

9037



**FIRST – TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CAM/22UQ/LSC/2013/0038

**Properties** : 14, 16, 27, 29, 33 and 45 Mortymer Close,  
Little Canfield, Essex, CM6 1FQ

**Applicant** : Lauren Canford (14)  
Oliver Marian and Hannah Goodge (16)  
Christopher Street (27)  
Danielle Procter (29)  
Paul White (33)  
Paul Taylor (45)

**Representatives** : Oliver Marian, Christopher Street,  
Danielle Procter

**Respondent** : Swan Housing Association

**Representatives** : Mr Pearce and Mrs Macdonald

**Type of Application** : to determine reasonableness and payability of  
actual service charges for 2011-2012,  
and the estimated service charges for  
2012-2013, and 2013-2014 (Ss 19 and 27A  
Landlord and Tenant Act 1985 ('the Act'))

**Tribunal Members** : Judith Lancaster - Chairman  
Stephen Moll FRICS - Valuer Member  
John Francis - Lay Member

**Date and venue of  
Hearing** : 20 May 2013 – Saracen's Head, Great Dunmow  
adjourned part-heard to 28 June 2013

**Date of Decision** : 29 July 2013

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**DECISION**

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1. The Tribunal finds that the reasonable service charges for the year 1 April 2011-31 March 2012, and the reasonable estimated service charges for the years 1 April 2012-31 March 2013 and 1 April 2013-31 March 2014 should be follows;

<b>Charges Per Applicant</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Communal Grounds Maintenance	50.00	100.00	100.00
Communal Repairs	0.00	50.00	52.00
Audit Fee	34.60	36.00	37.00
Building Insurance	68.75	71.00	73.00
Management Fee	100.00	200.00	206.00

### **Charges Per Block**

For the reasons set out in paragraph 24 below the Tribunal can only calculate the following charges on the basis of per Block, rather than per Applicant;

<b>12-45, Mortymer Close</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Electricity	201.37	100.00	110.00
Communal Lighting Maintenance	16.91	20.00	25.00
Communal Lighting	100.00	50.00	52.00
Communal Window Cleaning	100.08	104.00	107.00
Communal Door Entry	200.00	205.00	210.00
Communal Equipment Maintenance	141.93	0.00	0.00
TV Aerial Maintenance	115.00	36.00	37.00
Fire Equipment Provision	750.00	775.00	650.00
<b>27-31, Mortymer Close</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Electricity	103.35	100.00	110.00
Communal Lighting Maintenance	16.91	20.00	25.00
Communal Lighting	0.00	50.00	52.00
Communal Window Cleaning	100.08	104.00	107.00
Communal Door Entry	319.52	205.00	210.00
Communal Equipment Maintenance	141.93	0.00	0.00
TV Aerial Maintenance	115.00	36.00	37.00
Fire Equipment Provision	750.00	775.00	650.00

<b>33-43, Mortymer Close</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Electricity	97.53	100.00	110.00
Communal Lighting Maintenance	16.91	20.00	25.00
Communal Lighting	0.00	50.00	52.00
Communal Window Cleaning	118.08	122.00	126.00
Communal Door Entry	200.00	205.00	210.00
Communal Equipment Maintenance	141.93	0.00	0.00
TV Aerial Maintenance	115.00	36.00	37.00
Fire Equipment Provision	750.00	775.00	650.00

### **Communal Cleaning**

For the reasons set out in paragraph 29 (c) below, the Tribunal determined that these charges could only reasonably be determined on the basis of the total charge for all three Blocks, which would be £5892.16 for 2011/12, £6070.00 for 2012/13 and £6250.00 for 2013/14.

2. However, pursuant to paragraph 25 (b) below, the Respondents can only charge each Applicant £100.00 per annum for the services provided under the agreement with Axis Europe PLC signed on 1 April 2009.
3. The Tribunal makes an order pursuant to Section 20C of the Act preventing the Respondent from claiming any cost of representation before this Tribunal as part of any future service charge demand.

