



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

Case Reference	:	LON/00BG/LSC/2014/0357
Property	:	Flats 1, 5, 6, 7, 10, 14, 22 Lister House Lomas Street London E1 5BG
Applicant	:	Mr John Bloxam & Others (as detailed in the attached appendix)
Representative	:	Mr John Bloxam
Respondent	:	London Borough of Tower Hamlets
Representative	:	Ms R Cattermole of Counsel
Type of Application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge: Haria Professional Member: Mr Gowman
Date and venue of Hearing	:	10 Alfred Place, London WC1E 7LR
Date of Decision	:	2 June 2015

DECISION

NB: The numbers in square brackets [] correspond to page numbers in the bundle.

Decisions of the tribunal

- a) The tribunal makes the determinations as set out under the various headings in this Decision.
- b) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that 50% the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicant in respect of the service charge years ending 31st March 2007, 2008, 2009, 2010, 2011, 2012, and 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. John Bloxam represented the applicants at the hearing and the respondent was represented by Ms Cattermole of Counsel.
4. Immediately prior to the hearing the parties handed in further documents, namely:
 - (i) The applicants written opening comments,
 - (ii) The respondent's counsel's skeleton argument.

The start of the hearing was delayed while the tribunal considered these new documents.

5. During the course of the hearing the parties produced the following additional documents:
 - (i) A document produced by the respondent entitled "Scope for Leasehold Services Audit,
 - (ii) A letter dated 14 April from Mazars LLP to John Kiwanuka of the London Borough of Tower Hamlets explaining the services offered,

(iii) A copy of the London Borough of Tower Hamlets Arboricultural works order dated 6 February 2009 for works to the Chicksand Estate.

6. During the course of the hearing there was considerable discussion as to whether the respondent should produce the Mazars report in evidence. The applicants were of the view that it would assist the tribunal but the respondent was reluctant to submit it in evidence as it had not been approved by the Chief Executive of the London Borough of Tower Hamlets for publication. The tribunal was permitted to see a copy of the report, and after reading the report, the tribunal concluded that the report did not add anything of substance to the evidence before it and so the report was not put in evidence.
7. After the conclusion of the hearing the tribunal issued further directions requiring the parties to submit closing submissions and replies to those submissions in writing. As a result the tribunal had before it, closing submissions and submissions in reply from the parties as well as a revised Scott schedule.

The background

8. The respondent is the freehold owner of Lister House ("the Building").
9. All applicants hold long leases granted pursuant to the right to buy under part v of the Housing Act 1985 by the respondent. A list of the applicants and their flats is detailed in Appendix 1 to this decision.
10. The property, which is the subject of this application, is a nine storey block of 34 flats on the Chicksand Estate ("the Estate") owned by the respondent. 18 flats are held by leaseholders and the remaining 16 by secure tenants. The block was built in the late 1950's or early 1960's. The Building has two lifts and one stairwell. The lifts were replaced in 2004 and 2005. There is another block of flats known as Treves House on the Estate, which contains a total of 52 units. The Estate includes footpaths, car parks, a grassed area, garages and sheds these are shown on a map [175].
11. Since July 2008 Lister House has been managed by Tower Hamlets Homes ("THH"), an arms length management organisation ("ALMO"). THH are responsible for tenancy management, leaseholder management, estate management, income collections, caretaking, repairs and maintenance.
12. Photographs of the Building were provided in the hearing bundle and the tribunal did not consider an inspection was necessary, nor would it have been proportionate to the issues in dispute.

13. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

14. At the start of the hearing the parties identified the relevant issues for determination as follows:
- (i) The payability and/or reasonableness of service charges for 2007/8, 2009/10, 2010/11, 2012/13 relating to Management fees.
 - (ii) The payability and/or reasonableness of service charges for 2013/14, 2014/15 relating to Estimated Management fees.
 - (iii) The payability and/or reasonableness of service charges for 2006/7 to 2012/13 relating to Block and Estate Cleaning.
 - (iv) The payability and/or reasonableness of service charges for 2006/7 to 2012/13 relating to Block repair and maintenance charges.
 - (v) The payability and/or reasonableness of service charges for roof repairs.
 - (vi) The payability and/or reasonableness of service charges for 2006/7; 2008-2012/13 relating to lift repairs and maintenance.
 - (vii) The payability and/or reasonableness of service charges for 2006/7 to 2012/13 relating to Horticultural charges.

Matters which do not require a determination from the tribunal

15. The parties did not require a determination from the tribunal on the following matters:
- (i) The Credit adjustment as the parties agreed to resolve this item amongst themselves,
 - (ii) The Communal electricity charge as these were agreed,
 - (iii) The applicants do not dispute that the costs in relation to the items in dispute are recoverable under the terms of the lease.
 - (iv) It is agreed that the proportions of service charge payable are based on rateable values of the properties. 1 Lister House is a 3-bed ground floor flat and all the other flats are 2 - bed maisonettes. The applicants accept that the correct proportion

payable is 2.91% of the total service charge expenditure for the block, and 1.84% of the total service charge expenditure for the Estate. It is accepted that the correct proportion payable for 1 Lister House is 3.36% of the total service charge expenditure for the block, and 2.13% of the total service charge expenditure for the Estate.

