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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UH/LSC/2017/0028
Property	:	Flats 12 and 11, Meridian Court, 47 Buckland Road, Maidstone, Kent ME16 0SH
Applicants	:	(1) Mens-Sana Tamakloe (Flat 12) (2) Mark Curry (Flat 11)
First Applicant's Representative	:	Lina Matson of counsel, instructed by Bonnalack & Bishop Solicitors
Second Applicant's Representative:	:	In person
Respondent	:	Sanctuary Housing Association (landlord)
Representative	:	N Grundy QC of counsel, instructed by Bevan Brittan LLP solicitors
Type of Application	:	Landlord and Tenant Act 1985 s.27A (service charges)
Tribunal Member(s)	:	Judge Mark Loveday Richard Athow FRICS MIRPM
Date and venue of hearing	:	14 November 2017, Medway MC
Date of Decision	:	28 November 2017

DETERMINATION

Background

1. This is an application under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") to determine liability to pay service charges under leases of two flats at 12 and 11, Meridian Court Maidstone, Kent ME16 0SH. The Applicant lessees originally sought a determination in respect of the completed 2012-16 service charge years and the relevant costs relating to the interim service charges. The Respondent is a registered Housing Association.

2. The Application was initially made by the First Applicant alone in respect of Flat 12. By an order dated 6 June 2017, the Second Applicant was joined in relation to Flat 11.

3. A hearing took place on 14 November 2017. At the hearing, the First Applicant was represented by Ms Lina Matson of counsel, and the Respondent was represented by Mr Nicholas Grundy QC of counsel. The Second Applicant appeared in person and although he did not file any statements of case or evidence, he was happy to adopt the First Applicant's arguments and evidence in relation to his own flat. The Respondent did not object to this approach.

4. For the purposes of this decision, the Tribunal adopts the definitions of "service charge" and "relevant costs" in s.18 LTA 1985.

Inspection

5. The premises comprise a modern 3 storey block of flats c.1980 set within grounds in the centre of Maidstone. There is a common basement car park with various storage, refuse and associated areas. The site slopes upwards sharply from the road, so that the floor of the garage is below street level, while the ceiling of the garage just projects above ground level where an area of terracing has been excavated to the rear.

6. The grounds are fairly extensive. To the front are two brick staircases which give access to the street doors. To the front, there are

paths and a driveway and turning area serving the car park. There are three substantial trees and the remainder is laid to grass. To the rear the terrace and garden (approx. 30m x 40m) are largely laid to grass, hedges and six substantial trees. On inspection, the gardens were seen to be maintained to a high standard, the grass being neat and well-tended despite the season.

7. The block itself is of brick construction under a pitched concrete tile roof with 12 flats on two staircase cores. Each street door has a steel and glass entrance lobby which projects beyond the front elevation. Internally, each lobby (approx.3m x 9m) has polished wooden floors and a wood and glass fire safety stair partition giving access to two flats. An open tread staircase leads to two upper landings (approx.3m x 3m) giving access to the flats on the upper floors. The walls are exposed brickwork throughout. Windows to the common parts comprise 8 x double glazed units on each staircase set into wooden frames. The general standard of maintenance and cleanliness was good – with no signs of litter, marking etc.

8. The Tribunal was told there are 7 flats held on secure tenancies, and 5 flats leased under "Right to Buy" leases. 12 Meridian Court is a leasehold flat on the 2nd floor, and 11 Meridian Court is a flat on the 3rd floor. The Tribunal did not inspect either flat.

The leases

9. The leases of the two flats are in each case dated 24 April 1989, and grant a term of 125 years from 1 November 1988. The material covenants appear in Appendix I to this determination.

The service charges in dispute

10. As explained above, the Application challenges liability to pay service charges for the years ending 31 March 2012-17.

11. Despite the parties having prepared a substantial hearing bundle, there were a number of important omissions. The parties agreed to deal with them as follows:

- The audited service charge accounts for 2014/15 were missing, but it was agreed at the outset that audited accounts had in fact been produced. As explained below, the Respondent did not rely upon all the figures for relevant costs given in the audited accounts. But since the 2014/15 relevant costs were also set out in the 2016/17 service charge budget, the parties agreed to adopt these figures for the missing accounts.
- As to the 2016/17 service charge year, the initial Application was made before audited service charge accounts for that year had been completed. The 2016/17 service charge year has now ended and the Respondent has prepared audited accounts. It produced a copy at the hearing. The Tribunal was concerned that these had been sent to the Applicant under cover of a letter dated 25 September, but a copy had not been forwarded to the Tribunal as they should have been (see the Respondent's statement of case). The parties sensibly agreed it would be better to deal with liability to contribute to the relevant costs actually incurred in 2016/17, rather than liability to pay the interim service charges. The Respondent therefore consented to amendment of the Applications to challenge the 2016/17 relevant costs as they appeared in the audited accounts. The Applicants adopted the same objections to the 2016/17 relevant costs that they made in previous years.
- There were no service charge demands. The parties agreed the Tribunal should determine liability to pay in each case by taking the recoverable relevant costs for each year and applying the apportionment of 1/12th in the Lease.

12. The Applicants' arguments are set out in the Application itself, two Position Statements and a witness statement from the First Applicant dated 28 July 2017. The Respondent's arguments are set out

in two position statements, a Statement of Case dated 8 February 2017 and in a witness statement of Ms Debbie Shynn (dated 1 September 2017). At the hearing, the First Applicant and Ms Shynn were cross-examined and both counsel made closing submissions. Mr Grundy also produced a skeleton argument.

13. The material statutory provisions appear in Appendix II to this determination.

14. The Tribunal deals with each issue raised by the parties in turn.

Issue 1: Apportionment

15. This issue has been at the forefront of the Applicants' arguments throughout, and raises a question about the proper application of the apportionment provisions of clause 7(1)(c) and the Particulars of the Leases of each property. In essence, the argument is the Respondent has calculated service charges by applying an apportionment of 1/5th to certain relevant costs incurred, as opposed to the apportionment of 1/12th specified in the Leases. By the end of the hearing, the First Applicant argued this issue affected liability to contribute to four heads of relevant costs, namely:
    - Building insurance;
    - Annual management charge;
    - Annual audit charge, and;
    - Transfer to sinking fund.

