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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00BB/LSC/2012/0795 [consolidated with LON/00BB/LSC/2013/0150]
Premises:	FLATS 2, 9 AND 22 THE FIRS, MILTON AVENUE, EAST HAM, LONDON E6 1GH
Applicant(s):	FLAT 22: MR AND MRS N PATEL FLAT 2: MR S THAICHETTI FLAT 9: MR M RAHMAN
Representative:	NONE
Respondent(s):	LONDON BOROUGH OF NEWHAM
Representative:	MR C McDONNELL
Date of hearing:	30 APRIL 2013
Appearance for Applicant(s):	MR PATEL MR THAICHETTI MR RAHMAN (ASSISTED BY HIS SON MR M RAHMAN)
Appearance for Respondent(s):	NONE
Leasehold Valuation Tribunal:	(1) MS L SMITH (LEGAL CHAIR) (2) MR J BARLOW JP FRICS
Date of decision:	3 JUNE 2013

ΣΙΡΥ

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £250 each is payable by the Applicants Mr Patel and Mr Rahman in respect of the major works described below as Major Works B. The bill for the major works in relation to Mr Thaichetti has been cancelled by the Respondent local authority.

(2) The Tribunal determines that nothing is payable by the Applicants in respect of the major works described below as Major Works A.

(3) The Tribunal determines that the sums set out below are payable by the Applicant Mr Patel in respect of the service charges for the years set out below in relation to Flat 22. It is for the parties to calculate the contributions for Mr Thaichetti and Mr Rahman based on the determination below.

Service charge year 2005/6	£726.83
Service charge year 2006/7	£682.22.
Service charge year 2007/8	£715.04
Service charge year 2008/9	£851.63
Service charge year 2009/10	£805.64
Service charge year 2010/11	£895.02
Service charge year 2011/12	£914.72.

(4) The Tribunal makes the determinations as set out under the various headings in this Decision.

(5) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(6) The Tribunal determines that the Respondent shall reimburse the Applicants within 28 days of this Decision in respect of the Tribunal fees paid by the Applicants.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), as to the amount of service charges, payable by the Applicants in respect of 2 sets of major works and in respect of the service charge years 2005/6, 2006/7, 2007/8, 2008/9, 2009/10, 2010/11 and 2011/12.

2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a purpose built block of 30 flats, some of which have been purchased from the Respondent local authority and some of which remain in their ownership and are tenanted.

4. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The Applicants hold a long lease of their respective flats (although Mr Thaichetti has recently sold his property in order to return to his home country). The Tribunal was provided with the lease in relation to Flat 22. The Applicants confirmed that their leases were all in common form. The leases require the lessor to provide services and the lessee to contribute towards their costs by way of a variable service charge. The relevant provisions of the lease are clauses 5(2) and 7 of and the Third Schedule to the lease. There was no dispute between the parties as to the relevant terms of the lease.

6. On 13 February 2013, the Tribunal gave directions for the progress of this case. That order required the Applicants to provide to the Respondent by 15 March 2013 a written statement of their case, setting out what they would be prepared to pay and providing alternative quotations or other evidence relied upon. They were also directed to provide what evidence they could to demonstrate their case that the Respondent had failed to comply with s20 Landlord and Tenant Act 1985 in relation to the major works. They were also directed to provide a copy of the Notice of Transfer to show the dates when they acquired their properties. The Respondent was required to respond to the Applicants' statement of case stating what was admitted and agreed and what remained in dispute by 17 April 2013. The Respondent was also directed to provide copies of invoices in relation to the disputed items, a statement setting out how s20 notices were served and when and whether other leaseholders had responded to the consultation. The Respondent was also directed to provide any other documents on which the Respondent wished to rely. The Respondents agreed to prepare the bundle and the Applicants were directed to provide documents for inclusion in the bundle by 19 April 2013. The bundles were to be produced by 26 April 2013.

7. On 5 March 2013, the Tribunal consolidated this case with case reference LON/00BB/LSC/2013/0150 which was a claim transferred from Bow County Court. This concerned proceedings issued by the Respondent in this case against Mr Rahman of Flat 9 for recovery of a sum of £1097.60 by way of unpaid service charges and administration charges. The Tribunal has dealt with that part of the claim in a separate determination in light of the fact that it concerns transferred proceedings. However, Mr Rahman raised the same issues in that case in defence of the claim as are raised by the lessees of Flats 2 and 22 in this case. Accordingly the decision in this case in relation to those issues applies equally to Mr Rahman.