Leases

16. The applicants' leases are all in a similar form and the lease of Flat 10, Lister House was adopted as the sample lease [1199] – [1231].
17. By clause 4(4) the leaseholders covenant to pay the Interim Charge and the Service Charge are as defined in the Fifth Schedule [1207].
18. Paragraph 1(2) of the Fifth Schedule provides that the leaseholder pays a reasonable proportion of the total expenditure [1227].
19. By paragraph 1(1) of the Fifth Schedule, the Total Expenditure means the total expenditure incurred by the landlord in carrying out their obligations under clause 5(5) of the lease and any other costs and expenses reasonably and properly incurred in connection with the Lister House including the cost of, inter alia enjoying managing agents [1227].
20. By clause 5 of the lease the respondent covenants:
 - (i) To maintain and keep in good and substantial repair and condition in the Building including the roof, and the Common Parts,
 - (ii) To keep clean and in the opinion of the landlord where appropriate lighted the Common Parts,
 - (iii) For the purposes of performing the landlords covenants at their discretion to employ on such terms and conditions as the landlord thinks fit one or more caretakers, porters, maintenance staff, gardeners, cleaners or such other persons as the landlord may from time to time in their absolute discretion consider necessary,
 - (iv) To employ its servants or at the landlords discretion of fan of managing agents to manage the Building and discharge all proper fees, salaries, charges and expenses payable to such agents or other person who may be managing the Building,

- (v) To employ direct or enter into contracts with all such surveyors, builders, tradesmen, accountants or other professional person as may be necessary or desirable for the proper maintenance, safety and administration of the Building,
 - (vi) To maintain and where necessary renew or replace any existing lift and ancillary equipment unless caused by negligence of the leaseholder,
 - (vii) To provide services to the Building.
21. Fifth Schedule paragraph 1(2): the Service Charge means such reasonable proportion of Total Expenditure as is attributable to the Demise to Premises.
 22. Fifth Schedule paragraph 1(3): the interim charge means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the landlord or then managing agents shall specify at their discretion to be a fair and reasonable interim payment.
 23. Fifth Schedule paragraph 3: the Interim Charge shall be paid to the landlord by 4 equal payments in advance on the first days of April, July, October and January.
 24. Fifth Schedule paragraphs 4 and 5: provision is made for the reconciliation of the service charge where the Interim Charge exceeds the Service Charge or where the Service Charge exceeds the Interim Charge
 25. Paragraph 6 of the Fifth Schedule provides:

“As soon as practicable after the expiration of each Accounting Period there shall be served upon the Lessee by the Lessors or their Agents a certificate containing the following information:

 1. *The amount of total expenditure for that accounting period,*
 2. *The amount of Interim Charge paid by the Lessee in respect of that Accounting Period together with any surplus carried forward from the previous Accounting Period,*
 3. *The amount of Service Charge in respect of that Accounting Period and of any excess or deficiency of the Service Charge over the Interim Charge.”*
 26. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

27. In making its determination the tribunal had in mind the guidance given in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100, which was followed in the Lands Tribunal case Schilling v Canary Riverside Development PTD Ltd LRX/26/2005 in support of the fact that it is for the applicants to make a prima facie case. At paragraph 15 of the Lands Tribunal decision Judge Rich QC states:

“... if the landlord is seeking a declaration that a service charge is payable he must show not only that the costs was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case makes clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard

Building and Estate Cleaning 2006/7, to 2012/13

28. **The applicants' case:** The applicants allege that the standard of service is poor and unsatisfactory and that the lack of cleaning has caused the ASB. The applicants rely on the Lister House Cleaning Record, which includes photographs in support [73-82]. It is accepted that in response to complaints, or specific events or specific deterioration the respondent has at times attempted to improve the situation e.g with additional monitoring or rotas but the applicants submit that these have only had a temporary effect and have not resulted in an improvement of the overall standard on a consistent or reasonable basis. It is claimed that the same issues keep recurring time and time again. The applicants claim that the cleaning and other failures have contributed to the downward spiral in the living environment experienced by Lister House residents. It is claimed the situation is the same as it was when the LVT inspected on the 24 October 2006 with visible detritus from the ASB such as drug paraphernalia, urine etc. but also underlying grime and stains in the communal areas and particularly on the staircase. The applicants accept that the ASB problems compounded the cleaning issues but they do not accept that they are an excuse for underlying poor standards. The applicants pointed to a few examples such in 2012 as the failure to remove graffiti over 3 month period [80], the on- going ingrained surface dirt that requires regular acid cleaning [364]. The only publicly available assessments of the cleaning service are the Neighbourhood Inspection reports which recorded a “less than satisfactory” grade in 33 out of 36 inspections from 2010- 2012. The applicants submit that this is one of the worst results in Bethnal Green.