16. Before dealing with the arguments raised, it is important to set out the history of the way the argument developed. The starting point is the audited service charge accounts for each service charge year ended 31 March 2013, which were prepared by Pricewaterhouse-Coopers LLP. The accounts expressly relate to what is described as a "scheme" at "Meridan [sic] Court". The accounts include a list various relevant costs. They can be summarised as follows:

	2012/13	2013/14	2014/15	2015/16	2016/17[1]
Scheme Service Costs					
Contract Ground Maintenance	£7,949.24	£8,840.00	£8,840.00	£8,840.00	£8,840
Light Bulbs	£1,547.01	£175.50	£738.51	£17.31	£37.45
Internal Contract (cleaning)	£3,686.28	£2,301.00	£2,301.00	£1,742.00	£1,742.00
Non-contracted Maintenance	£517.50	£1,028.77	£859.57	£55.71	£114.20
Day to Day repair costs	£2,229.71	£3,400.83	£1,016.54	£1,425.45	£2,041.42
Other Costs					
Building Insurance	£407.20	£402.55	£429.25	£412.15	*£1,073.52*
Annual Management Charge	£1,260.00	£1,298.96	£1,402.80	£1,515.00	*£3,926.88*
Annual Audit Charge	£56.40	£145.20	£150.00	£154.80	*£371.52*
Transfer to Sinking Funds	£1,597.00	£1,710.68	£1,764.00	£1,812.08	*£4,393.33*

The accounts then include a separate schedule for the individual flat showing individual headings for relevant costs, but giving figures for "the part of the scheme costs that relate to" the individual lessee. For example, the costs passed onto the lessee for "Building Insurance" in 2012/13 was given as £81.44. The parties agree the service charges which were demanded from the Applicants were based upon the latter schedule.

17. A difficulty with the "Other Costs" figures for 2012/16 is immediately apparent. A straight apportionment of 1/12th of the "Other Costs" figures for those years produces figures which differ from the costs which were passed on to the lessees. For example, in 2012/13, an apportionment of 1/12th of "Building Insurance" costs

[1] Taken from the 2016/17 service charge budget.

of £407.20 results in a figure of £33.90. By contrast, the accounts show the Respondent passed on Building Insurance costs of £81.44 to the lessees. The same applies to the "Other Costs" in each year. *Prima facie*, the Applicants were therefore overcharged for these four items of relevant cost. Arithmetically, in each of these four cases, the service charges were based on an apportionment of 1/5th of the "Other Costs" – and the same applied to all the service charge accounts produced for 2013/14, 2014/15, 2015/16[2].

18. The Application dated 22 February 2017 expressly challenged liability *inter alia* on the ground that "The Applicant is paying 1/5th of the Property's Service Charge, despite the Lease expressly stating that Specified Proportion of Service Provision is 1/12th".

19. The first response from the Respondent in the bundle is its Position Statement for the CMC on 25 April 2017. The Respondent acknowledged that "the lease states 1/12" and that "the presentation of budgets and accounts suggest 1/5 is passed onto the claimant, in relation to some of the budget headings". However, it stated:

> "The headings which are apportioned by 1/5 relate to items which are not charged to tenants, as their rent includes these. For example, Buildings Insurance. In these instances, the amount showing as a scheme total only relates to the proportion charged to the 5 owners and not to the costs associated in managing the while [sic] building."

It went on to say:

> "We accept the information provided to the applicant could be clearer in relation to this point, and request an opportunity to explain to the applicant why certain headings are apportioned differently ... and only equates to 1/12 of the costs associated with the building."

[2] The "Other Costs" in the more recent 2016/17 service charges are correctly apportioned.

20. On 26 June 2017, the Applicant sought details *inter alia* of the "Invoices for the services being apportioned as 1/5th to the Leaseholders, in the period 2012 to 2016." In response, on 18 July 2017, the Respondent "confirmed that our client has adhered to [the apportionments in the lease] and has charged your client one-twelfth of the overall costs incurred in relation to the costs associated with buildings insurance, annual audit and sinking fund contribution". But it declined to provide the requested invoices. Significantly, the Respondent attached to this letter three schedules of relevant costs, each headed "Draft Service Charge Budget". Of these, the third marked "C" purported to show relevant costs incurred by the Respondent for the "scheme" in 2013/14, as well as budgets for 2014/15 and 2015/16. The letter suggested the "C" budget showed "the full scheme cost attributable to the scheme for buildings insurance, Annual Audit Charge and sinking fund contribution". It is notable that the actual scheme costs for 2013/14 were as shown in paragraph 16 above.

21. As to written material before the Tribunal, it should be noted that although the hearing bundle includes invoices relating to various items of relevant costs, it does not include anything relating to the four items referred to above which were apparently apportioned by 1/5th. The First Applicant's witness statement dated 28 July 2017 relied on the figures given in the accounts, and essentially repeated the argument made in the Application. The Respondent's Statement of Case refers to apportionment of insurance at paragraphs 15-21. For 2012/13, it acknowledged "the annual service charge indicates that the total cost of insurance for this financial year was £407.20" and suggested that "the misconception of the Applicants that they are paying 1/5th each of the total cost of insuring the Meridian Court" could "largely be blamed" on this fact. The Statement of Case went on to explain (at paragraphs 16-21) that the figures were derived from "the buildings insurance for leaseholders". This insurance was "obtained by way of a block policy that provides

cover to the entire leaseholder stock". The Respondent then allocated:

> "The total cost of that policy ... across each unit of leasehold stock so that a sum is attributed to each individual leasehold unit for service charge purposes by dividing the total cost of the leasehold aspect of the policy by the number of leaseholders".

It suggested the insurance element could be more accurately described as "Building Insurance – Leaseholders". As to the other items of relevant cost, the Statement of Case suggested the relevant cost of the Annual Audit for Meridian Court was in fact £135.36 and that the Sinking Fund contributions were similarly apportioned across each block. The same approach was adopted in relation to the 2014-17 service charge years.

22. To summarise, the position at the start of the hearing was therefore that:

(i) The parties agreed the serviced charges in each year ought to have been based on an apportionment of 1/12th of the relevant costs incurred by the landlord for the block.

(ii) The Applicants relied on the figures given in the audited annual service charge accounts which appeared to show those relevant costs. Applying a 1/12th apportionment to those relevant costs suggested the Applicants had been overcharged.