The hearing

8. On 29 April 2013, the Respondent wrote to the Tribunal. The heading of the letter bears the reference of both this and the consolidated case. The content of that letter bears setting out in full:-

"I write to apologise for the fact that we have not provided the papers for the hearing above and will not be able to do so in time for the hearing tomorrow. I am also not able to appear in person to provide this apology.

The case was being dealt with by Brian Bailey, Senior Service Charge team leader who left his position suddenly and did not pass over the case before his sudden departure.
We would wish to contest the case if possible but realise that we are at the mercy of the Tribunal as to whether an adjournment would be possible given the circumstances. As mentioned at the initial pre-trial review we also would be interested in mediation in order to resolve this issue
Once again may I apologise for any inconvenience caused"

9. In relation to mediation, the Tribunal notes that the Respondent was represented at the directions hearing on 13 February 2013. There is no indication that the Respondent offered mediation but in any event the Tribunal indicated that it did not consider that mediation would be effective.

10. Rule 30(3) provides that a Tribunal may adjourn a hearing but that if this is done at the request of a party "*it must consider that 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 parties."

11. The Respondent provided little justification for an adjournment requested on the day before the hearing. There was for example no reason given why the person who signed the letter could not appear in person. The Applicants strongly opposed the application. As they explained, the dispute in relation to the major works had been ongoing for some 7 years. The local authority had failed to engage with the issues in correspondence with them, their conveyancing solicitors and their MP. It had been left to them to seek to ascertain what the position was by making requests for documents under the Data Protection Act. Mr Rahman's son explained that he had had to take a day off from his employment to attend. Mr Rahman senior also suffers from health problems which were being exacerbated by the stress of these proceedings. Mr Thaichetti told the Tribunal that he had to sell his property and was returning to his home country because he simply could not afford to continue with his ownership of the property with this dispute unresolved (although see below as to concession of the major works items in his case). The Applicants pointed out that the local authority had failed to comply with the directions in both this case and the conjoined case. The Applicants voiced concern that, if the adjournment were granted, the local authority would simply continue to delay matters.

12. The Tribunal was initially concerned that it would be unable to deal with the matter in the absence of proper bundles. The Applicants were able though to provide to the Tribunal the documents which they had sent to the Respondent which included a clear breakdown of the amounts claimed and disputed in relation to the service charge years as well as documents relating to the consultation notices. The Tribunal therefore took a short adjournment to ensure that it would be able to determine the issues with those documents and submissions and evidence from the Applicants. Having ascertained that there

was sufficient information and documentation, the Tribunal refused the Respondent's request for an adjournment. The Applicants obtained copies of the relevant documents and put together a bundle for the Tribunal so that the hearing was able to proceed.

The issues

13. As set out in the directions of 13 February 2013, the relevant issues for determination are as follows:

    (i) The payability and/or reasonableness of service charges for major works to the lift in the building which were the subject of consultation in 2005 (Major Works B)
    (ii) The payability and/or reasonableness of service charges for major works to walls, paths, lighting and car park barrier (Major Works A)
    (iii) The payability and/or reasonableness of service charges for the service charge year 2005/6
    (iv) The payability and/or reasonableness of service charges for the service charge year 2006/7
    (v) The payability and/or reasonableness of service charges for the service charge year 2007/8
    (vi) The payability and/or reasonableness of service charges for the service charge year 2008/9
    (vii) The payability and/or reasonableness of service charges for the service charge year 2009/10
    (viii) The payability and/or reasonableness of service charges for the service charge year 2010/11
    (ix) The payability and/or reasonableness of service charges for the service charge year 2011/12

14. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service charge item and amount claimed: Major Works B

15. The Applicants' contribution to works to the building described in the notices as "*erection of temporary lift, renewal of existing permanent lift, renewal of electrical mains and landlords services, renewal of the door entry system, renewal of BT wiring, provision of CCTV, decoration of the stair and lift lobby areas*". The total costs of the works is said to be £613,901.91 of which each Applicants' contribution is in the sum of £20,071.43.

The Tribunal's decision

16. The Tribunal determines that the amount payable in respect of Major Works B is £250 in relation to Flats 9 and 22 as the Tribunal is not satisfied that the Respondent properly complied with s20 Landlord and Tenant Act 1985 in relation to consultation. The major works bill for Flat 2 has been cancelled.

