10861

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2014/0507**
Property	:	**28 Granard House, Bradstock Road, London E9 5BN**
Applicant	:	**Ms Megan Williams and Roberto Massari**
Representative	:	**Ms Megan Williams**
Respondent	:	**The Mayor and Burgesses of the London Borough of Hackney**
Representative Also in attendance on behalf of the Respondent	:	**Mr Patrick Maxwell : Mr Marius Ciuca paralegal, Ms Helen Lockhart S.C Accounts Team Leader Mr David Newell S.C Accounts Officer Mr Greg Chadwick Estate Inspection Officer**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Ms M W Daley LLB (hons) Mr M Cartwright FRICS Mr R Turner BA JP**
Date and venue of Hearing	:	***23 February 2015 at 10 Alfred Place, London WC1E 7LR***
Date of Decision	:	**23 April 2015**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The tribunal makes no 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].

The application

1. The Applicants sought 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 Applicant.

2. An oral case management hearing took place on 23 October 2014, when the following issues were identified to be determined by the Tribunal-: *"Service charge accounts for both 2012/13 and 2013/14 have now been issued and in respect of those years the applicants challenge the reasonableness of a number of the actual costs incurred and their liability to pay a service charge in respect of the concierge costs. The applicants challenge the reasonableness of the estimated costs for 2014/15 and their liability to pay a service charge in respect of the estimated concierge costs."*

3. The application for a determination also included service charges in respect of major works in the sum of £12,352.16. However this matter was settled by way of mediation and the issues concerning this matter were not before this Tribunal for the purpose of a determination

The background

4. The Property which is the subject of this application is a purpose built 2 bedroom maisonette on the 3rd and 4th floors, situated in an 11 storey block of flats, on an estate of similar properties comprising 11 blocks. The block in which the applicants' flat is situated, is one of a pair of buildings built in the 1950s-1960's. The Applicants' block of flats comprises 108 units.

5. The Applicant holds a long lease of the property pursuant to a lease dated 13 November 2000,(since assigned to the Applicants). The lease requires the landlord to provide services, and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

6. The Respondent is a local authority. Who are also responsible by way of a separate arms-length management company for the management of the estate and block in which the Applicants' premises are situated.

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

The hearing

8. At the hearing the Applicant Ms Williams was present, Mr Massari was not present. Ms Williams indicated that she would be representing Mr Massari, and also speaking on her own behalf. The Respondent was represented by Counsel, Mr Patrick Maxwell.

9. The Tribunal indicated that it would be helpful if the parties provided further details concerning the layout of the estate. Counsel referred the Tribunal to the First Schedule which defined the estate as-*: All That area of land shown for the purposes of identification only outlined in green on the attached plan marked 'A' comprising land garden(s) flats garages parking spaces stores and premises known as Gascoyne Estate in the London Borough of Hackney.*

10. The Tribunal were referred to the estate plan which was marked to delineate the boundary of the estate.

Service charge item & amount claimed

The Service charges 2012/13 in the sum of £2118.34

11. The Applicant, Ms Williams, ("The Applicant") indicated that the following charges for the period 2012/13 were not in dispute: building insurance, lift maintenance and lift electricity.

12. The Tribunal indicated that where the same head of charge was disputed for more than one year (for example the estate cleaning), the Tribunal would consider all of the years on the same issue. If any of the years presented different issues, then it would be necessary for the Tribunal to distinguish that issue and make a decision on that issue and apply it, for the year in question.

General Services -Estate cleaning

13. The Applicants in their statement of case stated -: "*General Services: We assume this is about keeping the surrounding areas clean and in good order as stated in the Lease, yet there is regular fly-tipping at the back of the buildings abysmal lawn maintenance, paving slabs left to drift into a state of serious hazard shoddy repairs...we are unable to understand why we are paying for such a sub- standard service and one which is clearly in breach of the Landlord's obligations to keep the estate in good repair...The cost is only marginally less than what new developments with beautiful and high maintenance gardens etc. pay...Is it reasonable that we should pay towards the installation of a bollard several blocks away simply because the Council has extended the curtilage of the Estates boundaries?*"

14. The Tribunal were referred to two charges on the estate for cleaning, one in the sum of £68.71 for the period 2012/13 (the Applicant's share was 0.1136 of the overall cost) and £76.43 for the period 2013/14.