(iii) The Respondent suggested this approach was misconceived, albeit accepting that the misconception was derived from the accounts themselves.

(iv) The Respondent appeared to argue the insurance contribution for each lessee was derived from the total premium charged for a single block policy for insuring its estate, which was "allocated across each unit of leasehold stock" to produce a charge of £81.44 in 2012/13.

(v) The Respondent further argued some of the other contributions complained about were derived from a proper apportionment of 1/12th of relevant costs for the block.

(vi) There was no documentary evidence to support any of the above arguments, other than the audited annual accounts.

(vii) The same arguments applied to each of the service charge years.

23. At the start of the afternoon session of the hearing, this position changed. The Respondent's witness, Ms Shynn, produced a spreadsheet which explained the apportionment which had in fact been applied between 2012 and 2016. She stated the spreadsheet had been prepared by a Ms McPhee, who was responsible for budgeting and financial accounts, and forwarded to Ms Shynn on Thursday 9 November 2017. The spreadsheet gave a detailed breakdown of the relevant costs over five service charge years, which differed from the figures previously provided. In addition to the figures derived from the annual service charge accounts, the spreadsheet crucially included an additional column in each year headed "Total Actual Cost". The corrected figures for relevant costs taken from the spreadsheet are as follows (although the Tribunal has added the equivalent figures taken from the audited 2016/17 service charge accounts for the sake of completeness):

	2012/13	***2013/14***	***2014/15***	***2015/16***	***2016/17[3]***
Scheme Service Costs					
Contract Ground Maintenance	£7,949.24	£8,840.00	£8,840.00	£8,840.00	£8,840
Light Bulbs	£1,547.01	£175.50	£738.51	£17.31	£37.45
Internal Contract (cleaning)	£3,686.28	£2,301.00	£2,301.00	£1,742.00	£1,742.00
Non-contracted	£517.50	£1,028.77	£859.57	£55.71	£114.20

[3] The 2016/17 figures for relevant costs are taken from the audited service charge accounts.

Maintenance					
Day to Day repair costs	£2,229.71	£3,400.83	£1,016.54	£1,425.45	£2,041.42
Other Costs					
Building Insurance	£977.28	£966.12	£1,030.20	£989.16	£1,073.52
Annual Management Charge	£3,024.00	£3,117.50	£3,366.72	£3,636.00	£3,926.88
Annual Audit Charge	£135.36	£348.48	£360.00	£371.52	£371.52
Transfer to Sinking Fund	£3,832.80	£4,105.63	£4,233.60	£4,348.99	£4,393.44

24. When the proper apportionment of 1/12th is applied to the corrected figures for "Other Costs", the contributions now correspond with the figures which were in fact charged to the tenants. For example, in 2012/13, the "Total Actual Cost" of Building insurance was now given as £977.28, producing a 1/12th contribution of £81.44 per flat – i.e. the same figure which appears in the 2012/13 service charge accounts on the page marked "the scheme costs that relate to you".

25. Ms Matson was given an opportunity to consider the spreadsheet, but did not object to it being produced in evidence.

26. In her oral evidence, Ms Shynn confirmed that in each case the Respondent had incurred the relevant costs shown in the "Total Actual Cost" column in the spreadsheet. She then went on to deal with the four heads of relevant cost which were in issue. As far as the insurance premium was concerned, she had spoken to a member of the Respondent's insurance team who clarified that there were actually two building insurance policies in place for the block with the same insurer. Under the "General Needs Social Housing" policy, the Respondent insured properties with social and market rent tenants. Other properties were insured under the "Leaseholder, Shared Ownership and Commercial" policy. In this case, Meridian Court appeared in the schedules to both policies. The Re-

spondent allocated part of the premium for each policy to Meridian Court, based on the numbers of tenants or leaseholders covered by each policy. For example, in 2014/15, the new figure of £1,030.20 was the combined cost of the two policies which covered the block. When questioned by the Tribunal, Ms Shynn accepted that the Respondent's Statement of Case (at paras 15-21) was wrong on the point. But she denied there was any duplication between the two policies, since the two policies jointly covered Meridian Court with the risk shared according to the number of units in their respective insurance schedules. In cross-examination, Ms Shynn accepted that the first time the Applicants were shown the schedule and the "Total Actual Cost" figures was on the day of the hearing. She also accepted that the Statement of Case made no mention of there being two insurance policies - and that for example, in 2015/16 this was the first time it had been suggested the relevant costs of insurance were in fact £989.18. She was unable to assist with the split in the cost between the two policies. As far as the relevant costs of Audit, Management Charges and the Sinking Fund, Ms Shynn simply stated that the figures were as shown in the spreadsheet – although she accepted they were not the figures given in the annual accounts.

27. In closing submissions, both counsel accepted the issue of apportionment was essentially one of fact. For example, in the event the Respondent incurred relevant costs of £977.28 in 2012/13 (as shown in the spreadsheet), the contribution to service charges would be £81.44 per flat. If the relevant costs incurred were £407.20 (as shown in the audited accounts), the contribution was £33.93 per flat.

28. Faced with the new evidence, Ms Matson nevertheless contended that on the balance of probabilities, the figures given in the audited accounts should be preferred, and the spreadsheet produced on the day of the hearing was simply wrong. She relied on three ar-

guments to support this. First, the audited accounts were the only credible evidence of relevant costs, since they were a formal record of the service charges prepared by a professional firm of accountants. Secondly, she relied on the very late production of the spreadsheet, despite specific requests for disclosure of details of the relevant costs. Third, there was an absence of documentation to support the spreadsheet in circumstances where one would have expected there to be some documentary evidence.

29. Mr Grundy contended that on the balance of probabilities, the Tribunal should accept the evidence set out in the "Total Actual Costs" column in the spreadsheet. Ms Shynn was a credible witness, and the only way the figures could be wrong would be if the spreadsheet was a "manufactured piece of evidence" to mislead the Tribunal. That was not the Applicants' case. He accepted the audited accounts showed different figures to the spreadsheet, but the spreadsheet had not really changed the Respondent's case. It was plain the accountant who prepared the accounts had simply applied a 1/5th apportionment to a lower figure for relevant costs whilst the spreadsheet applied a 1/12th apportionment to a higher figure. They both produced the same figures for service charges.