29. In 2009, the residents took matters into their own hands and organised their own weekly cleaning rota whereby the residents cleaned the common parts¹.
30. THH undertake monthly estate inspections, in order to monitor the cleaning service. The applicants referred to the findings in the Beevers and Struthers (“B&S”) report which stated that *“the cleaning standard varies considerably throughout the borough and in our opinion doesn’t always agree to the standard of cleaning awarded by THH Also the standard of cleaning bears no resemblance to the fees charged at each block...”*² In addition the B & S report concluded that in 2010, *“...Our leaseholder survey demonstrated that the cleaning service is not effective, does not deliver value for money and is creating considerable dissatisfaction....THH needs to recognise that this is a failing service.”*³ The applicants also referred to the comments of THH’s own CEO Gavin Cansfield *“We’re continually looking at how we improve the services we deliver residents – especially in the Neighbourhood Services and Caretaking. When compared to other providers, our costs are high but our performance is average”*⁴. The applicants claim a figure of 50% of the relevant costs would be a reasonable figure for the actual service provided.
31. Due to the large increase in the charges from 2011/12 and the other concerns regarding the cleaning service the applicants consistently asked for verification of the apportioned caretaker times. By 2014 the estate cleaning timings were reduced by more than 50% due to the reduced ASB, however THH were not able to explain why the block cleaning timings and charges stayed the same although the block was more affected by ASB than the Estate.
32. **The respondent’s case:** The respondent contends that the service provided is of a reasonable standard. The increase in costs in 2011/2012 and 2012/2013 was a direct result of dealing with increased ASB and the necessity to clean more frequently. It was explained that prior to 2011/12 the costs of cleaning were based on assessment of elements of each site, and the costs of which were considered reasonable, when compared with housing associations, by B & S⁵[253]. In general terms, the caretakers provide a comprehensive service which was flexible, responsive and customer focused.⁶
33. The calculation of the caretaker charges are based on a 35 hour working week and salaried time spent on each site. THH worked out on average what percentage of caretakers time is spent on each block and estate

¹ [876] & [877]

² B & S Report para 23.5/6, p43

³ *ibid* para 4.1(b), p51

⁴ “Open Door”, Autumn 2013, [48]

⁵ B & S Report para 20.4

⁶ Audit Commission Report [677]

grounds in the duty schedule. The number of hours spent and time apportioned added to the full 35 hour week. On 18 June 2014 John Bloxam had no complaint about the quality of the cleaning in the block.

34. The respondent submits that the standard of cleaning has to be measured against the age, character and location of Lister House. It is in an inner city borough plagued by ASB. The caretaking team leader undertakes six weekly inspections at Lister House and checks the quality of the caretaking standards [363]. The matters monitored are set out at [368] and the monitoring results are at [370] – [382]. There are more frequent acid cleans in order to remove deeply ingrained dirt on the floors as well as ensure that germs are destroyed. The job requires the whole team applying chemicals to the floor and other surfaces. Mr Ahmed the THH Neighbourhood Housing Officer in his witness statement gave evidence of the Estate Inspections [390]-[391]. The inspection grading is for the whole Estate so if one part of the Estate has a low grade it can result in a low grade for the whole Estate. The Estate includes a block known as Treves House, which is a tower block twice the size of Lister House and in an area plagued by ASB [53]. The respondent submits that the photographs produced by the applicants are of limited value as they show evidence of one day at a particular time.
35. The respondents contend that it is wholly unclear whether the applicants are arguing for an increase in hours which would increase costs, or whether they claim the cleaning products used are inadequate or that the caretakers are not attending or not cleaning Lister House.
36. The respondent made the following comments on the years in issue:
 - (i) 2006/7- the photographic record shows 3 days [66] and there are no before and after photographs.
 - (ii) 2007/8 – the same as above
 - (iii) 2008/9- the stain on [68] required acid cleaning to remove it.
 - (iv) 2009/10 -same as above
 - (v) 2010/11 – removal of the graffiti at [70] was attempted but it was difficult to remove
 - (vi) 2011/12- as well as the change in methodology for allocating costs resulting in an increase in the costs there were daily morning visits to Lister House. Extra hours of cleaning provided to deal with problems that occurred in the evenings [363]-[364].

- (vii) 2012/13 – the caretaking charge out rate was £23.92 per hour which was the cost of the service, caretakers salaries, NI, pension contributions, cleaning materials and sub contracted specialist cleaning, supervisor and uplift for back office and overheads [169]. The respondent claims this is less than other London Boroughs. The caretaker works in the block daily and he is responsible for cleaning the communal areas of the block. He visits the block every morning and cleans the lobby and lift on the ground floor. During the course of the morning he will walk through all floors checking for any health and safety issues. Over the course of the week the landings and lobbies on the remaining floors will be spot mopped and these areas are swept and mopped on a monthly basis. The time allocated to the block is 10 hours per week with 7 hours of internal cleaning and 3 hours for the external areas. One third of the time allocation is not spent on the block but covers tasks such as reporting repairs, training, sickness absence or annual leave.⁷ The applicants do not argue that more or less hours of cleaning should have been provided.

