases that come before the LVT that deal with the minutiae of service charges, and it is happening more frequently.'

The residents say they should not have to pay VAT on the porter's wages, or pay extra for cover when he is on holiday, since Sackville is providing the porter under a management service contract. In other words, the residents claim any additional costs for VAT or cover should be borne by Sackville.

Nelson Bakewell and DTZ refused to comment before the leasehold valuation tribunal had reached a decision.

In response to what Patric Walsh viewed as excessive charges over a four-year period, he established a fighting fund to pay the expected £40,000 legal bill of going to the tribunal.

'When we were chasing DTZ for answers it got to the point where they stopped replying whatsoever, so that channel of investigation was exhausted and we had to go to the next step,' he says.

Walsh says he would have gone to the tribunal much earlier if he had anticipated the length of time and paperwork it would take to get answers. 'If I knew then what I know now it wouldn't have dragged on for three years,' he says. 'Had we known about the tribunal, we would have gone there a long time ago. A lot of the time we depended and relied on the agents to sort out the mess, but we were wasting our time. We had to go higher.'

'This stopped being about money long ago. This is about principle,' he says. ■