### **Introduction**

4. The Applicants are long leaseholders of the individual flats, as set out above, and the Respondents are the freeholder.
5. In this Application the Applicants seek determination of the service charges, as set out above, and also ask that the Tribunal makes an order under Section 20C of the Act preventing the Respondents from recovering any costs incurred by them in these proceedings from being included in any future service charge claim.

### **The Inspection**

6. The members of the Tribunal inspected the development where the Properties are located in the presence of the representatives of both parties. The estate (the 'Estate') is made up of different blocks of 25 flats/houses, and the Properties, all flats, are located in three separate, but very similar modern blocks, constructed in 2009, though different in overall size; 12, 14, 16 and 45 in one block, ('Block 12-45') 27-31 in a second, ('Block 27-31'), and 33-43 in a third ('Block 33-43'). Therefore the service charges are split into charges for the Estate, ('Estate Charges'), and charges for each individual block, ('Block Charges'), with the addition of what is called Property Charges, ('Property Charges'), composed of charges for the audit fee, building insurance and management fee.

7. The Estate is surrounded by communal garden areas, mainly grass with some shrubs etc, and a parking area, with a space for each resident. The Tribunal noted that the grass areas did not appear well maintained. There is a garden shed in communal garden area near Block 33-43, which had a broken window on the date of inspection.
8. There is a communal door for each block, with a door entry system, leading to a hall/landing on each floor, with communal stairs between the floors. The Tribunal noted that the entrance door for Block 27-31 did not appear to be working properly. The communal areas of each Block are very similar in size and lay-out on each floor, but Block 33-44 has three floors and the other two Blocks have only two floors. There is one automatic light, with a light sensor, on each floor, a meter cupboard on each floor, automatic smoke vents, and a loft hatch on the top floor. The Tribunal were told that the light on the ground floor of Block 12-45 did not work properly, and that a damaged loft hatch was supposed to have been replaced, but instead had been repaired to a poor standard. The Tribunal noted that a basic repair did appear to have been carried out. The Tribunal also noted that the landing cupboards were not particularly clean, although the communal areas generally did appear to be clean. The Tribunal did not see any fire extinguishers.

### **The Lease Terms**

9. It was agreed by the parties that the terms of each lease are identical for the purposes of this Application. In the lease relating to Flat 14, ('the Lease') the service charge provisions are set out under clause 7. The Applicants did not challenge the types of costs specified in the service charge claims for the years in question, but they did challenge whether the amounts claimed for some of the items in each of the years were reasonable.
10. The Applicants also challenged the way in which the charges were apportioned. In Schedule 9 of the Lease, 'Service Charge' is defined as the Specified Proportion of the Service Provision, and the Specified Proportion is defined a  $1/25$  in the section of the Lease headed 'Particulars'. In their Statement of Case the Respondents stated that the Specified Proportion in the leases is  $1/25$ , but they did not believe it was fair or reasonable to apportion certain costs in this way, because the estate consists of 19 flats and 6 houses, and they considered that the houses should not contribute to the costs incurred in respect of the blocks. Therefore items shown as Block Charges were apportioned to each block and divided by the number of flats in that block. Under clause 7.8 of the Lease, the Specified Proportion may be varied by written notice to the leaseholder, but the Respondents admitted that at no time had such written notice been given.

### **The Law**

11. Section 18 of the Act defines service charges as being an amount payable by a tenant to a landlord, as part of, or in addition, to rent for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs.
12. Section 19 states that the relevant costs are payable 'only to the extent that they are reasonably incurred'.

13. A tenant may apply to the Leasehold Valuation Tribunal, (from 1 July 2013 the First-tier Tribunal Property Chamber (Residential Property)) pursuant to Section 27A.