15. A major source of Ms Williams' objection to the cost of the cleaning on the estate was the fact that the estate experienced problems with fly tipping. Ms Williams objected to the fact that items had been left outside the fire door, and had not been removed immediately. As well as being unsightly, Ms Williams was concerned that this was in breach of health, and safety.

16. The Applicant also referred to photographs that she had taken of fly tipping on the estate over the Christmas/New year period (2012/13).The Applicant also referred to records of complaints that she had made to the Respondent.

17. The Applicant stated that she had made complaints to a Stella Nicolson who had been employed as Head of Leaseholder services and had subsequently left the Respondent's employment. These complaints were made firstly by email, and then followed up by meetings at the council offices.

18. The Applicant referred to an email dated 10 December 2012, in which she complained about the obstruction caused by fly tipping in front of the fire door. In her email Ms Williams stated that when she went to complain to the concierge, there was a notice on the door stating that the "Concierge was on patrol".

19. In reply to this issue the Respondent stated that the Applicants were charged for a bi-weekly service, this meant that the fly tipping was normally cleared within the week. The Respondent also relied upon the witness statements of Ms Lockhart and Mr Jim Yeend which confirmed this.

20. Also at Section D of the Statement of Case the Respondent stated-: "... *Various small concerns are identified on Granard House giving rise to pass marks. Some items were identified occasionally as failing the cleanliness standard due to factors beyond the control of Respondent's operatives because improvement works were carried out. Overall the findings of the cleaning inspections seem to suggest that the standard of cleanliness is identified either acceptable or good. On this basis the Respondent submits that it observes its covenants with regards to maintaining an adequate standard of cleanliness...*"

21. There was also a letter dated 16.4.2013 sent from Mr Newell which amongst other matters stated that Ms Nicholson would write to the tenants at the estate informing them of the duties and obligation to ensure that the estate was kept clean and tidy. A copy of the letter dated 6.05.2013 was enclosed in the hearing bundle. The Tribunal were also shown a copy of the Estate Environment Estate Cleaning Schedule which set out that fly tipping would be dealt with on Tuesdays and Thursdays.

22. The Tribunal by way of its questions noted that the issue of fly-tipping was a frequently reoccurring problem on estates, accordingly the Tribunal wanted to know what the Applicants' expectations of the estate had been at the time of purchasing the premises. Ms Williams stated that "*...overall the appearance of the estate was squalid but that was what I could afford...*" She accepted that the Respondent had a system, in relation to fly tipping. However in her opinion, such system as the Respondent had was not working.

23. Ms Williams raised the same issues for the estate cleaning for 2013/14. She stated that additionally, there had been major works undertaken at the premises during this period. Her observations were that whilst the major work were being undertaken there had been less fly tipping in the immediate area around her block of flats. However the fly tipping had moved beyond the immediate area to other parts of the estate.

24. There had also been in her view, less cleaning being undertaken on the estate whilst the Major Works contractors were on site. Ms Williams appeared to be asserting two things; the fact that fly-tipping was not such a problem when the work was being undertaken meant that it could, in general be better managed by the Respondent. In her view the fact that there had been less cleaning on the estate supported her claim for a decrease in the actual charges.

25. Counsel, Mr Maxwell, stated on the Respondent's behalf, that the cleaning was provided by in-house contractors. The costs were based on the actual costs of cleaning the estate and the block for that period. In addition the cleaning contract had been awarded in-house based on a best value assessment which had taken place in 2007, this meant that the Applicants were receiving services which were value for money.