Reasons for the Tribunal's decision

17. The Tribunal was informed by Mr Thaichetti that he had recently completed on the sale of his property (Flat 2). In the course of discussions with the Respondent during that sale (which the Respondent had blocked for a number of months due to this dispute), the Respondent had finally indicated in a letter dated 25 July 2012 that it accepted that it was at fault for not notifying Mr Thaichetti when he bought the flat of his liability for the major works. Accordingly, the major works bill was "cancelled". Mr Thaichetti and the Tribunal understand this therefore cancelled the totality of Mr Thaichetti's liability for Major Works A and B (although there still appears to be an ongoing dispute in relation to a sum of £1550.30 – to what this relates is unclear).

18. Mr Patel purchased Flat 22 on 1 August 2005. He moved into the flat on that date. He also changed all his utility bills including Council tax bills on this date. Notwithstanding this, it appears that it took the local authority until June 2007 to recognise that he had purchased the flat (they welcomed him as a "new leaseholder" in a letter of 5 June 2007). Mr Rahman purchased Flat 9 on 26 October 2005. In the course of his purchase, his solicitors enquired about any planned major works. By a letter dated 26 September 2005, the local authority indicated that there were planned works for double glazing, internal and external communal repairs and redecoration, services upgrade and environmental works. It indicated that no budget had been allocated for these works. It also indicated that consultation would be carried out before major works were commenced implying that no such consultation exercise was underway.

19. The Tribunal accepts that it is for a vendor to indicate to a purchaser whether there are any matters affecting a property under purchase and that generally no liability would attach to the local authority for failing to disclose upcoming major works. The wording of the letter of 26 September 2005 is also potentially wide enough to encompass both Major Works A and B. Mr Rahman rightly points out that the letter is misleading in indicating that there was no budget allocated for the works given the stage that the consultation had reached in relation to, in particular, Major Works A.

20. The Tribunal though was more troubled by the apparent failure of the local authority to properly give notices to Mr Patel and Mr Rahman both of whom owned the properties at the time of the consultation notice of 7 November 2005. That notice invited comments and alternative contractors in relation to the lift works. Copies of those notices have been obtained by the Applicants through later correspondence and a request under the Data Protection Act ("DPA request"). It is clear in relation to Flat 22 that the notice was sent to the previous owners at their address (which was not Flat 22) although the local authority has also produced (with later correspondence) a copy of a notice addressed to "the Current Lessee/s" at the property address. In relation to Flat 9, the local authority has produced (in response to the DPA request) a copy of a notice addressed to "the Current Lessee/s" at the property address.

21. Mr Patel and Mr Rahman gave evidence to the Tribunal and answered the Tribunal's questions about those notices. Both were adamant that they had not received the notices which the local authority had later produced. Mr Patel

said that he had moved into his property immediately on purchase and would therefore have received the notice if delivered to the property address. Mr Rahman said that whilst he did not reside at the property, 7 November 2005 was shortly after he had purchased the property and he visited the property very frequently at that time. He too was adamant that if the notice had been delivered to the property address it would have come to his attention. This assertion is supported by his reaction when he received the second notice of 20 November 2006 giving a figure for the contract and his contribution. Mr Rahman responded on 14 December 2006 in the following terms:-

"With reference to your letter HOLG/MW/MT/1082 dated 20.11.06 I would like to inform you that I am totally unaware about this proposed work. This is the first letter that I received from you since I have bought the property about a year ago. You have written to me regarding contributing a substantial amount of £20,411.68 which totally shocked me. From the description of work it seems to me that the contractor has overpriced the costs of work. I would also like further clarification on how essential and of an emergency this nature of work is for our estate. As a leaseholder I should have the right to take part in consultation process to make my own observations regarding this proposed work. I am unable to afford such a large contribution cost and therefore I am requesting you to consider this case strongly at your earliest convenience"

22. The first notice which Mr Patel received was one dated 14 February 2007 (again addressed to "the Current Lessee/s"). Mr Patel wrote on 21 February 2007 in the following terms:-

"I received a letter on 19 February 2007 which is dated 14 February 2007 from the Council regarding some work to be carried out in our block. I am fully unaware about these works, could you please send me more detail and share of cost regarding these work to be carried on. Also could you please explain whether these works are mandatory or can we choose not to carry out the work?"

23. Section 20 of the Landlord and Tenant Act 1985 requires the landlord to "give notice" to the tenant. It does not require the notice to be actually received and it might be accepted to have been given if there is good reason why it might not have been received. However, in circumstances where both Mr Patel and Mr Rahman were both at the properties at the dates of the notices and where both are adamant that the notice was not received (which is borne out by their reaction when they received the later notices), the Tribunal cannot be satisfied that the notices were actually given notwithstanding that the local authority may have file copies of the standard notices relating to these flats.