The tribunal's decision

37. The tribunal determines that the amount payable in respect of Block and Estate cleaning to be:
- (i) 2006/7 - is £137.54 being 50% of £275.08, the amount claimed ⁸, and in relation to 1 Lister House the sum of £158.55 being 50% of £317.11, the amount claimed.
 - (ii) 2007/8- is £136.56 being 50% of £273.12, the amount claimed ⁹, and in relation to 1 Lister House the sum of £157.42 being 50% of £314.85, the amount claimed
 - (iii) 2008/9 – is £128.86 being 50% of £257.72, the amount claimed ¹⁰, and in relation to 1 Lister House the sum of £145.20 being 50% of £290.41, the amount claimed
 - (iv) 2009/10 – is £129.36 being 50% of £258.71, the amount claimed ¹¹, and in relation to 1 Lister House

⁷ Para 8 and 9 of the witness statement of Noel Keady [363]

⁸ [343]

⁹ [343]

¹⁰ [343]

¹¹ [343]

the sum of £149.12 being 50% of £298.24, the amount claimed.

- (v) 2010/11 – is £121.89 being 50% of £243.78, the amount claimed ¹², and in relation to 1 Lister House the sum of £140.51 being 50% of £281.03, the amount claimed.
- (vi) 2011/12 is £407.72 being the amount claimed ¹³, and in relation to 1 Lister House the sum of £470.01 being the amount claimed.
- (vii) 2012/13 is £411.29 being the amount claimed ¹⁴ and in relation to 1 Lister House the sum of £474.13 being the amount claimed.

Reasons for the tribunal's decision

- 38. It was clear to the tribunal that the applicants were not satisfied with the cleaning service provided. The applicants accepted that a cleaning service is provided but it was the standard of the service as well as the charge for the service that the applicants considered to be unreasonable. The tribunal did not have any evidence as to the precise nature of the cleaning service provided for all the years in question. The witness statement of Noel Keady relates to the period from 2011 onwards and the respondent in the statement of case has given a general idea as to the cleaning service provided.¹⁵
- 39. The issue for the tribunal is whether the service charge demanded was reasonable for the service provided. It was clear from the evidence that the standard of cleaning was insufficient to deal with the problems presented at Lister House for the period from 2006 – 2011/12, and this was largely due to the problems with ASB, which included drugs and prostitution.
- 40. Mr Keady the Caretaking Manager of THH in his witness statement and oral evidence gave a detailed account of the cleaning service provided and stated that “The leaseholders were never charged for the extra work required to contain the effect of anti –social behaviour in the block”.¹⁶ This was consistent with the evidence given by Andrew Crompton.
- 41. The tribunal noted that although the B&S report states that “.....*THH fails to deliver a satisfactory cleaning service*” and “.....*the method*

¹² [343]

¹³ [343]

¹⁴ [343]

¹⁵ [125]

¹⁶ Para 19 of Mr Keady's witness statement [364]

*of charging leaseholders is unsatisfactory.....*¹⁷ Lister House was not inspected for the purpose of the report.¹⁸ The comments made in the report are therefore general comments applicable to the sample of 24 buildings inspected for the purpose of the report, which represents just over 10% of the leaseholders managed by THH. In relation to the value for money the report concludes that cleaning costs where THH provides a caretaking service are comparable when benchmarked against other providers.¹⁹ A caretaking service is provided at Lister House.

42. The charge for Block and estate cleaning for the period 2006/7 to 2010/11, ranges from £275.08 to £243.78 which equates to a charge of £5.29 to £4.68 per week.
43. **2006/7** – The tribunal noted the comments made by the LVT who had inspected Lister House on the 24 October 2006 and made a determination in relation to the service charges for the years 1998/1999 to 2005/6, and in relation to the block and estate cleaning determined a reasonable charge to be 40% of the sums claimed in each year for the reasons stated in the LVT determination.²⁰ The applicants considered a reasonable charge for the block and estate cleaning would be 50% of the sum claimed.
44. The respondent was not able to provide details of the cleaning service provided during the period 2006/7. The applicants produced a series of photographs taken on the 17 September, 21 January and 20 February in the period 2006/7²¹, as well as comments taken from various meetings of between representatives of the Lister House TRA and the Spitalfields Housing Office on the 11 May, 15 June and 28 September.²² The tribunal heard from several witnesses for the applicants, Ms Lane, Mr Ali, Ms Gibbs and Mr Khan, they all consistently stated that the cleaning service provided was inadequate although the cleaning was better at times when compared to other times. The tribunal accepted that although the photographs are mere snap shots in time, they are indicative of the level of cleaning within the block for the period 2006/7, and are consistent with the oral evidence of the witnesses for the applicants. The tribunal accepted that the applicants witnesses gave an accurate picture of the level of cleaning within the block and the estate for this period. Accordingly, the tribunal considers a charge of 50% of the amount claimed for this period in relation to Block and Estate cleaning to be reasonable.