The Tribunal's decision

30. The issue is the amount of relevant costs actually incurred by the Respondent for Meridian Court in the 2012/16 service charge years. Although not canvassed with either party, it is assumed this argument does not apply to the 2016/17 service charges, since it is clear the Respondent has properly applied an apportionment of 1/12th of the four items of "Other Costs". But for the remaining four years, the Tribunal accepts the question which has been described as "apportionment" is essentially a question of fact. Once the Tribunal ascertains the relevant costs in each year, one arrives at liability to pay the service charges by applying the correct apportionment of 1/12th.

31. In this respect, the Tribunal prefers the figures for relevant costs given by the Respondent in the spreadsheet for 2012-16. This is for the following reasons:

(a) Ms Shynn was a credible witness, although lacking in detailed knowledge in respect of many aspects raised during the Hearing. Although the evidence she produced was hearsay material originally created by a third party (Ms McPhee), there was no obvious reason for Ms Shynn or Ms McPhee to create a document which they knew to be wrong. The Tribunal would have been better served if appropriate witnesses with detailed knowledge of the building and the accounts were included as part of the Respondent's case - but as submitted by Mr Grundy, a finding that the figures in the "Total Actual Cost" column were wrong, could only be explained by finding the Housing Association had fabricated evidence of relevant costs. Such an argument was not developed by the Applicants, was not supported by any other evidence and was inherently improbable.

(b) A powerful argument in favour of the Applicants is that the spreadsheet appears inconsistent with accounts which were audited by a reputable from of accountants, who had the financial information available close to the service charge years in question. But a careful consideration of the accounts lessens the weight to be attached to this point. The material sheet of the Service Charge accounts which sets out the relevant costs includes three sub-headings. The first is "Service Charge Income" (i.e., the gross service charge recoverable for the various flats). The second is headed "Scheme Service Costs", which lists various items of relevant cost to which the Respondent evidently applied the (correct) 1/12th apportionment. However, as already explained, the four items in dispute to which the (incorrect) 1/5th apportionment was evidently applied, all appear under a third subheading of "Other Costs". The absence of any reference to "Scheme" costs in the "Other Costs" subheading indicates the accountants were conscious that these were not

landlord's expenditure on the whole "Scheme" of 12 flats. Although the accounts are (admittedly) misleading, the Tribunal does not consider the "Other Costs" purported to give a figure for the relevant costs incurred by the landlord for the whole "scheme" at Meridian Court.

(c) Plainly, for each of the four items in dispute, the accountants ought to have specified the gross relevant costs for the whole of Meridian Court, and not applied a 1/5th apportionment of a lesser figure. In the Tribunal's view, the most likely explanation for this is that the accountants simply were not conscious of the provisions of the Lease when preparing the accounts. But as Mr Grundy submitted, ultimately the failure to use the correct format for the accounts made no difference to the Applicants' liability. The accountants had simply apportioned 1/5th of a lower figure for relevant costs, rather than 1/12th of a higher figure – and the outcome was the same for the Applicants.

(d) It is true the spreadsheet was produced very late indeed, and no explanation was given as to why it was not prepared at an earlier stage or provided to the Applicants on the day it was prepared. Worse still, the Respondent's letter of 18 July 2017, in response to a very specific request by the Applicant, repeated the misleading information about the relevant costs incurred. But against this, from a very early stage, the Respondent stated expressly that the relevant costs to which the 1/5th apportionment was applied were limited to those costs "charged to the 5 owners": see Position Statement for CMC on 25 April 2017. The argument by the Respondent, although clarified by the spreadsheet, was not therefore a late invention.

(e) It is also true the figures in the spreadsheet are not supported by any documentary evidence, despite there being numerous documents in the bundle supporting other elements of relevant cost. There are no insurance policies or schedules, no receipts for payment of managing agents or auditors and no bank statements showing transfers to reserves. However, the Tribu-

nal determines the issue on the balance of probabilities, and there is no documentation (other than the accounts which are dealt with above) suggesting the relevant costs incurred were as alleged by the Applicants.

32. It follows from the above that the Applicants' liability to pay is as alleged by the Respondent, subject to the other contentions set out below.

Issue 2: Contract Ground Maintenance

33. According to the spreadsheet and the 2016/17 accounts, grounds maintenance for the years in question amounted to £7,949.24 (2012/13) and £8,840 (2013/14, 2014/15, 2015/16 and 2016/17). Grounds maintenance was carried out 'in-house' by Sanctuary Maintenance Company Ltd. The gardening element was charged for on the basis of 312 hours a year (i.e. 6 hrs/week).

34. The Application contended that the grounds maintenance costs were not reasonably incurred under s.19 LTA 1985, but by the start of the hearing the parties had narrowed the issue considerably. In essence, the question was whether it was reasonable to incur the cost of 6 hrs / week of gardening. The Respondent said it was, but the Applicant suggested that only 3.5hrs / week of gardening would be enough.

35. In his witness statement, the First Applicant stated that he knew "the contracted party works approximately 2 hours a month for Meridian Court". In cross examination at the hearing, he accepted he had not produced any documentation to support a commitment of 3.5 hours a week, but suggested this was based on ½ an hour a day. He accepted he had no expertise in grounds maintenance. He was referred to a Sanctuary Maintenance "Landscape Maintenance Specification – Summary Sheet" which set out the frequency of visits by the gardening contractors throughout the year. He accepted the frequency of visits would vary throughout the year. When

questioned by the Tribunal, the First Applicant stated he had lived at the flat for 37 years until 2016. He had a new home and another investment property, but neither had a grounds maintenance contract. In her witness statement, Ms Shynn denied the contractors visited only 2 hrs/month and she relied on the Landscape Maintenance Summary which showed much more work was undertaken. The Respondent operated nationally, and it was unreasonable to expect them to appoint local contractors for each property, indeed they benefited from economies of scale. In cross-examination, it was suggested the caretaker carried out some work to the grounds, and there was duplication. Ms Shynn was referred to a Sanctuary "Internal & External Cleaning/Caretaking Specification – Summary Sheet" which had entries for weekly sweeping of "paving including steps removing all litter and obnoxious matters" and "sweep bin store". However, she denied there was any duplication between caretaking and grounds maintenance.