26. The Tribunal asked about whether there had been a subsequent bench marking exercise. Counsel, conceded that there had been no further benchmarking carried out, however notwithstanding this he stated that the cost were low compared to those that would be charged by a firm of commercial cleaners. Given this, the cost was considered to be reasonable.

27. Counsel stated that although there were major works being undertaken, cleaning was still on-going on the estate. He accepted that the presence of the contractors may have inhibited some people from fly-tipping, however there was still on-going cleaning needed on the estate as in all likelihood the fly-tipping had moved to other parts of the estate. Cleaning costs had been incurred during this period. Counsel submitted that the costs for the period were reasonable and payable.

28. The estimated charge for estate cleaning for 2014-15 was £67.93. This charge was objected to by the Applicant on the same basis as the other charges for cleaning the estate .Ms Williams also considered that throughout both periods in issue the service provided was poor and not reflective of the cost charged.

29. Counsel rejected this argument and relied upon clause 3A of the lease, which required the leaseholders to-: " *Pay to the Lessor such annual sums as may be notified to the Lessee by the Lessor from time to time as representing the due and proper proportion of the reasonably estimated amount required to cover the cost and expenses incurred...*"

30. Counsel also referred to Witness Statement of Ms Lockhart which dealt with how the estimated charges are calculated. In her statement, Ms Lockhart dealt with how the estimated charges were calculated. This was by taking into account the actual charges for the last three to five years and then coming up with an average in an effort to provide an accurate estimate.

The decision of the Tribunal

31. The Tribunal determines that the cost of the estate cleaning for the period 2012/13 in the sum of £68.71, and 2013/14 in the sum of £66.28, and the estimated charges of £67.93, was reasonable and payable.

32. The Tribunal noted that the Applicant in support of her claim relied upon photographs which were taken by the Applicant over Christmas/New Year period (2012/2013), the photographs which were taken over a short period of time (a matter of days) depicted the fact that the estate had a very serious problem with fly tipping.

33. The Tribunal noted that although the photos were taken over a few days, the items of rubbish photographed were different items rather than the same items left for a number of days. This confirmed that the rubbish was cleared on a regular, although not daily basis.

34. The Tribunal noted the nature of the estate, which comprised a large number of properties similar to the subject block, (which comprised 108 units) which had common parts made up of footpaths and grassy areas. The estate was of mixed tenancy. In the Tribunal's experience, it was an unfortunate fact of life, that there would be tenants and others living on the estate, or the surrounding area, who would view the estate as presenting an opportunity to dump large items of rubbish.

35. The Tribunal noted that the Applicants were critical of the Respondent's approach in dealing with the fly-tipping. However the Tribunal considers that, there was a system used by the Respondent. Even though the system was considered inadequate by the Applicants, the Tribunal had to consider question of whether the service provided was reasonable for the costs charged. Therefore although the system did not work to the Applicants' satisfaction, this did not preclude the costs of the estate cleaning, from being reasonable and payable.

36. The Tribunal noted that there was evidence of cleaning and clearance activity on the estate, in that the fly-tipping was dealt with as evidenced in the photographs. Accordingly, the Tribunal find the cost to be reasonable and payable.

The Grounds Maintenance and The Estates, roads, foot path and drains

The Grounds Maintenance

37. The next head of charges was ground maintenance this was in the sum of £61.22 for 2012/13. The ground maintenance involved, cutting grass, pruning the shrubbery, and trees, and also general gardening. It was accepted by the Applicant that the grass was cut on a regular basis during this period.

38. Ms Williams' major issue was with the charges for 2013/14, in the sum of £63.95. Ms Williams stated that during the period that major works were being undertaken on the estate there was little if any gardening being undertaken by the ground maintenance contractors during this period.