¹⁷ Para 2.9 B&S Report [220]

¹⁸ *ibid* [259] & [304]

¹⁹ *ibid* [267]

²⁰ [513] [519] [520]

²¹ [66]

²² [75]

45. **2007/8:** The tribunal noted that the respondent had not produced any evidence to counter the photographs produced by the applicants and the comments at the meeting on the 19 April and 6 December ²³ that the cleaning was not undertaken to the required standard. The tribunal accepts the applicants claim that the cleaning was not to the required standard and that a charge of 50% of the amount claimed is reasonable in the circumstances.
46. **2008/9:** The tribunal is persuaded that matters had not improved sufficiently despite the occasional deep clean. The photographs and the comments support the applicants claim.²⁴ Paul Leo the Head of Housing & Customer Service in an email of the 11.07.2008 to 10 Lister House is quoted as stating, *“Cleanliness of the Block ...it has been acknowledged for some time, that Lister House does need additional cleaning resources to ensure that a good standard is reached in the first instance and that this standard is maintained.... During my inspection of the block it was evident that whilst the less frequent tasks have not been addressed, the daily and weekly tasks have been carried out and that the standard was acceptable, This included recently mopped and cleaned lifts.”*²⁵ Although the photographs produced are snaps shots in time they are consistent with the Estate Inspection report of the 18 July 2008, which records that there was graffiti on the stairwell, the lift need mopping and the block required a deep clean.²⁶ In November 2009 the residents took matters into their own hands and organised a weekly cleaning rota.²⁷ The respondent has produced no evidence to counter the evidence produced by the applicants. The tribunal accepts the applicants claim that the cleaning was not undertaken to the required standard and that a charge of 50% of the amount claimed is reasonable in the circumstances.
47. **2009/10:** The respondent did not produce any evidence to counter the picture painted by the applicants and supported by the photographs and comments taken from various emails to the Neighbourhood Housing Office.²⁸ The tribunal accepts the applicants claim that the cleaning was not to the required standard and that a charge of 50% of the amount claimed is reasonable in the circumstances.
48. **2010/11:** The evidence produced shows that there was little or no improvement in the cleaning service and a formal complaint was lodged by Mr Ali of 9 Lister House which raised several issues including the poor standard of cleaning.²⁹ The respondent did not produce any evidence to counter the picture painted by the applicants and supported

²³ [75]

²⁴ [76]

²⁵ [76]

²⁶ [873] -[875]

²⁷ [876] & [877]

²⁸ [76] & [77]

²⁹ [878]

by the photographs and comments taken from various emails.³⁰ The email from Claire Demmel, Head of Environmental services acknowledges that the standard of cleaning needs to be improved, she states: *“I apologise that you are unhappy with the standard of cleaning at Lister House and also that the caretaker had not previously reported the area between the 5th and 7th floor being used as an encampment. I confirm that this area has now been cleared and I have arranged for the block to be checked twice a day by the caretaker to ensure that the area remains clear. The caretaker will also ensure that any urgent cleaning issues are dealt with immediately. I have spoken to the senior caretaking officer for the area who will arrange for Lister house to be brought up to a silver standard by 10th of November and he will also monitor the block on a weekly basis to make sure that this improvement is maintained.”* This is consistent with the Neighbourhood inspection results for 2010 in which the Estate achieved a basic rating from April to June, a poor rating in July and August, a good rating in September and a basic rating in October to December.³¹ The tribunal accepts the applicants claim that the cleaning was not to the required standard and that a charge of 50% of the amount claimed is reasonable in the circumstances.

49. **2011/12 and 2012/13:** The respondents gave a detailed explanation as to the revised methodology used to allocate the charges based on time spent at each site. The tribunal was persuaded by the cogent oral evidence of Mr Crompton the Head of Finance for THH and his witness statement. He provided a clear and detailed explanation of the revised methodology for allocating the various costs.
50. However the photographs and comments show that Lister House continued to suffer the effects of ASB³², in May it was agreed that the block would be cleaned 7 days a week with a morning service at weekends. The Tribunal agrees that the standard of cleaning should be measured against the age, character and location of Lister House. The level of ASB suffered by Lister House is bound to have an effect on the type of cleaning as well as the frequency of the cleaning required. The witness statement of Mr Keady, the Caretaking Manager gives a detailed account of the cleaning services provided since he took the position of Caretaking Manager in 2011. Mr Keady’s witness statement explains that time allocated to the block is 10 hours per week with 7 hours of internal cleaning and 3 hours for the external areas. One third of the time allocation is not spent on the block but covers tasks such as reporting repairs, training, sickness absence or annual leave.³³ He stated that in response to the incidents of ASB extra efforts and time was put into the cleaning, the additional cleaning was undertaken from May until September 2011 when the Lister House TRA confirmed that since the installation of CCTV the ASB in the block had reduced. He

³⁰ [77] & [78]

³¹ [880]

³² [79]

³³ Para 8 and 9 of the witness statement of Noel Keady [363]

also confirmed that more frequent acid cleaning was undertaken to remove the ingrained dirt on the floors as well as to ensure that germs were destroyed. He stated that the job required the whole team applying chemicals to the floor and other surfaces and the leaseholders were not charged for the extra work undertaken to contain the effect of the ASB in the block. The tribunal was persuaded by the detailed evidence produced on behalf of the respondent as to the cleaning service provided. The applicants did not produce any comparative figures of the cost of providing such a service in a similar block. The tribunal finds that the charge of £407.72, which equates to a charge of £7.84 per week is reasonable for the service provided.