### **The Hearing**

14. The hearing was attended by the Representatives set out above, with Mr Coombs, Mrs Meyer and Mr Kyprianou also in attendance. The Tribunal Chairman asked the parties first to address issues of general relevance to all the service charges to be considered.
15. Apportionment – see paragraph 9 above.
16. Consultation – under Section 20 of the Act, the contributions of each service charge payer relating to any qualifying works or qualifying long-term agreements to which the section applies will be limited to £250.00 in respect of qualifying works, and £100.00 pa in respect of qualifying long-term agreements, unless the specified consultation requirements have been complied with, or dispensed with by a Leasehold Valuation Tribunal.
17. The Respondents accepted that the Communal Grounds Maintenance service was provided under a qualifying long-term agreement under Section 20, and therefore charges would be amended to a maximum of £100.00 per Applicant per annum, a reduction of £8.00 for 2011/12 and £14.59 for 2113/14 for all the Applicants.
18. The Respondents stated that other items in the service charges were the subject of a qualifying long-term agreement with Axis Europe PLC. These included Communal Repairs, Communal Door Maintenance, Communal Equipment Maintenance, TV Aerial Maintenance and Fire Equipment Provision and Maintenance, which were provided under a 14-year contract between the Respondents and Axis Europe PLC, signed on 1 April 2009, before any of the properties on the Estate were occupied, and before the Applicants signed the leases for the Properties. This contract applied to all properties owned by the Respondents, and all tenants occupying other properties owned by the Respondents at the time the contract was entered into were properly consulted. The Estate became part of this contract once it was occupied, but there was no need to consult the Estate tenants as the contract had already been signed. The Applicants were not aware of the requirements to consult under Section 20 and made no representations on this.
19. The Applicants had questioned why the costs of repairs to the buildings had not been covered by a 10-year warranty from the builders of the Estate. The Respondents stated that there was a 10-year warranty, but this only covered structural defects, and so did not cover any repairs which are the subject of this Application. Any other repairs were only covered by a one-year warranty, which expired in 2010.
20. Each service charge item was then considered individually.
21. Estate Charges.

- a) Electricity;  
the Respondents agreed that, as there was no amount included for 2011/12, the estimated charge shown for 2012/2013, £32.34, should be removed. There was no amount shown in the estimated charge for 2013/14.
- b) Communal Lighting Maintenance;  
no amounts for this had been included in the original figures submitted by the Respondents, but £50.74, relating to a repair to an archway light, had been included in the Block charges for Block 12-45. The Respondents agreed that this should have been charged to all three Blocks, and included in Estate Charges. At the hearing on 28 June, the sum of £50.74 was still only charged to Block 12-45 for 2011/12, with no charge for the other two Blocks. The amended figures showed that £50.74 was included for Blocks 12-45 and 27-31, and £53.83 for Block 33-43, for 2012/13, and £53.83 for each Block for 2013/14. The Applicants asked the Tribunal to determine reasonable estimated charges for the following years
- c) Salt Bins; no charges made in any year.
- d) Communal Grounds Maintenance:  
the Applicants argued that the annual charge for the whole Estate, £2,700, was excessive, as the grounds were not extensive and the standard of maintenance was unsatisfactory, as the Tribunal saw at the inspection. There was very little done during the winter months, although there was a monthly bill throughout the year. The Respondents stated that the contract was billed monthly based on an agreed contract price for the whole job. The Respondents agreed they would not have expected to see the grass in the poor condition it was at the inspection.
- e) Refuse Disposal; no charge in any of the years in question.
- f) Water and Sewerage; no charge in any of the years in question.

## 22. Block Charges.

- a) Electricity;  
the Applicants queried why the costs for Block 12-45 were roughly double the costs for the other two Blocks. The Respondents stated that the costs were calculated by meters in each Block, and they were unable to explain the differential. The Applicants accepted that it was likely that the additional electricity had been consumed for some unknown reason, such as a loft light not being turned off, and agreed to accept the sums charged for 2011/12. The Respondents agreed that the estimated charges for the following two years should be based on the charges for Blocks 27-31 and 33-43
- b) Communal Lighting;  
i) the only charge in 2011/12 was for Block 12-45. The Respondents stated this related to a repair to a light sensor in the common parts of this Block. At the hearing on 20 May the Applicants stated that this repair was faulty, and the Respondents undertook to carry out further remedial works free of charge. At the hearing on 28 June the