39. The Tribunal were referred to the First Schedule of the lease which defined the Estate as follows-: *"All That area of land shown for the purposes of identification only outlined in green on the attached plan marked 'A' comprising land garden(s) flats garage parking spaces stores and premises known as Gascoyne Estate in the London Borough of Hackney."*

40. Ms Williams stated that the blocks were surrounded by grassy areas, these areas were given over to the contractors. Given this, the cost of the gardening ought to be reduced, as it had been unnecessary to cut the grass whilst the major work was on-going.

41. Of the estimated charges for 2014/15 the estimate was in the sum of £61.83, Ms Williams did not dispute this charge, although she considered that the charge should be adjusted to reflect the fact that major works were still being undertaken, and that similar issues as those previously set out applied for this period.

42. Mr Maxwell, Counsel for the Respondent did not accept that this was the correct approach, he stated that the estate was wider than just the area that surrounded each block, and that whilst the major work was on- going, the grounds for the rest of the estate were still being maintained. As such the costs were still being incurred, and the benefit of the grounds maintenance was still experienced by the Applicants as part of their access of the wider estate.

43. The Applicants were required to contribute to this cost by virtue of the provisions of the terms of their lease, the Respondent's estimate for 2014/15 was in line with previous years and accordingly this was a reasonable estimate which was payable.

The Estates, roads, foot path and drains

44. The service charges claimed was for £47.13, £65.81 and £15.15. Mrs Williams stated that her query with these charges was that she had not notices any improvement in the roads and foot paths. The Applicant referred to an area, which was situated between the building and Hasland Road (on the estate) where there were missing paving slabs. Ms Williams stated that this had been a trip hazard since 2012 and no work had been undertaken.

45. Counsel for the Respondent referred to the schedule of works which had been provided to the Tribunal and listed the works of repair to the road and footpaths and drains undertaken by the Respondents. He stated that this work had been undertaken on or around the estate. Of the loose/ broken slabs, counsel stated that the Applicant had not been charged for this work, as it had not been undertaken by the Respondent.

46. The Respondent's also referred the Tribunal to the witness statement of Humara Qayyum; in the statement of the Business Support and Contact Centre Manager, details were given of arrangements made by the Respondent to facilitate the reporting of disrepair 24 hours, a day, and 7 days a week. The witness statement provided details of how repairs

were logged. The statement further stated that between April 2011 and October 2014 no reports of disrepair were logged from the Applicants.

47. Ms Williams acknowledged that this was in all probability correct, however she stated that this did not mean that she was satisfied with the condition of the estate, and had in fact complained directly to Stella Nicholson, up to the time of her departure.

The Tribunal's determination on the estate cost and gardening and pathways

48. The Tribunal has determined that the costs of the grounds maintenance are reasonable and payable. Although the Tribunal have not had the benefit of an inspection of the estate, both parties have addressed the Tribunal on the scope of the estate, and the Tribunal were also fortunate to have the benefit of photographs taken of the estate by the Applicant.

49. The Tribunal noted that there were periods when due to Major Works being undertaken, the immediate area surrounding the Applicants' block was not maintained, and that this was accepted by the Respondent. The Tribunal have noted that this was a relatively small part of the total estate and that it is difficult to apportion what the savings would have been for not maintaining this part of the estate whilst major works were being undertaken.

50. The Applicants have also not provided any comparable evidence to show that this charge was unreasonable compared to an estate of a similar size. Given this, the Tribunal have had to apply its knowledge and experience of similar estates.

51. Having done so, the Tribunal has concluded that the level of the charges (which ranged between, £62-£63 for this period), were reasonable and payable. The Tribunal also finds that the scope of the estate is such that any areas which were not maintained due to the major work would not have substantially reduced the overall charge. If the Tribunal are wrong concerning this, any small reduction which may have been due, would in the Tribunal opinion, have been extinguished by the cost of calculating such fluctuating reductions which must occur on all estates from time to time.