Block Repairs

51. A breakdown of the Block Repairs Service Costs and the Estate Repairs Service Costs are provided.³⁴ A copy of the repairs history (including lift call outs) for Lister House is also provided.³⁵
52. **The applicants case:** The applicants challenge two elements of the charges for block repairs as follows:
 - (i) Repairs necessary due to the ASB and vandalism affecting the communal parts of Lister House, and
 - (ii) The cost of the roof repairs for 2012/13, which the applicants claim arose directly as a result of management failures.
53. For the years 2006/7 and 2007/8 the applicants claim that they should not be required to pay for repairs, which are due to the ASB and the respondent's failure to take action. The applicants confirm in the years 2006/7 and 2007/8 the respondent managed Lister House and historically charged for repairs caused by ASB and Vandalism. However prior to the LVT the leaseholders were given rebates for the lift repairs and maintenance services as the respondent accepted that ASB had been a contributory factor. The applicants consider that a reasonable approach would be to apply the same approach as was applied to lift maintenance charges pre 2004/5 where the respondent offered rebates of 50%.
54. The applicants submit that the repair costs attributable to the ASB consist mainly of the cost of replacing the Georgian Wired Glass panels in the stairs and between the stairs and the communal landings. The

³⁴ [1298] - [1543]

³⁵ [1544]- [1560]

applicants have provided a breakdown of the costs that they consider are attributable to this element of the charge.³⁶

55. For the years 2008/9 – 2012/13 the applicants rely on the THH comments to the B&S report in which THH agreed that the recharging of ASB costs are reviewed and checked and not all ASB costs are recharged.³⁷ The applicants rely on this statement in support of their claim that the costs of repairs attributable to ASB should not be recharged to them.
56. **The respondent's case:** A breakdown of the block repairs costs provided by the respondent are set out at [1306] and [1322]-[1327].
57. The letter of the 8 April 2014³⁸ from Melanie Vickers the THH Leasehold Improvement Manager sets out the respondent's position in that Leaseholders are required under the terms of their lease to pay for their share of all communal repairs including any repairs necessitated due to ASB. It is accepted that in the past the respondent did not always charge for repairs caused by ASB or vandalism.
58. For the year 2012/13 in relation to the roof repairs the applicants claim that the management failures to undertake regular maintenance has contributed directly to the deteriorating fabric of the building and the consequent responsive and costly repairs. Lister house was in an existing major work scheme from early 2009 with one of the main elements being the full replacement of the roof. The first published target date was the end of 2010/Beginning 2011. The money was earmarked for these works and ring fenced and the applicants were regularly informed that its availability was not the cause of the continuous delays. However, the external phase of the works including roof replacement did not take place. In September 2009 a "condition survey report" was carried out the conclusion was "*the roof finishes are noted to be failing at present in several locations and a separate core samples have revealed wet insulation to Lister House it is therefore clear that the present roof coverings have reached the end of their useful life and require replacement*". THH undertook another resurvey in 2012 producing the same results and incurring extra cost. The recorded repairs in Lister House were in April, July and October 2012, February and March 2013. The applicants claim a rebate for the total sum involved over and above the average accepted charges from the previous six years excluding the overheads added in 2012/13.
59. The respondent concedes that this issue of delay in the roof repairs might conceivably be in issue when it comes to recouping the cost of replacement of the roof or major roof repairs. Nonetheless the respondent submits that the cost of the roof repairs for 2012/2013 are

³⁶ para 78 [56]

³⁷ [623]

³⁸ [486] -[496]

reasonable because temporary maintenance will be required pending consultation on major works in any event. The applicants produced no evidence as to the quality of the works undertaken or comparable evidence regarding the cost of the repairs.

60. In relation to the criticism by the applicants of the Decent Home Works, Nick Neal a Chartered surveyor in his witness statement³⁹ has given a credible explanation of the reasons for the delay in undertaking phase two of the works which included the roof replacement works. In relation to the roof replacement works he confirms that the Potter Raper Partnership report commissioned by THH in September 2009 concluded the roof should be replaced, but he states that it gave no dates for the replacement. The report confirmed an earlier investigation in July 2009 by Langley Waterproofing. Mr Neal explained that funding for the roof replacement was not available but it was always intended the roof replacement works would form part of an overall scheme to carry out significant repairs to the fabric of the building.

The tribunal's decision

61. The tribunal determines that the amount payable in respect of Block Repairs and maintenance to be:
- (i) 2006/7 - is £164.12 being, the amount claimed ⁴⁰, and in relation to 1 Lister House the sum of £189.20 being the amount claimed.
 - (ii) 2007/8- is £164.83 being, the amount claimed ⁴¹, and in relation to 1 Lister House the sum of £190.01 being, the amount claimed.
 - (iii) 2008/9 – is £255.20 being, the amount claimed ⁴², and in relation to 1 Lister House the sum of £294.19 being, the amount claimed.
 - (iv) 2009/10 – is £377.81 being, the amount claimed ⁴³, and in relation to 1 Lister House the sum of £435.54 being the amount claimed.
 - (v) 2010/11 – is £246.57 being, the amount claimed ⁴⁴, and in relation to 1 Lister House the sum of £284.23 being the amount claimed.