24. In the absence of a proper consultation process under section 20, the landlord is confined to recovering the statutory maximum figure of £250 per flat. The Tribunal accordingly determines that this figure is reasonable and payable for each of Flats 9 and 22. Recovery in relation to Flat 2 has been cancelled (see paragraph 17 above)

Service charge item and amount claimed: Major Works A

25. The Applicants' contribution to major works in relation to a new front brick and rail walling, new front paths, upgrade of lighting and installation of automatic parking barrier. The actual total block cost of the works is said to be £66,647.30. The proportion payable by the Applicants is in the sum of £2282.62 each.

The Tribunal's decision

26. The Tribunal determines that nothing is payable in relation to Major Works A on the basis that the works were not reasonably necessary.

Reasons for the Tribunal's decision

27. The Applicants made the same submissions in relation to these major works as in relation to Major Works B, namely that the local authority had failed to comply with s20 Landlord and Tenant Act 1985 by failing to give notice. However, in the case of these works, the first notice was given on 31 January 2005 and the second on 20 July 2005. Mr Patel and Mr Rahman had purchased their properties after that date. Accordingly they were not in a position to confirm or deny that the notices had been received. They relied on the response they had received from their vendors during the conveyancing process which had indicated in both cases that there were no major works in relation to which the vendors had received notice. They submitted that, given the woeful state of the Respondent's systems as evidenced by the Applicants' non- receipt of the notices in relation to the later works, it was reasonable for the Tribunal to conclude that no notices had been received by their vendors and therefore were not given. The Tribunal rejects those submissions. There was no evidence from the vendors of either property to that effect. The Tribunal notes that, in both cases, the vendors had indicated in response to standard enquiries during the conveyancing process that they had not received any notices relating to major works. However, in the absence of direct evidence from those persons, the Tribunal could not infer from those responses that no notices had been received rather than that the vendors had failed to disclose that they had received such notices.

28. All of the Applicants though had acquired their properties by the time of the works which were carried out during 2007/2008 (the invoice is dated 7 October 2008). They submitted that the works were not necessary. The works had involved the demolition of a perfectly good brick wall and reinstatement with a set of railings, the building of a small path bedded on sand which was not needed, changes to the covers of the lighting (which continued not to work thereafter) and the removal of a working car park barrier secured with a padlock and replacement with an automatic barrier which had since caused problems and often did not work. They showed the Tribunal photographs of the outside of the block since the works and gave evidence about the lack of necessity of the works as they saw it. They submitted that the changes were aesthetic in nature and had not been required.

29. Since no-one from the local authority was in attendance it was difficult for the Tribunal to ascertain the need for the works. The Tribunal notes that the notice of 31 January 2005 (which the Applicants obtained via the DPA

request) noted that the works were "tenant-led" and would "improve the safety and security of the estate and improve resident parking facilities". There is no evidence before the Tribunal of any structural need for the works and the evidence of the Applicants, two of whom live or lived in the property both before and after the works were carried out, was that the works were so minimal that they made no difference to safety or security and that the installation of the automatic parking barrier, far from improving facilities, had made matters worse.

30. The Tribunal has carefully considered the Applicants' submissions and the documents in relation to the need for the works as well as the fact that the second notice indicated that no observations were received in response to the first notice. Absent any evidence from the local authority to show the need for the works or the full extent of the works, the Tribunal was not satisfied that the works were reasonably necessary. Accordingly, nothing is payable by the Applicants in this regard.

Service charge item and amount claimed

31. Service charges in relation to service charge year 2005/6 in the actual sum of £766.82 (for Flat 22).

The Tribunal's decision

32. The Tribunal determines that the amount of service charges reasonable and payable in respect of the service charge year 2005/6 for Flat 22 is £726.83. The other Applicants' proportion of that figure is for the parties to calculate.

Reasons for the Tribunal's decision

33. The Applicants disputed the sum claimed for minor repairs in the sum of £182.88 and ground maintenance in the sum of £17.11. The remainder of the items were not disputed.

34. In relation to minor repairs, the Applicants disputed this sum as they had requested and had not been provided with a schedule (unlike later years where a schedule had been produced). They indicated that they considered £150 to be reasonable in relation to this item in the absence of substantiating invoices. Since there is no evidence from the Respondent in relation to the minor works carried out, the Tribunal accepts the Applicants' concession in relation to what is reasonable and determines that £150 is a reasonable figure.