52. Accordingly the Tribunal considers the costs of the Ground Maintenance to be reasonable and payable.

53. The Tribunal noted that the Applicants dissatisfied concerning the cost of repairing the estate paths and walkways was not on the grounds of the reasonableness of the costs. The Applicants submission was based on the fact there were areas which continued to be in disrepair and that she was not personally aware of the areas on the estate which had been repaired.

54. In reply the Respondent produced a detailed schedule of repair which set out the items of repair which were undertaken on the estate. The Tribunal noted that this was not challenged by Ms Williams. Neither did she provide evidence of any work set out in the schedule (for which the Applicants had been charged), on the estate, which had not been undertaken by the Respondent.

55. The Tribunal noted that Ms Williams was concerned about work not being undertaken to paving slabs, one of the issues that Ms Williams had was paying for work, whilst not herself seemingly experiencing the benefit of the work undertaken, on the estate.

56. The Tribunal hoped that the Respondent would now deal proactively with the Applicants' complaints which were set out at the hearing.

57. The Tribunal finds that as the Applicants has only been charged for the costs of the works undertaken. The Tribunal is therefore satisfied on a balance of probabilities that the cost claimed by the Respondent for estate repairs undertaken was reasonable and payable.

The Management Charges

58. The Management Charges for the periods in issue were £193.73 2012/13 £199.70 for 2013/14 and the estimated charges for 2014/15 was £195.73.

59. The Applicants' complaints concerning the management of the premises was set out in the Statement of Case at paragraph 4 in which it states-: *"...The managers, Hackney Homes Ltd have a great deal at their disposal to help them to manage the building and estate properly, such as CCTV, a concierge who allegedly keeps a log of antisocial behaviour, photographic proof of miscreant activities... However for whatever reason HHL have consistently demonstrated an ineffectual performance in their duties to 'manage' and, we feel, a disdainful lack of will, as illustrated by the fact that nothing ever*

changes or improves despite the need being pointed out them on numerous occasions..."

60. The Respondent's referred to clauses 3 A and 8 (A) (1) of the lease, the 9th Schedule of the lease and clause 5. These clauses set out the obligations of the Respondent to manage the estate, and also provided for the payment of the management charge as a service charge.

61. In reply the respondent's relied upon Mrs Lockhart statement which dealt with the management charges at paragraphs 5-6 of her statement, which stated-: *The Respondent has a significant number of dwellings including leasehold properties under its management. The Respondent does not manage each Estate within its property portfolio as a separate discrete entity. 6. The management charge comprises two elements; first, an element for Housing Management Services (both staff costs and overheads for all the neighbourhoods housing offices); second, an element for Central Leasehold Services (again based on staff costs and overheads for that discrete service). These are referred to as the "Neighbourhood Management Fee" and the "Leasehold Admin Fee" respectively. At its own turn the Neighbourhood Management Fee includes costs relating to the management, administration and enforcement against anti-social behaviour ("ASB costs")*

62. Charges were calculated firstly, on the time spent on leaseholder issues on the estate. This meant that leaseholders who lived on estates paid an additional charge which reflected the service provided. The services were considered by the Respondent to be more extensive than required for an off street property. There were also the leaseholder charges, which reflected the percentage of time spent solely on leasehold matters, then there were expenses which were passed on to everyone, including social tenants as part of their rent.

63. David Newell set out the matters which were within the Respondent's budget, which were contributed to by the Leaseholders by way of management charges that is the leaseholder services, and the leaseholder enquiries, of the total budget 5.127% was specifically attributed to leaseholder matters and 38% was attributable to freeholder, and other tenants.

64. The Tribunal were referred to clause 8 (A) which stated-: " *That the Lessor shall at all time during the term hereby granted manage the Estate and Block in a proper and reasonable manner the Lessor shall be entitled.(i) to appoint if the Lessor so desires managing agents for the purpose of managing the Estate and Block and to remunerate then properly for their services..."*

65. Clause 5 of the lease stated-: *"To manage the Block for the purpose of keeping the Block in a condition similar to its present state and condition."*

66. The Respondent stated that for the purpose of clause 8 (A) 'Hackney Homes' was considered to be an arms- length management company. The Respondent considered the management charges in the sum of £193.73 to be reasonable.