³⁹ [357] [358]

⁴⁰ [343]

⁴¹ [343]

⁴² [343]

⁴³ [343]

- (vi) 2011/12 is £189.17 being the amount claimed ⁴⁵, and in relation to 1 Lister House the sum of £218.07 being the amount claimed.
- (vii) 2012/13 is £550.68 being the amount claimed ⁴⁶ and in relation to 1 Lister House the sum of £634.81 being the amount claimed.

Reasons for the tribunal's decision

- 62. The respondent covenants under clause 5 of the Lease to keep in good and substantial repair and condition the Building including the roof and the Common Parts. The applicants covenant under the Lease to pay a reasonable proportion of the Total expenditure incurred by the respondent in carrying out its obligations under Clause 5 of the Lease.
- 63. The provisions of the Lease do not exclude any costs incurred in relation to repairs and maintenance necessary as a result of the ASB. The applicants rely on THH's comments on the B&S report in which they state that "...not all ASB costs are recharged...". It seems that the applicants may have misinterpreted this statement. It means that some of the ASB costs will be recharged. It does not mean that none of the ASB costs will be recharged.
- 64. The fact that Lister House has been plagued by ASB has no doubt contributed to the need for some of the items of repair and maintenance. The respondent has not caused the ASB and it is therefore not reasonable to hold the respondent liable for the ASB and the costs of any repairs that may be necessary. Melanie Vickers in her letter of the 8 April 2014⁴⁷ correctly pointed out that when a repair arises as a result of vandalism a claim can be made on the building insurance policy (so long as notification of the claim is made within 90 days). The insurance policy contains an excess payment of £50 per leaseholder. Generally if the repair works required amount to an individual charge of less than £50 per leaseholder then THH will charge the lesser amount rather than the £50. If a claim was not notified within 90 days but it is established that the vandalism was the cause of repair, THH will cap individual recharges to £50 as if the claim had been made.
- 65. The applicants do not dispute liability to pay for the costs of the repairs to the roof, but the issue is whether the costs were reasonably incurred and the reasonableness of the costs. The applicants claims the costs are unreasonable as roof should have been replaced as planned in 2009/10. The applicants produced no evidence to show that the costs of the patch

⁴⁴ [343]

⁴⁵ [343]

⁴⁶ [343]

⁴⁷ [493]

repairs undertaken are unreasonable. The applicants have not produced any comparable quotes of the cost of the roof repairs. The applicants produced no evidence to show that undertaking patch repairs to a roof and therefore replacing it less often is more expensive than undertaking a full roof replacement and patching the roof less often.

66. The applicants in the Decent Homes Case study details the catalogue of delays and lack of organisation in undertaking the Decent Home works. This is a matter that is relevant when considering the management fees and or the costs of the Decent Homes works, but it does not render unreasonable roof repairs that were necessary in the interim period. It is clear from the results of the surveys that the roof does require replacement, however since the Statutory Section 20 Consultation has yet to be undertaken and so the roof cannot be replaced as programmed under the Decent Homes Works. It seems that Flats 29 and 34 were affected by roof leaks. The applicants have not provided any evidence to show that the roof repairs were unnecessary or that the cost of the repairs is unreasonable and so the tribunal considers the patch roof repair works to be reasonable and necessary and the cost of the repair to be reasonable.

Lift repairs and maintenance

67. Lister House has nine storeys and consists of 34 flats, and it is served by two lifts, a 8 person lift (“the big lift”) and a 4 person lift (“the small lift”).
68. **The applicants’ case:** The applicants claim that the performance of the lifts which were installed in 2004/5 has not been markedly different from the old lifts that they replaced. They have been regularly out of use and the subject of many complaints. The applicants were offered a rebate of 50% on the repairs and maintenance charges in respect of the old lifts. The applicants seek the same rebate in relation to the current lifts for all years except 2008/9 as in that year there were no recorded callouts.
69. The applicants accept that ASB and vandalism is a part of the problem but they do not accept that these issues explain the overall poor performance of the lifts or the number of breakdowns or the need to replace the motor on the main lift less than 7 years after installation. The applicants are of the opinion that if the new lifts had been properly maintained and had performed to the claimed specification, then the overall performance record of the lifts can and should have been much better.
70. The applicants dispute the respondent’s claim that the breakdown records show the vast majority of the lift breakdowns to be attributable to constant abuse. The applicants submit that the records show 59% of

actual breakdowns on the big lift and 12% on the small lift are attributable to vandalism.

71. **The respondent's case:** The respondent's dispute the applicants claim and state that the call outs per year have reduced, and the increase in call outs in 2012/13 were due to vandalism of the lifts⁴⁸. The respondent relies on the witness statement of Ian Ford a lift engineer who has been working for the respondent since 1990 and with THH since 2007. He is of the view that the new lifts are of a higher quality and have an American anti –vandal door gear control which has been successfully tried and tested in other parts of the borough. He is of the view that they are of a much better design and they perform much better than the old lifts.
72. The call outs per year at its highest in 2012/13 represents 10% of the time which is the equivalent of less than once a week.
73. The increase in the costs of lift repairs for the years 2011/12 – 2012/13 were as a result of the change in methodology in 2011 resulting in full costs being recovered. In addition in 2011/12 the original drive unit in the smaller lift required replacement [361] and this partly accounted for the increase in costs in that year. The lift broke down on the 8 March 2011, attempts were made to repair the defective part but it subsequently became necessary to replace the part and the lift was brought back into operation on the 9 May 2011.