36. In closing, Ms Matson observed that the Tribunal had seen the grounds and could form a view as to whether 6 hrs/week was necessary, or whether 3.5 hrs/week would suffice. She referred to the two Summary Sheets and suggested there was duplication. Overall, a figure of £4,500 per annum would be appropriate in each year for grounds maintenance. In closing, Mr Grundy simply submitted that 6 hrs/week was not more than was necessary for maintaining the grounds.

The Tribunal's decision

37. The Tribunal finds it was reasonable to incur 6 hours grounds maintenance a week. The landlord has a "margin of appreciation" about the level of services it provides (*Waller* at para 39) and in this case the Tribunal does not consider it was unreasonable to provide for 6 hours work a week. The gardens are extensive, and include large areas of grass to both front and rear, on sloping ground which would not be straightforward to maintain. The grass

could not be cut conveniently with an ordinary domestic mower, and required scarifying feeding and edging. The Summary Sheet suggests that cutting takes place fortnightly between March and October, and that alone would take a significant portion of the time of 6 hrs/week suggested. In addition, there were areas laid to flowerbeds and shrubs, which required attention throughout the year. The Tribunal noted there were several substantial trees on site, which would each require attention from time to time. The Tribunal considers the Summary Sheet to be a reasonable summary of the gardening services that need to be provided. Finally, the Tribunal considers that on inspection the general standard of gardening was of a fairly high standard, and the hours involved to maintain it to that level was a relevant factor to take into account.

Issue 3: Light Bulbs

38. Although described in the accounts and spreadsheet as "Light Bulbs", it is clear this item of cost covered more extensive electrical repairs and renewals. At the start of the hearing, the parties indicated they had reached agreement on liability to pay for lightbulbs in 2012/13 and 2014/15. The relevant costs were agreed at £929.99 and £584.40 respectively, suggesting a 1/12th contribution by each flat of £77.50 and £48.70.

Issue 4: Internal Contract (cleaning)

39. According to the spreadsheet and the 2016/17 accounts, the relevant costs of cleaning for the years in question were £3,688.28 (2012/13), £2,301 (2013/14 and 2014/15), £1,742 (2015/16 and 2016/17). Cleaning was again carried out 'in-house' by Sanctuary Maintenance Company Ltd.

40. The Application contended that the cleaning costs were not reasonably incurred under s.19 LTA 1985. In particular, the costs had fluctuated from year to year. In his evidence, the First Applicant

stated that the cleaning prior to 2013/14 had bene carried out by one of the tenants called Barbara, who had charged £80/month.

41. The Respondent produced various spreadsheets showing the calculation of cleaning hours and the Summary Sheet for internal and external cleaning referred to above. The Statement of Case and Ms Shynn's witness statement suggested the cleaning element was charged for in 2013/14 on the basis of 156 hrs/year (3 hrs/week) and at a rate of £14.75 / hr, which was significantly less than the National Housing Federation recommended rate of £31.50/hr. Part-way through 2014/15, the service was reviewed and the hours adjusted downwards to 104 hrs / year, so that by 2015/16, the total cost of cleaning the block was £1,742. In cross-examination, Ms Shynn stated that the specification had been prepared about 4-5 years before, but it was regularly reviewed. She accepted that Barbara (a residential "general needs" tenant) had been paid by the Respondent to clean the common parts. She did not know what Barbara had charged, or when she stopped cleaning the premises, but she was replaced by the contractors. Ms Shynn denied there had been a delay of 2 years in implementing the cleaning review.

42. In closing submissions, Ms Matson limited her objection to the relevant cost of cleaning in 2012/13. She accepted that 104 hrs a year was reasonable for cleaning this block, which was essentially 1 hr per stairwell per week. However, Ms Matson argued the 2012/13 rate of 156 hrs a year (3 hrs/week) was excessive for such a low maintenance block. She relied on two other points to support this. First, the cleaning review had taken place in 2012, but the reduction in hours was not implemented until 2014. Secondly, the cost of employing "Barbara" had been much lower than the cost of employing the contractors in 2012/13.

43. In closing, Mr Grundy submitted the costs were reasonable both before and after the review. There was no evidence that the review took place in 2012 and was delayed.

The Tribunal's decision

44. The Tribunal finds it was reasonable to incur relevant costs of £3,688.28 for cleaning in 2012/13. The costs are significantly higher than in later years, but an explanation has been given about how that costs was calculated. There is no evidence about the precise date of the review, but the fact that the service was reviewed to a lower specification does not by itself suggest the cost in 2012/13 was not reasonably incurred. No-one alleges that the standard of cleaning the premises was poor at any stage, or that comparable premises were cleaned at lower cost in 2012/13. The only evidence of a reasonable level of costs prior to 2013/14 is the suggestion that "Barbara" had been employed at much lower cost. But this evidence is hearsay, it is unsupported by documentary evidence and there is no evidence what work Barbara performed for her fee. By contrast, the Summary document mentioned above gives details of the work carried out for the contractor's charge – including caretaking functions in addition to cleaning.

Issue 5: Non-contracted maintenance

45. According to the spreadsheet and the 2016/17 accounts, the relevant costs of non-contractual maintenance were £517.50 (2012/13), £1,028.77 (2013/14), £859.57 (2014/15), £55.71 (2015/16) and £114.20 (2016/17).

46. The issue of liability for this cost was raised in the Application. However, it was not pursued at the hearing.

Issue 6: Building Insurance

47. According to the spreadsheet and the 2016/17 accounts, the Building Insurance costs for the years in question were £977.28

(2012/13), £966.12 (2013/14), £1,030.20 (2014/15), £989.18 (2015/16) and £1,073.52 (2016/17).

48. In her closing submissions, Ms Matson argued that the insurance costs were not reasonably incurred under s.19 LTA 1985. She argued that the use of two building insurance policies for Meridian Court (including a policy for the non-leasehold flats) inevitably meant the insurance premiums were higher than for a block with a conventional insurance arrangement. Ms Matson adopted the apportioned figures for building insurance in the service charge accounts as being a reasonable figure for insurance costs (for example, she contended that the Tribunal should allow only £407.20 for the relevant cost of insurance in 2012/13, as opposed to the costs of £977.28 which were in fact incurred).

49. Mr Grundy submitted that the matter had not been pleaded, and that there were no alternative estimates for the cost of insurance.