67. In answer to a query from the Tribunal the Respondent confirmed that the charge was the same for all of the leaseholders, and that no account was taken of whether the property was a three bedroom property or a studio flat.

68. In response the Applicant stated that although the Respondent seemed to have a system, if the management was carried out effective there should be evidence. She considered that based on the service that the Applicants received the cost did not represent value for money.

69. In answer to a question from the Tribunal, concerning her view of the amount that the Ms Williams consider was reasonable and payable by the Applicants for management charges. The Applicant stated that in her view only 25 % of the current charge was reasonable. Ms Williams stated that she had experience of another estate, which was much better managed where she paid £75.00 per month. This was for a property in the City of London.

70. Mr Maxwell stated that limited weight should be attached to evidence of what service charges were applied for another property where no evidence had been produced to demonstrate that it similar to the subject property, or the estate.

The decision of the Tribunal

71. The Tribunal noted that the Respondent provided information on the elements which made up the management charge, and the fact that the management functions were carried out by an ALMO.

72. No information or evidence was provided by the Applicants of alternative costs for management of premises of a similar type as those occupied by the Applicants. The Applicant, Ms Williams, was concerned about the lack of proactive management and the fact that the systems in place were not effective. The Tribunal however had to take into account the nature and character of the estate and the challenges that this presented to the Respondent.

73. The tribunal noted that the Applicants were aware of the nature of the challenges of this estate. This was clear from the way in which Ms Williams described the estate. Given this, the tribunal accepted that although the Respondent did have systems in place, the Respondent would have a significant number of challenges given the nature and character of the estate.

74. The Tribunal had to consider whether the charges were reasonable, or whether a reduction to the management charge was warranted, given the service that was provided. The Tribunal noted that it was for the Applicants to satisfy the Tribunal about what was asserted by them (on the balance of probabilities). The Applicants had not provided any alternative evidence, of other management charges.

75. In considering a reduction, the Tribunal noted the level of services that were provided by the Respondent's ALMO, and the actual management charges. The Tribunal were aware from its experience of ALMOs and Social Landlord freeholders that there were a variety of ways in which charges were calculated, and that the Tribunal may consider that there were other ways in which the charges may have been calculated, however the issue was whether the charges were reasonable.

76. The Tribunal used its knowledge and experience of management charges for such estate property in the London area. Having done so, the Tribunal concluded that the sum claimed by the Respondent for management charges was reasonable and accordingly payable by the Applicants.

The Concierge Service

77. In the statement of case the Applicants stated-:"*... Our understanding is that charges for services not specifically referred to in the Lease, such as concierge services, are not recoverable by the Landlord. However, HHL have referred us to the Ninth Schedule, Clause 6 of our Lease to justify the Landlord's right to charge for this service. We do not agree that this service is either necessary or good value since without management to back it up... it is a waste of money...*"

78. At the hearing the Applicant, Ms Williams did not advance any argument concerning the fact that the charges were, irrecoverable under the terms of the lease. Ms Williams set out concerns that the Applicants had about the service. Ms Williams noted that until December 2014, the Concierge did not accept packages for residents. In the Applicants' view, the service should have involved receiving packages, monitoring the CCTV, recording incidents which were

reported, and dealing with matters that arose such as the fly-tipping at the property as well as being a daily presence at the property.

79. Ms Williams stated that most of the time when she went to the office a sign would be up "*Concierge on patrol.*" However, she did not see that this was not reflected in improvements on the estate.

80. The Respondent stated that the Concierge provided a direct service to the Applicants' block and was not a shared resource, with the neighbouring block Vain House, as the neighbouring block had its own Concierge. This meant that when the Concierge was out on patrol, this was solely for the benefit of the Applicants' block.