- Applicants confirmed that some work had been done, but it was of a poor standard; the faulty surface detector had only been re-attached, when, as the Tribunal saw at the inspection, it needed to be replaced ;
- ii) as far as the estimated charges for 2012/13 and 2013/14 were concerned the Respondents explained that these were simply calculated for each Block by using the actual figures for that Block for the year two years before ie the estimate for 2012/13 was based on the actual figures for 2010/12, and the estimate for 2013/14 was based on the actual figures for 2011/12. The Applicants stated that the estimated charges should be a reasonable amount based on the previous year's figures, not two years previously.
- c) Communal Cleaning;
- i) the Applicants stated that the communal areas were cleaned once a week, and that cleaning all three Blocks takes two people less than an hour, and therefore the amounts charged were excessive. The standard of cleaning is not satisfactory – the cupboards are not cleaned properly. The costs per Block varied too much: for 2011/12 the cost for Block 12-45 was £1812.98, for Block 27-31 it was £1359.74 and for Block 33-43 it was £2719.44. This was not justified by the differences in communal areas;
- ii) the Respondents stated that the charges were based on an hourly rate, and the differences in charges per Block reflected the different work carried out in each Block. The charges were reasonable, because they also included a caretaking service; when necessary the work included gritting pathways, replacing light-bulbs, Estate inspections, monitoring the gardening/window cleaning, re-setting the time clocks and checking fire-alarm panels. The Applicants responded that there were no anti-social problems in these Blocks causing additional work, such as graffiti, and that the state of the communal gardens showed that the caretaking duties had not been carried out properly;
- iii) The Respondents stated that the estimated service charges for 2012/13 were based on the actual charges for 2010/11 plus 6.5%, and for 2013/14 they were based on the actual charges for 2011/12 plus 6.5%. The Applicants stated that they were happy to accept whatever figure the Tribunal decided was reasonable, but they should be based on the latest actual figures available.
- d) Communal Window Cleaning: the Applicants accepted the charges, but stated that these should be Estate Charges, not Block charges, because there is a minimal difference in the number of windows per Block.
- e) Communal Door Entry:
- i) at the hearing on 20 May the Respondents stated that the charges were for an annual inspection/maintenance, and additional repairs as necessary. The Respondents admitted that they could not justify the charges shown for each Block for 2011/12. At the hearing on 28 June, the Respondents submitted adjusted figures, which were substantially lower for each Block. The charge for 2011/12 for Blocks 12-45 and 33-43 was adjusted from £618.66 to £268.92, to cover annual inspection/maintenance, and the charge for Block 27-31 was adjusted

from £648.54 to £388.44 – this included the inspection/maintenance charge and a charge for repair. The Respondents stated that all works under the contract with Axis Europe PLC, such as these, included an on-cost of 24.5% plus VAT. The on-cost covered site overheads, such as the call centre, and central overheads. The Applicants challenged whether the charge for annual inspection/maintenance was reasonable, and whether it was reasonable to add such a high on-cost;

ii) at the hearing on 20 May the Applicants stated that the door for Block 27-31 was still not working properly, as the Tribunal were able to see at the inspection. The Respondents undertook to repair the door free of charge.

f) Communal Repairs;

- i) the Applicants stated that the charges for 2011/12 were excessive, especially given that there had been problems with a blocked drain in Block 27-31 since 2009, but the repair had only been carried out in 2012. There was also a charge for a repair to the cleaners cupboard, which had not been carried out properly;
- ii) at the hearing on 20 May the Respondents admitted that errors had been made in calculating the charges, and they undertook to carry out the repair to the door for Block 27-31 at no further cost. They submitted significantly lower charges for each Block at the hearing on 28 June. The charges for Block 12-45 were reduced from £1569.80 to £0.00, for Block 27-31 from £544.88 to £232.82, and for Block 33-43 from £221.26 to £0.00.
- iii) at the hearing on 28 June the Applicants also agreed that the repair to the garden shed window had now been done, but the Respondents stated that they had omitted to include this charge, £35.48, in the revised service charge figures for Block 33-43;
- iv) both parties agreed that the estimated service charge figures for Communal Repairs for 2012/13 and 2013/14 should be £50.00 per Applicant.