The Tribunal's decision

50. The Tribunal declines to deal with the argument. No challenge to the reasonableness of the building insurance was specifically made in the Application, the Position Statements or the First Applicant's witness statement.

51. In any event, on present evidence the Tribunal would not find the relevant costs unreasonable. There is no evidence of how the Respondent placed its insurance, and the Applicants produced no alternative quotations for insuring the block in accordance with the Lease: see *Waaler v LB Hounslow* [2017] EWCA Civ 45; [2017] 1 WLR 2817 and *COS Services Limited v (1) Irene M Nicholson (2) Wendy E Willans* [2017] UKUT 0382 (LC). In any event, the Tribunal rejects the use of the suggested "proxy" for what might be a reasonable insurance cost - since it is not a cost for insuring the whole block as required by the Lease.

Issue 7: Annual audit

52. According to the spreadsheet and the 2016/17 accounts, the fees paid to PriceWaterhouse Coopers to audit the service charge accounts were £135.36 (2012/13), £348.48 (2013/14), £360 (2014/15), £371.52 (2015/16 and 2016/17).

53. In the Application, the Applicants suggested the audit fees had increased over the years (and in particular between 2012/13 and 2013/14) and that the increase was unexplained. In closing, Ms Matson applied the same argument to the updated audit costs in the spreadsheet. She argued there had been serious errors in the audit process. In particular, in the light of the spreadsheet, the accounts understated the relevant costs in each year by several thousand pounds. Moreover, for reason explained elsewhere in this decision, the accounting for the sinking fund was seriously flawed. She submitted nothing should be allowed for audit, because the accounts were wrong.

54. The Respondent's Statement of Case stated that the annual audit fee was based on a sliding scale calculated on a cost per unit. If the annual service charge showed an increase, the audit fee also increased. The audit fees were signed off by the Respondent's own auditors KPMG as being reasonable in each year. No copies of the receipts from PriceWaterhouse Coopers were produced. In his closing submissions, Mr Grundy suggested that an audit fee of between £11.28 and £30.96 per unit in each year was not excessive and that the audit appeared to have been properly carried out.

The Tribunal's decision

55. The evidence on this is very limited indeed, but there is no challenge to the contention that the audit fees were incurred on the basis of a fee per unit, which varied according to the overall relevant costs. The only evidence produced of alternative costs for preparing accounts was produced by the Applicants in relation to

Stoneacre Court and Courtenay Place (see below), where the cost of "accounts preparation fee" and "preparation and certification of accounts" were £364 and £1,000 respectively. Although different properties, these do not suggest an annual fee of between £135.36 and £371.52 for auditing the service charges for Meridian Court were excessive. Nor was the figure excessive in the Tribunal's own experience of audit and accounting fees for small blocks of flats. As to whether the service provided by the auditors was of a reasonable standard under s.19(1)(b) LTA 1985, we comment elsewhere on the treatment of the sinking fund. There is a real criticism to be made of the format of the service charge statement, which for reasons already given were misleading about the question of relevant costs incurred in each service charge year. But in essence, the audit gave the correct service charge payable by the Applicants, and the Tribunal does not consider any allowance should be made against the audit fees for that reason alone.

Issue 8: Transfer to Sinking Funds

56. According to the spreadsheet and the 2016/17 accounts, there was a contribution to the sinking fund of £3,832.80 (2012/13), £4,105.63 (2013/14), £4,233.60 (2014/15), £4,348.99 (2015/16) and £4,393.44 (2016/17).

57. The argument raised in the Application was on the basis of apportionment. However, the Respondent's letter of 18 July 2017 perhaps inadvertently raised a further issue. In that letter, the Respondent stated that "Sanctuary calculate the total amount that needs to be absorbed by Sanctuary on the basis that it is not passed down to the occupiers of tenanted units and that Sanctuary will meet 7/12ths of the cost of any works in respect of which the sinking fund is utilised". The inference was that the Respondent had itself made no contributions to the sinking fund under clause 7(7) of the Lease, which required the landlord to "provide in respect of [its 7 flats] a ... contribution to the reserve fund".

58. At the hearing, Ms Slynn was cross-examined about the sinking fund. She was taken to the "Consolidated Sinking Fund Statement" in the audited service charge accounts for 2013/14. These showed "contributions receivable" of £1,710.88, which was the total for the relevant cost of "transfer to Sinking Fund Accounts" made by the 5 lessees in the same accounts. It was put to Ms Slynn that the 2012/16 accounts suggested the Respondent had made no contribution to the sinking fund over the entire period. Ms Slynn accepted that the accounts showed no contribution by the landlord, but the Respondent would "make up for that". She believed the Respondent had already made a contribution to the sinking fund.

59. In closing, Ms Matson argued that the audited accounts showed the landlord had made no contributions to the sinking fund in any year, contrary to clause 7(7) of the Lease. She invited the Tribunal to disregard the evidence of Ms Slynn, since she knew nothing directly about the property. When pressed as to how a breach of that covenant affected the issue of liability to pay a service charge under s.27A LTA 1985, Ms Matson argued that it could not be reasonable under s.19 for the tenants to make a contribution to the sinking fund if the landlord is not making a contribution.

60. In his closing submissions, Mr Grundy's primary argument was that reasonableness of the sinking fund had not been pleaded. Secondly, he argued that Ms Slynn's evidence should be accepted that the Respondent had in fact made a contribution to the sinking fund. In any event, there were good reasons why no contribution could be made to the sinking fund, since the Respondent as trustee was unable to contribute moneys to its own sinking fund.

The Tribunal's decision

61. Should the Tribunal permit the Applicant to raise the question of reasonableness without specifically having pleaded the issue? In this case the Tribunal has no hesitation in permitting the Applicant

to amend its case to deal with the question of whether the sinking fund contributions were reasonably incurred under s.27A. The point has substance, in that it is plainly arguable on the evidence and the law. The Respondent is in a position to deal with the point, in that the most significant evidence is already before the Tribunal (namely the Consolidated Sinking Fund Statements). Indeed, it was the Respondent who first foreshadowed the issue in its letter of 18 July 2017. The Respondent is represented by experienced leading specialist property counsel at the hearing and was in a position to deal with the new argument (as it in fact did). The specific objection was of course raised very late indeed, but the Applicant had objected to the Sinking Fund contributions and made separate objections to reasonableness of other items of cost under s.19 from the outset. Moreover, the Tribunal considers the Respondent's own conduct is material when considering whether to allow the argument to be raised at this late stage. The very late production of the spreadsheet had a significant impact on the question of sinking find contributions.