35. In relation to ground maintenance, the Applicants explained that the garden to the building was very small and badly tended. The grass had only been cut once or twice in the period during which they had resided there and not at all for about 3-4 years. Trees were not regularly lopped (so much so that one of the large branches from one of the trees had fallen). None of the residents use the garden. They indicated therefore that they were not prepared to pay anything under this head. The Tribunal notes that ground maintenance is likely to include more than just grass cutting and it is therefore prepared to find that some payment is reasonable. It considers, in the absence of evidence of the amount actually paid for this service, that £10 is reasonable.

36. The above adjustments mean that the service charge for 2005/6 which is determined to be reasonable and payable is £726.83 for Flat 22. The Tribunal has determined the service charge for this and other years by reference to the service charge demands levied for Flat 22 since those were the most complete documents available to the Tribunal. The contribution for the other Applicants has not been calculated since the method by which the Respondent calculates this will be determined by a number of factors such as rateable value and may differ therefore for Flats 9 and 2.

Service charge item and amount claimed

37. Service charges in relation to service charge year 2006/7 in the actual sum of £841.17 (Flat 22)

The Tribunal's decision

38. The Tribunal determines that the amount of service charges reasonable and payable in respect of the service charge year 2006/7 for Flat 22 is £682.22. The other Applicants' proportion of that figure is for the parties to calculate.

Reasons for the Tribunal's decision

39. In relation to the year 2006/7, the Applicants disputed the sums claimed for caretaking in the sum of £304.67, ground maintenance in the sum of £19.24, management in the sum of £207.90 and minor repairs in the sum of £157.13. They indicated that they were prepared to pay £200 for caretaking, nothing in relation to ground maintenance, £170 in relation to management and £96.50 in relation to minor repairs.

40. In relation to caretaking the Applicants pointed out that the previous year's charge was £244.66 and had increased by a significant amount. Further the caretaker was at the building only for a limited number of hours. The schedule of what the caretaker actually did was produced. This showed that caretaking was provided on each weekday but that the caretaking services were also carried out at 2-3 other blocks on each day. The tasks carried out daily were limited. The Tribunal notes that the Applicants did not dispute the caretaking charges for the service charge year 2005/6 in the sum of £244.66. That sum should be adjusted to allow for some inflation. Allowing for a 5% increase with some rounding of the figure gives a figure of £255 which the Tribunal considers reasonable under this head.

41. In relation to ground maintenance, for the reasons given at paragraph 35 above, the Tribunal considers £10 to be reasonable.

42. In relation to minor repairs, an actual breakdown for these was supplied which showed a total overall cost for Flat 22 of £89.99. There is no explanation why the Respondent claims £157.13 when its own schedule gives a total figure of £89.99. Accordingly, the Tribunal determines that £89.99 is reasonable.

43. In relation to management charges, the amount claimed in 2005/6 which the Applicants had not disputed was £168.30. That sum should be adjusted to allow for some inflation. Allowing for a 5% increase with some rounding of the

figure gives a figure of £175 which the Tribunal considers reasonable under this head.

44. The above adjustments mean that the service charge for 2006/7 which is determined to be reasonable and payable is £682.22 for Flat 22. The Tribunal has determined the service charge for this and other years by reference to the service charge demands levied for Flat 22 since those were the most complete documents available to the Tribunal. The contribution for the other Applicants has not been calculated since the method by which the Respondent calculates this will be determined by a number of factors such as rateable value and may differ therefore for Flats 9 and 2.

Service charge item and amount claimed

45. Service charges in relation to service charge year 2007/8 in the actual sum of £1108.91(Flat 22)

The Tribunal's decision

46. The Tribunal determines that the amount of service charges reasonable and payable in respect of the service charge year 2007/8 for Flat 22 is £715.04. The other Applicants' proportion of that figure is for the parties to calculate.

Reasons for the Tribunal's decision

47. In relation to the service charge year 2007/8, the Applicants disputed the claims for caretaking in the sum of £385.56, ground maintenance in the sum of £19.82, management fees in the sum of £241.56 and mechanical and electrical works in the sum of £216.93. The Applicants indicated that they were willing to pay £210 for caretaking, nothing for ground maintenance, £190 for management fees and nothing for mechanical and electrical works unless they received the invoice for this work with a breakdown.

48. In relation to caretaking services, the Tribunal considers that it is reasonable to increase the charge for 2006/7 of £255 (paragraph 40 above) by 5% which after some rounding of the figure gives a figure of £270.

49. For the reasons stated at paragraph 35 above, the Tribunal considers that £10 is reasonable for ground maintenance.

50. In relation to management fees, the Tribunal considers that it is reasonable to increase the charge for 2006/7 of £175 by 5% to allow for inflation which after some rounding of the figure gives a figure of £190.