g) Communal Equipment Maintenance;

the Respondents stated that this relates to a risk assessment of the lightening protection equipment, carried out by Axis PLC, at a cost of £141.93 per Block for the year 2011/12. This had been charged to two of the Blocks, but by mistake had not been charged to Block 27-31. They accepted that an inspection/risk assessment should have been done in 2009 prior to occupation, and that there were no further anticipated costs, so no estimated charges should be included for 2012/13 or 013/14. The Applicants accepted that a one-off cost of £141.93 per Block was reasonable.

h) TV Aerial Maintenance;

the Applicants queried why the charge for 2011/12 for Block 27-31 was £106.14 higher than for the other Blocks. The Landlord stated that each Block had been charged £79.68 for digital switch-over in that year, a one-off charge, and the sum of £106.14 was for aerial maintenance, which should have been spread over all three Blocks, and the Respondents would amend this.



- i) Fire Equipment Provision;
  - i) the Respondents stated that the charges, per annum per Block, were for two emergency lighting discharge tests and smoke ventilation tests, a fire risk assessment, and ten periodic emergency lighting flash tests, and any necessary repairs. The Respondents stated that this Estate is very small compared to other estates which the Respondents own – other blocks of flats can be up to 24 storey's high, with 110 flats in each. The charge is per block, regardless of size;
  - ii) at the hearing on 20 May the Respondents admitted they did not know why there were no charges for Block 12-45 for the year 2011/12, although the charge for Block 27-31 for this year was £1476.76, and for Block 33-43 it was £948.38. They also admitted that errors had been made in calculating the charges for these two Blocks. At the hearing on 28 June they submitted amended figures for these two Blocks of £1141.88 and £822.66 respectively. They also stated that, from 2013/14, the emergency flash lighting tests were no longer to be done under the contract with Axis Europe PLC, but would be part of the caretaking services charged under the heading of Communal Cleaning.

### 23. Property Charges.

- a) Audit Fee; the Respondents stated that Grant Thornton provided audit service for all their properties, on the basis of a 10% random audit, and the costs were shared between all the properties. The Applicants stated that the cost for 2011/12, £34.60 per Applicant, would not be unreasonable, if there had not been so many errors in the calculation of the service charges. They also stated that the estimated charges should be based on the previous years actual charges, not the actual charges from two years previously, which meant that the estimated charges for 2012/13 were lower than the actual charges for 2011/12.
- b) Building Insurance; at the hearing on 20 May the Respondents stated that this was provided under a policy with Aviva, covering all their properties, providing standard buildings insurance cover. The Tribunal asked for further information to be provided showing the basis on which the costs were calculated, in particular the cost per £1000 of the sum insured. This information was provided for the hearing on 28 June. The Applicants accepted that the charges, £68.75 per Applicant for 2011/12, were not unreasonable. However, as above, the estimated charges should be based on the previous year's actual figures.
- c) Management Fee; two of the Applicants, Mr Marian and Mr Street, stated that the management fee for 2011/12, £197.74 per Applicant, would have been reasonable had the management services been carried out efficiently, but, given all the errors admitted by the Respondents, the amount should be reduced. Ms Procter felt that the charge was too high, but had no experience on which to base this view. The Respondents stated that the charge was reasonable commercially, but accepted that a number of adjustments and

amendments, which should not have been necessary, have had to be made to the service charges.

## **Conclusions**

### **24. Apportionment;**

- a) the Tribunal determined that the service charges should be apportioned as set out in the leases for the Properties, 1/25 of the total costs relating to all the flats/houses forming part of the Estate, as the Respondent admitted that they had not given notice of a change in the apportionment, as required under the terms of the leases;
- b) therefore all charges should be calculated as Estate Charges. Tribunal were unable to calculate the costs per Applicant in relation to those charges included in the service charge calculations as Block charges, because the Tribunal did not have details of the total costs for all the flats/houses, only the charges per Block;
- c) the Tribunal would therefore make a determination for these charges on the basis of charges per Block, and it for the Respondents to re-calculate the charges for each Applicant on the basis of 1/25 of the total costs. Given that this further delay in determining the amounts of the service charges for the years in question arises from the failure of the Respondents to calculate the service charges in accordance with their obligations under the leases, the Tribunal would expect these recalculations to be done as a matter of urgency.