62. As to the argument itself, the Tribunal finds, on the evidence, that the Respondent did not contribute money to the sinking find in any of the service charge years. The Consolidated Sinking Fund Statements in each year are unequivocal on the point, and one would not expect that contributions made by the Respondent in five successive years would be omitted from the Statements and that no note was made to the accounts. The Statements purport to show sums carried forward, with the evident intent of showing precisely how much money was available in the sinking fund to defray the costs for which it was established under the Lease. Moreover, the position is supported by the letter of 18 July 2017 referred to above. As to Ms Slynn's evidence, the Tribunal has already indicated that she was a truthful witness, but on this point, it was clear she had no direct knowledge of the sinking fund.

63. As to the law, the Tribunal finds the relevant costs of the sinking fund contributions were not reasonably incurred. Applying the two-stage test suggested in *Waaler* (referred to by Mr Grunby in his skeleton argument), there is only the barest evidence of the Respondent's decision-making process in relation to the sinking fund. It is unclear whether it has, for example, arrived at the sinking fund contributions in accordance with the *RICS Residential Service Charge Management Code* (3rd Ed). The RICS Code sets out the correct method of assessing the appropriate sum to be set aside as Reserves. There should be a costed long term maintenance plan that reflects the age, construction and condition of the property together with projected income streams. No evidence of this was presented to the Tribunal. But no challenge was made to this element of the *Waaler* test.

64. The Applicant's main argument was under the second limb of *Waaler*, namely that the Respondent's failure to pay into the sinking fund account led to an unreasonable outcome. In this case, the Tribunal considers there was an unreasonable outcome. The purpose of a sinking fund it to ring fence moneys to be applied to important items of cost and to defray the cost of those items of cost over a period of time as set out in the lease. In this case, the mischief is that the landlord has not met its obligation to pay into the fund at the outset. If the landlord does not do so, prejudice is caused to the lessees in three ways. First, the moneys contributed by the Applicant and the 4 other long leaseholders could of course be applied to expenditure on the whole building - effectively subsidising the 7 non-leaseholder flats. Secondly, and assuming the Respondent effectively "topped" up the sinking fund at the later stage whenever expenditure was incurred and moneys paid out of the fund, the lessees have still lost the security of knowing an adequate sum had been set aside to pay for major works etc. Thirdly, it is in any event plainly unfair for some contributors to the sinking fund to lose the use of their money for a period of time, whilst the land-

lord (in breach of covenant) does not. The Tribunal sees no reason why the Respondent's position as a trustee of the fund means it need not or cannot contribute to the sinking fund. The Tribunal therefore finds the Applicant's contributions to the sinking fund were not reasonably incurred.

65. This does not of course mean that the Applicant will benefit in the medium term. A contribution to a sinking fund is in effect an early payment towards a later liability for the costs of repairs etc. If the money is not available in the sinking fund, the Applicant will at some stage have to pay for those repairs through the other service charge provisions of the Lease.

66. The Tribunal has taken note of the 2012/3 year end accounts showing an opening balance as at 1 April 2012 of £16,945.50 in the Reserve Fund. From the evidence before the Tribunal it would appear that this balance is the result of contributions made by the five leaseholders, with no contributions being made by the Respondent. The treatment of the opening balance was not addressed by either party at the hearing, but the issue will need to be addressed by the Respondent at some stage.

Issue 9: Management charges

67. According to the spreadsheet and the 2016/17 accounts, the Annual Management Charge for the years in question was £3,024 (2012/13), £3,117.50 (2013/14), £3,366.72 (2014/15), £3,636 (2015/16) and £3,926.88 (2016/17).

68. At the start of the hearing, Ms Matson indicated that she wished to challenge the Annual Management Charges on the ground that they were not reasonably incurred. In support of this, she produced estimated service charge statements for Courtenay Place, Hart Street, Maidstone for the 2015 and 2016 service charge year, and anticipated service charge expenditure for Stoneacre Court,

Enterprise Road, Maidstone for the 2016/17 service charge year. No objection was raised to this material going before the Tribunal.

69. In her closing submissions, Ms Matson again argued briefly that the Annual Management Charges were not reasonably incurred under s.19 LTA 1985. The above costs suggested a charge per flat of between £252 and £303 a year. She argued that the premises were low maintenance and that a sum in the order of £300 per flat was excessive. She relied on the accounts for Stoneacre Court and Courtney Place, where the cost of "Management Fees" were £238 and £242 per flat respectively.

70. Mr Grundy submitted this argument had also neither been pleaded nor raised prior to the hearing. In any event, the cost of management per flat was well within the range of reasonableness.

The Tribunal's decision

71. The Tribunal declines to deal with the argument. No challenge to the reasonableness of management charges was specifically made in the Application, the Position Statements or the First Applicant's witness statement.

72. In any event, on present evidence the Tribunal would not find the relevant costs unreasonable. Although it appears the Respondent manages the property in-house, there is no real evidence of the way that this cost was procured. The service charge statements for the two other properties produced by the Applicants suggest a range of costs per flat slightly lower than that incurred for the subject property, but the Tribunal has not had the benefit of seeing any management contract for the subject property or for any of the other two premises relied on by the Applicants, or any list of services provided in each instance. In the Tribunal's own experience, a management charge of approximately £300 per flat per annum is in any event not obviously excessive for Southeast England.

Issue 10: Costs

73. The Application included a claim for a section 20C order and at the hearing, counsel indicated the Respondent agreed to such an order. In the circumstances, the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the Applicants.

74. The Tribunal would simply note the s.20C concession was a realistic one for the Respondent to make. Notwithstanding the fact that it has succeeded on most substantive issues, it is clear from the above that the Tribunal relied heavily on the spreadsheet produced at the hearing itself and apparently without any warning to the Respondent. No explanation was given as to why there was a delay between Thursday (when the document was created) and Tuesday (when the document was provided to the Applicant). Moreover, in material respects the case advanced in the spreadsheet and at the hearing was different to that advanced at an earlier stage of proceedings. There was an overwhelming argument that it was just and equitable to make the order sought.