51. In relation to mechanical and electrical items, there is no evidence as to what that relates and this does not arise in other years. There is therefore nothing to which the Tribunal can compare the charge to determine reasonableness. No invoices or schedule has been produced to the Applicants by the Respondent for this item. Accordingly, the Tribunal determines that this is not payable. The Tribunal notes though that the Applicants have indicated that they are willing to pay the amount claimed or some other reasonable amount if provided with the invoice and breakdown for this sum.

52. The above adjustments mean that the service charge for 2007/8 which is determined to be reasonable and payable for Flat 22 is £715.04. The Tribunal has determined the service charge for this and other years by reference to the service charge demands levied for Flat 22 since those were the most complete documents available to the Tribunal. The contribution for the other Applicants has not been calculated since the method by which the Respondent calculates this will be determined by a number of factors such as rateable value and may differ therefore for Flats 9 and 2.

Service charge item and amount claimed

53. Service charges in relation to service charge year 2008/9 in the actual sum of £897.61

The Tribunal's decision

54. The Tribunal determines that the amount of service charges reasonable and payable in respect of the service charge year 2008/9 for Flat 22 is £851.63. The other Applicants' proportion of that figure is for the parties to calculate.

Reasons for the Tribunal's decision

55. In relation to the service charge year 2008/9 the Applicants disputed the claims for caretaking in the sum of £324.22, management neighbourhood services team in the sum of £49.50 and grounds maintenance in the sum of £16.76. They indicated that they were willing to pay an amount adjusted by inflation based on what was found to be reasonable in the previous year for caretaking. For the reasons given previously they were not willing to pay for grounds maintenance. They were not willing to pay for management neighbourhood services team as they did not require this service (which was said to be to improve security) and when they had cause to seek assistance for security reasons, they had received no help from the security officers.

56. In relation to caretaking services, the Tribunal considers that it is reasonable to increase the charge for 2007/8 of £270 (paragraph 48 above) by 5% which after some rounding of the figure gives a figure of £285.

57. For the reasons stated at paragraph 35 above, the Tribunal considers that £10 is reasonable for ground maintenance.

58. In relation to the management neighbourhood team, the Tribunal notes that in the service charge year 2008/9, the Respondent appears to have changed the method by which it charges for management and has broken down the charges into management leasehold services team (£124.74), management neighbourhood services team (£49.50) and management repairs team (£7.92). The total of those management charges is £182.16 which compares favourably with the management charge for previous years. Accordingly the Tribunal finds that the amount claimed is reasonable.

59. The above adjustments mean that the service charge for 2008/9 which is determined to be reasonable and payable for Flat 22 is £851.63. The Tribunal has determined the service charge for this and other years by reference to the

service charge demands levied for Flat 22 since those were the most complete documents available to the Tribunal. The contribution for the other Applicants has not been calculated since the method by which the Respondent calculates this will be determined by a number of factors such as rateable value and may differ therefore for Flats 9 and 2.

Service charge item and amount claimed

60. Service charges in relation to service charge year 2009/10 in the actual sum of £1300.63. (estimated amount of £1382.52 with end of year adjustment crediting the sum of £81.89)

The Tribunal's decision

61. The Tribunal determines that the amount of service charges reasonable and payable in respect of the service charge year 2009/10 for Flat 22 is £805.64. The other Applicants' proportion of that figure is for the parties to calculate.

Reasons for the Tribunal's decision

62. For the service charge year 2009/10 the Applicants disputed the claims for caretaking services in the sum of £389.06, ground maintenance in the sum of £16.76, landlord controlled heating in the sum of £192.90, mechanical and electrical works in the sum of £206.27, management neighbourhood services team in the sum of £49.52 and management repairs team in the sum of £12.38.

63. The Applicants indicated that they were willing to pay an amount adjusted by inflation based on what was found to be reasonable in the previous year for caretaking. For the reasons given previously they were not willing to pay for grounds maintenance. They were not willing to pay for management neighbourhood services team for the reasons given previously. They also indicated that they were not willing to pay for the repairs team as they did not understand what this cost was for and it should already be included in minor repairs. The Applicants indicated that they were not willing to pay anything for mechanical and electrical works unless they received the invoice for this work with a breakdown. In relation to landlord controlled heating, they indicated that previous years' charges had varied between £0 and £5. Suddenly, a large sum was being claimed for this and no explanation had been given for this nor had any utility bills been supplied to justify the charge. They explained that each flat had underfloor heating and each was responsible for its own bills. There was no heating in the common parts and lighting of the common parts was charged as a separate item.