81. The Respondent considered that the major benefit of the Concierge services, was that it increased the sense of well- being on the estate, and reduced crime and fly-tipping.

82. Counsel for the Respondent stated that the cost of the concierge service was recoverable under the terms of the lease. Mr Maxwell referred to clause 8 (A) which provided that the Respondent could pay for the *"services of Any other person"*. Counsel asserted that the Respondent could at its discretion employ a concierge for the better performance of its duties under the terms of the lease.

83. The Tribunal were referred to the witness statement of Mr Newell in particular paragraph 6, which provided information about the nature of the development and the fact that the estate had historically high crime rate.

84. Amongst the duties undertaken by the Concierge were " *providing security and surveillance, carrying out fire safety inspections, dealing with complaints of anti-social behaviour and noise nuisance, I also set out that the amount the Respondent charges for the concierge service is less than the amount the service is costing so in this sense the concierge service is subsidised...*"

85. The Respondent stated that 14 of their blocks had a concierge service. The service provided was a 24 hours 7 days a week (evenings and weekends). In her witness statement Ms Lockhart stated that the cost of the concierge was subsidized by the Respondent as fifty percent of the cost was charged to Hackney Homes as landlord.

86. Counsel referred to the case of **Arnold -v- Britton,** Counsel stated that the facts of this case had no bearing on this present case, however paragraph 33 onward was referred to as relevant in terms of the

principle it established, in that the case when considering a similarly worded clause made it clear that the Respondent had considerable discretion concerning how the Landlord carried out their responsibilities under the terms of the lease.

The decision of the Tribunal

87. The Tribunal considered that there were two issues that the Tribunal needed to determine firstly whether the costs incurred were permitted within the terms of the lease and secondly whether the costs of the service were reasonable in all the circumstances.

88. The Tribunal noted that clause 8 A was permissive and provided that the Respondent could employ any person who was engaged for the provision of services at the block. The charge for the service was therefore recoverable.

89. The Tribunal noted that the Applicants complained that the services provided were limited, despite the hours worked by the concierge. However there was no evidence of alternative costings for this service. The Tribunal also noted that the costs of this service was subsidised by the Respondents, given this, the Tribunal is satisfied, on a balance of probabilities that the cost incurred were reasonable.

The block repairs

90. The Applicant referred to a lack of repair for items such as, burnt out lights in the lift, and the fact that the visual panel had not been repaired, there was also an issue with the fire door. These repairs were amongst a long list of repairs which had not been attended to by the Respondent. Ms Williams stated that the Respondent's attitude to repairs was that the bear minimum was carried out to a very low standard.

91. In reply in their Statement of Case, the Respondent stated in Section B *" The Respondent provides a document marked "Breakdown of Actual Charges for the Financial Year 2012-13 outlining repairs carried out pursuant to its repair covenants and which were charged as service charges during the service charge year 2012-13. A similar document would have been made available to the Applicants over the course of the 3 day inspection...No repairs actual charged are specifically contested by the Applicants..."*

92. The Respondent in their statement also stated that although the Applicant complained about a lack of repairs, there were only two

repairs which she had listed as outstanding; the third floor rubbish chute and flooring trim.

93. Counsel also stated that the Applicants were not asked to pay for repairs which had not been carried out, and this was the way in which the Tribunal ought to assess the charges. For each of the years in issue there were breakdowns of works undertaken and the actual charges. The Applicants had not raised an issue that these items of work had had not been carried out. For the work that had been carried out, no challenges were made that the charges were unreasonable.

94. In respect of the years 2014-15, there was an estimate, which, was based on the Respondent's best estimation of the likely charges for repairs. Given this, Counsel submitted that this figure was reasonable and payable.