### **25. Consultation;**

- a) the Tribunal determined that the contract between the Respondent and Axis Europe PLC was a qualifying long-term agreement under section 20 of the Act, and did not accept the Respondent's argument that there had been no need to consult the tenants of this Estate, because the contract was signed before the Estate was occupied. Under clause 3 (d) of the Service Charges (Consultation Requirements) (England) Regulations 2003 an agreement is not a qualifying long-term agreement if, when the agreement is entered into, there are no tenants of the buildings or other premises to which the agreement relates and the agreement is for a term not exceeding five years. The agreement between the Respondents and Axis Europe PLC was for fourteen years from 1 April 2009. If the agreement did not relate to this Estate when it was signed, then there must have been a new contract for the terms of the agreement to apply to this Estate, and the consultation requirements would therefore also apply if this were the case.
- b) Therefore the Respondents can only charge £100.00 per Applicant per annum for those items in the service charge calculation which are provided under this long-term qualifying agreement.
- c) The Tribunal will, however, also make a determination as to the reasonable amounts which would have been payable in respect of these items if the consultation requirements had been complied with.

- d) The Respondents have the right, under Section 20ZA of the Act, to make an application to a Tribunal for retrospective permission to dispense with the consultation requirements. If permission were to be granted, the decision of this Tribunal still stands unless either the Respondent appeals against the decision of this Tribunal, or the Applicants agree to pay the amounts referred to in paragraph 24 (c) above.
26. The Tribunal determined that there should be a consistent approach to uplifts applied to the estimated service charges, which should be based on current inflation figures, and that therefore an uplift based on an increase of 3% per annum would be applied, rounded as appropriate, except where, as noted below, there was a justification to apply a different amount of uplift.
27. The Tribunal accepted the Respondents representations that no warranty from the builders of the Estate covered the items included in the service charges.
28. Estate Charges. The Tribunal noted the Applicants representations with regard to the on-cost included in the cost of works carried out by Axis Europe PLC. The Tribunal determined that they would consider each item charged on the grounds of the reasonableness of the overall cost for that item, rather than how this cost was made up. They then considered each item and determined as follows;
- a) Electricity; the parties had agreed no charges would be made.
- b) Communal Grounds Maintenance; the Tribunal determined that the work had not been carried out to a satisfactory standard, as agreed by the Respondent, and therefore determined that the charge for 2011/12 should be £50.00 per Applicant, instead of £100.00, as shown in the amended service charge schedule following the Respondent's agreement that these works were the subject of a qualifying long-term agreement where they had not carried out the consultation requirements. The estimated charge for 2012/13 and 2013/14 should be £ 100.00 per Applicant, as agreed by the Respondents.
29. Block Charges; the Tribunal determined the total charges in the years in question to be made for each Block as follows;
- a) Electricity; for 2011/12, as agreed between the parties, the charge for Block 12-45 to be £201.37, for Block 27-31 £103.35, and for Block 33-43 £97.53. The Tribunal also determined that the estimated charges for the two following years should be £100.00 per Block for 2012/13 and £110.00 or 2013/14, to reflect the likely increase in electricity charges.
- b) Communal Lighting Maintenance; the Tribunal determined that the charge of £50.74 should be divided between all three Blocks for 2011/12, £16.91 per Block, and that a reasonable estimated charge for each Block for 2012/13 would be £20.00, and £25.00 for 2013/14.
- c) Communal Lighting; the Tribunal determined that the cost for the sub-standard repair to the light in Block 14-45 should be reduced from £181.21 to

£100.00, and the reasonable estimated cost for 2012/13 should be £50.00 per Block, and £52.00 for 2013/14.