64. In relation to caretaking services, the Tribunal considers that it is reasonable to increase the charge for 2008/9 of £285 (paragraph 56 above) by 5% which after some rounding of the figure gives a figure of £300.

65. For the reasons stated at paragraph 35 above, the Tribunal considers that £10 is reasonable for ground maintenance.

66. For the reasons stated at paragraph 58 above, the Tribunal considers that the amounts claimed for management, both for neighbourhood services team of £49.52 and for the repairs team of £12.38, are reasonable.

67. In relation to mechanical and electrical items, there is no evidence as to what that relates. No invoices or schedule has been produced to the Applicants by the Respondent for this item. Accordingly, the Tribunal determines that this is not payable. The Tribunal notes though that the Applicants have indicated that they are willing to pay the amount claimed or some other reasonable amount if provided with the invoice and breakdown for this sum.

68. In relation to landlord controlled heating, in the absence of any explanation as to why this fairly significant charge has suddenly arisen or any invoices to justify the charge, the Tribunal determines that nothing is payable in this regard.

69. The above adjustments mean that the service charge for 2009/10 which is determined to be reasonable and payable for Flat 22 is £805.64. The Tribunal has determined the service charge for this and other years by reference to the service charge demands levied for Flat 22 since those were the most complete documents available to the Tribunal. The contribution for the other Applicants has not been calculated since the method by which the Respondent calculates this will be determined by a number of factors such as rateable value and may differ therefore for Flats 9 and 2.

Service charge item and amount claimed

70. Service charges in relation to service charge year 2010/11 in the actual sum of £1275.29 (Flat 22)

The Tribunal's decision

71. The Tribunal determines that the amount of service charges reasonable and payable in respect of the service charge year 2010/11 for Flat 22 is £895.02. The other Applicants' proportion of that figure is for the parties to calculate.

Reasons for the Tribunal's decision

72. In relation to the service charge year 2010/11, the Applicants disputed the amounts claimed for caretaking in the sum of £389.06, landlord controlled heating in the sum of £177.13, water tanks in the sum of £76.96, car park barrier works in the sum of £26.88, neighbourhood services team in the sum of £49.52, repairs team in the sum of £7.92 and minor repairs in the sum of £180.24. They indicated that they were willing to pay an amount adjusted by inflation based on what was found to be reasonable in the previous year for caretaking. They were not willing to pay for management neighbourhood services team or repairs team for the reasons given previously. The Applicants indicated that they were not willing to pay anything for mechanical and electrical works unless they received the invoice for this work with a breakdown. In relation to landlord controlled heating, they were not prepared to pay anything until this item was explained to them and supporting invoices

were provided. In relation to minor repairs they were willing to pay only £150 until they were provided with invoices.

73. In relation to caretaking services, for the reasons stated above, the Tribunal considers that it is reasonable to base this on the previous year's charge. However the charge found to be reasonable in 2009/2010 is £300 (see paragraph 64 above) which the Tribunal considers is towards the top end of what is reasonable. Accordingly, the Tribunal considers that £300 remains reasonable under this head.

74. For the reasons stated at paragraph 58 above, the Tribunal considers that the amounts claimed for management, both for neighbourhood services team (in the sum of £49.52) and for the repairs team (in the sum of £7.92), are reasonable.

75. In relation to landlord controlled heating, for the reasons stated at paragraph 68 above, the Tribunal determines that nothing is payable in this regard.

76. The item for water tanks is totally unexplained. It could well be that an inspection of these is necessary but since there is no explanation for the charge nor any invoice substantiating it, the Tribunal determines that nothing is payable under this head. The Tribunal notes that the Applicants would be willing to pay this or some other reasonable charge for this item if an explanation and substantiating documentation are provided.

77. In relation to car park barriers, the Tribunal was told by the Applicants that the automated barrier installed as part of Major Works A often breaks down. This would explain a charge for this item. The Applicants objected to paying for this on the basis either that it was or should be included in lifts and lighting or alternatively that they should not have to pay for this as they did not want the automatic barrier and the fact that it broke down proved the deficiency in the major works carried out at the time. The Tribunal sees no reason why this item should be or should be thought to be included in lifts and lighting. Although the Tribunal has found that the Applicants should not have to pay for Major Works A on the basis that those works were not reasonably necessary, this does not mean that they are exempt from any charges which arise following the carrying out of those major works. The Tribunal considers therefore that something should be payable under this heading even though there are no invoices provided to substantiate this charge. The Tribunal considers that £20 is reasonable.