The decision of the Tribunal

95. The Tribunal accepted the Mr Maxwell, (Counsel for the Respondent) submissions. That although certain repairs may not have been carried out, (as stated by the Applicants), there had been no recent complaints from the Applicant, concerning recent outstanding repairs. Also no charges had been incurred by the Applicants for work not undertaken.

96. The Tribunal noted that the Respondent has the facilities in place to carry out repairs on the estate, given this in the Tribunals view there was nothing preventing them from doing so and it was hoped that they would use attend to the outstanding repairs.

97. However, the Tribunal is satisfied that the costs of the repairs to the estate are reasonable and payable.

The block cleaning

98. The Applicants were dissatisfied with the standard of cleaning of the block. Ms Williams referred the Tribunal to photographs in the bundle, of the landing and the fire escape and the rubbish chute. The photographs confirmed that there were items of litter on the landing and the area was unclean, this was also the case in relation to the rubbish chute handle. Ms Williams stated that the photographs showed that the premises were in the same condition for over three weeks.

99. The Applicant specifically complained about the following; the door mat was worn and dirty, the lift was dirty, as were the floors. In particular the doors and the door handles for the rubbish chute had not

been cleaned. Ms Williams stated that such cleaning as was carried out was undertaken to a very superficial standard.

100. In reply the Respondent relied upon a schedule of the cleaning duties, this listed the duties which were to be undertaken and the frequency (such as, washing lifts in the morning, sweeping litter and spot mopping with the stairs to be washed every two weeks).

101. Mr Chadwick, was called to given evidence on behalf of the Respondent. Mr Chadwick employed by Hackney Homes as an Estate Inspection Officer. Mr Chadwick stated that He worked in a team who were responsible for managing cleaning services, by managing a team of inspectors. During June/July 2014 he covered for an Estate Inspector, in this capacity he personally inspected the Gascoyne Estate on 8 July 2014.

102. He stated estate inspections were carried out every month, then every three or four months, there was a joint inspection with the Tenant's Association.. Mr Chadwick then issued a report.

103. After each inspection the estate inspectors were required to write up a report. The report was based on the visual inspection and the inspectors graded the premises using the following grading Grades A to E. Grade A was good, Grade C and below were fails, which denoted the standard was unacceptable and either required a response or was beyond the control of the contractor.

104. Mr Chadwick produced reports which were included in the bundle, which graded the block from A to B. B indicated a pass (acceptable).The Tribunal asked whether it was possible for something to pass, whilst was not being classified as Good.

105. Mr Chadwick acknowledged that it was possible for this to occur. He was invited by the Applicant to look at the photographs which the Applicant had produced. Mr Chadwick accepted that there were items which would constitute a fail had they been noted in an inspection.

The Decision of the Tribunal

106. The Tribunal noted that there was a concession from Mr Newell that at times the standard of the cleaning fell below the accepted standard, the Tribunal were also concerned that the standard, of ' acceptable' by its definition was low, and this was confirmed by the photographs.

107. The Tribunal accepted the Ms Williams evidence that the cleaning was at times cursory and not of an acceptable standard, and that the costs of cleaning service were not reasonable.

108. The Tribunal noted that there was a lack of evidence from the Applicants about alternative costs for this service. Accordingly the Tribunal has taken a 'broad brush' approach, and in doing so considers that the cost of the cleaning should be reduced by 40% for the periods in issue, to reflect the service provide.

109. For the period 2014/15(for the estimated costs) the Tribunal considers that no reduction should be made, as this is only an estimate.

Application under s.20C and refund of fees

110. At the hearing, the Applicant made oral submissions in support of her application under section 20C. The Applicant stated that she had no choice but to bring these proceedings.

111. Counsel for the Respondent was content that the cost should follow the findings of the Tribunal.

112. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that in all the circumstances given the findings of the Tribunal, it is not just or equitable for a Section 20C order to be made.

Ms MW Daley (Chair)

23 April 2015

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.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations 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.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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 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;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) 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).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in

accordance with provision made by any enactment other than this paragraph.