- d) Communal Cleaning;
- i) the Tribunal determined that the total actual charge for all three Blocks for 2011/12, £5892.16, was reasonable, given the standard of cleaning had appeared generally satisfactory at the inspection and given the other jobs included in this charge. However, the differentials between each Block did not seem reasonable, and therefore the Tribunal made a determination based on the total charge for all three Blocks, rather than per Block;
  - ii) the Tribunal determined that the estimated charges should be based on an uplift of 3.0% per annum ie £6070.00 for 2012/13 and £6250.00 for 2013/14.
- e) Communal Window Cleaning; the Tribunal determined that the charges per Block for 2011/12 were reasonable, £100.08 for Block 12-45 and for Block 27-31, and £118.08 for Block 33-43. The estimated charges for the following two years should be calculated on an uplift of 3.0% per year ie £104.00 for 2012/13 for Blocks 12-45 and 27-31 and £122.00 for Block 33-43, and for 2013/14 £107.00 for Blocks 12-45 and 27-13 and £126.00 for Block 33-43.
- f) Communal Door Entry; the Tribunal determined that the Respondents had not adequately justified the reasonableness of £268.92 for annual inspection and maintenance for each Block for 2011/12, and a determined that £200.00 was a reasonable cost for this item. An additional amount of £119.52 would be added to the charge for Block 27-31, to take account of the repair work which the Applicants confirmed had been done. The Tribunal determined that the estimated charges for 2012/13 should be £205.00 per Block, and for 2013/14 should be £210.00 per Block.
- g) Communal Repairs; the Tribunal determined that the charges for 2011/12, for Block 12-45 and Block 27-31, as amended by the Respondents, were reasonable. The parties had agreed on 28 June that a sum of £50.00 per annum per Applicant was reasonable for the estimated charges for 2012/13 and 2013/14. The Tribunal determined that £50.00 per Applicant was a reasonable charge for 2012/13, but that an uplift of approximately 3% should be included for 2013/14, ie £52.00;
- h) Communal Equipment Maintenance; the Tribunal determined that each Block should be charged £141.93 for the year 2011/12, but no estimated charges would be included for the following two years.
- i) TV Aerial Maintenance; the Tribunal determined that a charge of £115.00 per Block for 2011/12, to cover digital switch-over and annual maintenance, was reasonable. As the costs of digital switch-over were a one-off cost, it should not be included in the estimated charges for 2012/13 and 2013/14. The Tribunal determined that an estimated charge of £36.00 per Block should be included in the service charges for 2012/13, and £37.00 per Block for 2013/14.

- j) Fire Equipment Provision;
- i) the Tribunal determined that the Respondents had not justified the differential between the charges, as amended, for Blocks 27-31 and 33-43, and that this differential was not reasonable. The Tribunal determined that it was not reasonable to charge the same for all blocks of flats regardless of any significant differences in the size, type and number of blocks on a particular development; there was inevitably going to be more time spent doing emergency lighting discharge tests/smoke ventilation tests on large estates;
  - ii) the Tribunal therefore determined that the actual charges for each Block for 2011/12 should be £750.00 , and the estimated charge for each Block for 2012/13 should be £775.00, and the estimated charges for each Block for 2013/14 should be £650.00, taking account of the fact that the emergency lighting flash tests would no longer be included.

30. Property Charges.

- a) Audit fee; the Tribunal determined that the charges for 2011/12 were reasonable, as it appeared that the majority of the errors noted above were the responsibility of the Respondent, not the auditor. The estimated charges for the following two years should be based on an uplift of approximately 3% per year.
- b) Building Insurance; the Tribunal determined that the charges for 2011/12, £68.75 per Applicant, were reasonable, and that the estimated charges for the following two years should be based on an uplift of approximately 3% per year.
- c) Management Fee; the Tribunal determined that the charges for 2011/12 would have been reasonable, if the management services had been carried out to a reasonable standard. However, in light of the numerous errors admitted by the Respondent, the charges for 2011/12 should be reduced to £100.00 per Applicant. The estimated charges for 2012/13 should be £200.00 per Applicant, and the estimated charges for 2013/14 should be 206.00 per Applicant.

31. Section 20C of the Act; given that the Respondent has admitted that they had made numerous errors in calculating the service charges, the Tribunal determined that it is just and equitable to make an order that all or any of the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants, and hereby make such an order.

Judge Lancaster