78. In relation to minor repairs, no schedule has been provided to cover the year 2010/11. Since there is no evidence from the Respondent in relation to the minor works carried out, the Tribunal accepts the Applicants' concession in relation to what is reasonable and determines that £150 is a reasonable figure.

79. The above adjustments mean that the service charge for 2010/11 which is determined to be reasonable and payable for Flat 22 is £895.02. The Tribunal has determined the service charge for this and other years by reference to the service charge demands levied for Flat 22 since those were the most complete

documents available to the Tribunal. The contribution for the other Applicants has not been calculated since the method by which the Respondent calculates this will be determined by a number of factors such as rateable value and may differ therefore for Flats 9 and 2.

Service charge item and amount claimed

80. Service charges in relation to service charge year 2011/12 in the actual sum of £1279.86 (Flat 22)

The Tribunal's decision

81. The Tribunal determines that the amount of service charges reasonable and payable in respect of the service charge year 2011/12 for Flat 22 is £914.72. The other Applicants' proportion of that figure is for the parties to calculate.

Reasons for the Tribunal's decision

82. In relation to the service charge year 2011/12, the Applicants disputed the amounts claimed for caretaking services in the sum of £389.02, landlord controlled heating in the sum of £186.83, water tanks in the sum of £23.02, car park barriers in the sum of £19.94, neighbourhood services team in the sum of £49.50, repairs team in the sum of £9.90 and minor repairs in the sum of £231.27. They indicated that they were willing to pay an amount adjusted by inflation based on what was found to be reasonable in the previous year for caretaking. They were not willing to pay for management neighbourhood services team or repairs team for the reasons given previously. In relation to landlord controlled heating, they were not prepared to pay anything until this item was explained to them and supporting invoices were provided. In relation to minor repairs they were willing to pay only £60 until they were provided with invoices. For the reasons given previously they were not willing to pay for car park barriers work.

83. In relation to caretaking services, the Tribunal considers that it is reasonable to increase the charge for 2010/11 of £300 (paragraph 64 above) by 5% which after some rounding of the figure gives a figure of £315.

84. In relation to landlord controlled heating, for the reasons stated at paragraph 68 above, the Tribunal determines that nothing is payable in this regard.

85. For the reasons given at paragraph 76 above, the Tribunal determines that nothing is payable in relation to water tanks.

86. At paragraph 77 above, the Tribunal determined that the sum of £20 was reasonable in relation to works to the car park barrier. Since the amount claimed for 2011/12 is less than £20, the Tribunal determines that the amount claimed of £19.94 is reasonable.

87. For the reasons stated at paragraph 58 above, the Tribunal considers that the amounts claimed for management, both for neighbourhood services team (in the sum of £49.50) and for the repairs team (in the sum of £9.90), are reasonable.

88. In relation to minor repairs, no schedule has been provided to cover the year 2011/12. However, the Applicants had not disputed an amount of £150 in relation to previous years. The Tribunal therefore determines that £150 is a reasonable figure.

89. The above adjustments mean that the service charge for 2011/12 which is determined to be reasonable and payable for Flat 22 is £914.72. The Tribunal has determined the service charge for this and other years by reference to the service charge demands levied for Flat 22 since those were the most complete documents available to the Tribunal. The contribution for the other Applicants has not been calculated since the method by which the Respondent calculates this will be determined by a number of factors such as rateable value and may differ therefore for Flats 9 and 2.

Application under s.20C and refund of fees

90. At the end of the hearing, the Applicants made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they had paid in respect of the application/ hearing. Taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.

91. In the application form, the Applicants applied for an order under section 20C of the 1985. Taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: 
Ms L Smith

Date: 3 June 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to a Leasehold valuation 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -

(a) complied with in relation to the works or agreement or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount –

(a) an amount prescribed by, or determined in accordance with the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by , or determined in accordance with, the regulations.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
- (c) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
- (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (e) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Service Charges (Consultation Requirements) (England) Regulations 2003

Paragraph 6
For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

Paragraph 7
(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5) where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works-

(a) in a case where public notice of those works is required to be given are those specified in Part 1 of Schedule 4;
(b) in any other case, are those specified in Part 2 of that Schedule.

Schedule 2, Part 2
Paragraph 8
(1) The landlord shall given notice in writing of his intention to carry out qualifying works –

(a) to each tenant....

(2) The notice shall-

(a) describe in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
(b) state the landlord's reasons for considering it necessary to carry out the proposed works;
(c) invite the making, in writing, of observations in relation to the proposed works; and
(d) specify –
  (i) the address to which observations may be sent;
  (ii) that they must be delivered within the relevant period;
  (iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant... to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.