75. Finally, Ms Matson indicated that the Applicant wished to apply for a costs order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 at the conclusion of the hearing. The Tribunal indicated that if such an application is made, it would better made in writing within the time provided for in Rule 13(5). Ms Matson did not therefore pursue the application at the hearing.

Conclusions

76. The Tribunal therefore finds for the Respondent in respect of apportionment and on each of the items of relevant cost, apart from the contributions to the sinking fund. The Applicant is liable as follows, being 1/12th of the relevant costs in paragraph 23 above:

	2012/13	2013/14	2014/15	2015/16	2016/17
Contract Ground Maintenance	£662.44	£736.67	£736.67	£736.67	£736.67
Light Bulbs	£128.92	£14.63	£61.54	£1.44	£3.12
Internal Contract (cleaning)	£307.19	£191.75	£191.75	£145.17	£145.17
Non-contracted Maintenance	£43.13	£85.73	£71.63	£4.64	£9.52
Day to Day repair costs	£185.81	£283.40	£84.71	£118.79	£170.12
Building Insurance	£81.44	£80.51	£85.85	£82.43	£89.46
Annual Management Charge	£252.00	£259.82	£280.56	£303.00	£327.24
Annual Audit Charge	£11.28	£29.04	£30.00	£30.96	£30.96

77. Under s.20C LTA 1985, the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the Applicants.

Judge Mark Loveday
28 November 2017

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX I: MATERIAL LEASE TERMS

1(2) The following expressions have where the context admits the following meanings [by reference to the Particulars on the first page of the Lease] :-

- Estate — Meridian Court 47 Buckland Road, Maidstone ...
- Building — MERIDIAN COURT
- Premises — 12 [or 11] Meridian Court 47 Buckland Road Maidstone ...
- Specified Proportion of Service Provision: — One Twelfth

5. THE Landlord HEREBY COVENANTS with the Leaseholder as follows:-
...
(2) That the Landlord will at all times ... keep the Building insured against loss or damage by fire and such other risks as the landlord may from time to time reasonably determine or the Leaseholder or the Leaseholder's Mortgages may reasonably require ...
(3) That ... the Landlord shall maintain repair and redecorate and renew:
(a) the roof foundations and structure of the Building and all external and load-bearing walls the windows and doors on the outside of the flats within the Building (save the glass in any such doors and windows and the interior surface of walls) and all parts of the Building which are
not the responsibility of the Leaseholder under this Lease or of any other Leaseholder under a similar Lease of other premises in the Estate PROVIDED ALWAYS the Landlord shall redecorate as necessary the outside doors of the Premises and the Landlord will make good any defect affecting the said structure
(b) the pipes sewers drains wires cisterns and tanks and other gas electrical drainage ventilation and water apparatus and machinery in under and upon the Building (except such as belong to the British Telecom or any public utility supply authority)
(c) the Common Parts and boundary walls and fences of the Estate
(4) ... so far as practicable the Landlord will:-
(a) keep the Common Parts of the Building adequately cleaned and lighted
(b) tend keep clean and tidy the Common Parts of the Estate
(c) keep the gardens and grounds of the Estate cultivated and in good order

7(2) The Leaseholder HEREBY COVENANTS with the Landlord to pay the Service Charge during the term by equal payments in advance at the times at, which and in the matter in which rent is payable under this Lease PROVIDED ALWAYS all sums paid to the Landlord in respect of that part of the Service provision as relates to the reserve referred to in the sub-clause 4(b) hereof shall be held by the Landlord in trust for the Leaseholder until applied towards the matters referred to in sub-clause 4(5) hereof ...

7(4) The Service Charge shall consist of a sum comprising
(a) the expenditure estimated by the Surveyor as likely to be incurred in the Account Year by the Landlord upon the matters specified in sub-clause
(5) of this Clause together with
(b) an appropriate amount as a reserve for or towards such of the matters specified in sub-clause (5) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year including (without prejudice to the generality of the foregoing) such matters as the decoration of the exterior of the Building and Garages (the said amount to be computed in such manner as far as to ensure as far as is reasonably foreseeable that the Service Provision shall not fluctuate unduly from year to year) but
(c) reduced by any unexpended reserve already made pursuant to paragraph (b) of this sub-clause in respect of any such expenditure as aforesaid
(5) The relevant expenditure of the Landlord in connection with the repair management maintenance and provision of services for the Estate and shall include (without prejudice to the generality of the foregoing):-
(a) the costs of and incidental to the performance of the Landlord's
covenants contained in Clauses 5(2) 5(3) and 5(4) ...
(b) the costs of an incidental to compliance by the Landlord with every notice regulation or order kof [sic] any competent local or other authority in respect of the Estate

(c) all fees charges and expenses of the Surveyor (of if the Surveyor is an employee of the Landlord a reasonable allowance for the Landlord) in connection with the management and maintenance of the Estate including the computation and collection of rent (if any) and includes the completion and collection of the Service Provision (but not including any fees charges or expenses in connection with the effecting of any letting or sale of any premises)
(d) all fees charges and expenses payable to any Solicitor Accountant Surveyor Valuer or Architect whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Estate including the computation and collection of rent (but not including fees charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge and if any such work shall be undertaken by an Employee of the landlord then a reasonable allowance for such work
(e) Any rates taxes duties assessments charges impositions and outgoings whatsoever whether parliamentary parochial local or of any other description assessed charged imposed or payable on or in respect of the whole of the Building or on the whole or any part of the Estate

7(8) of the Lease provides as follows:
(8)(a) if in the reasonable opinion of the Surveyor it shall at any time become necessary or equitable to do so he may increase or decrease the Specified Proportion.
(b) the Specified Proportion increased or decreased in accordance with sub-clause 7(a) above shall be endorsed on this Lease and shall hereafter be substituted for the Specified Proportion set out in Clause 7(i)(c) of this Lease

APPENDIX II: LEGISLATION REFERRED TO IN DECISION

LANDLORD AND TENANT ACT 1985

18 Meaning of "service charge" and "relevant costs"

(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.

...

19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

20C.— Limitation of service charges: costs of proceedings.

(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;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) 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;
(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.

27A Liability to pay service charges: jurisdiction

(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.