The tribunal's decision

74. The tribunal determines that the amount payable in respect of Block Repairs and maintenance to be:
- (i) 2006/7 - is £64.2 being, the amount claimed ⁴⁹.
 - (ii) 2007/8- is £47.45 being, the amount claimed ⁵⁰.
 - (iii) 2009/10 – is £91.60 being, the amount claimed ⁵¹.
 - (iv) 2010/11 – is £52.13 being, the amount claimed ⁵².
 - (v) 2011/12 is £ 273.75 being the amount claimed ⁵³, and in relation to 1 Lister House the sum of £315.57 being the amount claimed.

⁴⁸ [360]-[361] and [423]-[424] and [1413]- [1415]

⁴⁹ [343]

⁵⁰ [343]

⁵¹ [343]

⁵² [343]

- (vi) 2012/13 is £170.02 being the amount claimed⁵⁴ and in relation to 1 Lister House the sum of £195.99 being the amount claimed.

Reasons for the tribunal's decision

75. The lift repairs and maintenance costs are recoverable under the Lease from the applicants. The respondent is obliged under the terms of the Lease to repair and maintain the lifts. So if a lift breaks down for whatever reason the respondent is required to repair it, and the applicants are liable for a reasonable proportion of the costs of such repair and maintenance. The applicants produced no expert evidence in support of their claim that the respondent's failure to properly maintain the lifts contributed to the lift breakdowns and callouts. The applicants accept that the ASB and vandalism is a contributing factor. The tribunal accepted the explanation given by the respondent for the increase in the costs. In the absence of any evidence from the applicants as to the costs of repair and maintenance of similar lifts in other blocks the tribunal finds the costs to be reasonable.

Horticultural charges

76. **The applicants' case:** The applicants claim that there is no reasonable basis for the increase in charges for this service from 2008/9. The average charge in 2006/7 and 2007/8 was £20.94 but the average charge since 2008/9 has been £75.18. The applicants refer to the LVT determination where a charge of £12.44 was determined as reasonable for 2004/5 and 2005/6. The applicants accept the charge of £20.94 for the first two years in question as within the range of a reasonable charge albeit higher than the charge determined to be reasonable by the LVT.
77. The applicants refer to the conclusions in the B&S report in which it states:

"2.9 The Horticulture service has not delivered a satisfactory service in the past. Steps have been taken by THH to improve the service delivery from 1 April 2010. We believe that these changes could deliver a better service. What is needed is effective supervision together with holding the contractor to account.

8.8 we note that contract works increased by circa 25% in October 2009. This is because in additional £100 K was applied to the contract fee. We have been unable to inspect an authorised contract variation to confirm this increase and what additional services were agreed. This matter needs to be thoroughly investigated."

⁵³ [343]

⁵⁴ [343]

78. At the beginning of 2012 the contractor was changed from Fountains & Connaught to Glendale. During 2012 Glendale were put on notice by THH to improve and in 2013 their contract was terminated for poor performance.
79. The applicants are of the view that a reasonable charge for the service would be the fee charged in 2007/8 with an annual addition of +2.9%.
80. **The respondent's case:** The respondent relies on the witness statement of Paul Stannard⁵⁵ the Leasehold Officer for THH. Paragraph 19 of his witness statement sets out the annual horticultural charges for the years 2008/9 to 2013/14. These are as follows:

2008/9	£5959.26
2009/10	£2021.95
2010/11	£4091.11
2011/12	£3611.40
2012/13	£2274.50
2013/14	£3302.96

81. He explained that in 2008/9 the charges were higher as the contractor undertook clearance work over the weekend to clear buddleia. He was able to produce the quotation⁵⁶ for the buddleia removal but not the final invoice, this showed the sum of £2150 plus vat was quoted in relation to the removal and disposal of the buddleia from the Estate. During the hearing Mr Stannard accepted that the quote related to the whole Estates and so 50% of the cost would apply to Lister House.
82. In 2010/11 the costs were higher as they carried out a tree survey, they are required to survey all the trees every four years in 2010 they surveyed 238 trees on the Estate.
83. In 2012/13 costs were reduced by 26% as a reduced service was provided by the ground maintenance contractor, and THH withheld payment from the contractor passing on the savings to the leaseholders. Since 1st October 2013 the grounds maintenance service is provided by staff employed directly by THH.

⁵⁵ [432] -437]

⁵⁶ [501]

84. In relation to the actual ground maintenance work undertaken in 2011/12, Mr Stannard referred to a letter dated 7 January 2013 from Veronica Suwara the contract administrator from the Enviromental Services at THH to Mr Bloxam⁵⁷, which states that the ground maintenance records indicate the following grounds maintenance works were undertaken:

Grass cutting: w/c 4th June, 22nd August, 30th August and 19th September, 3rd October.

Leaf clearance: 14th November, 9th December and 6th January, 27th January.

Weed treatment: 2nd June, 14 July and 13th September.

Shrub maintenance: 30th June, 21st July and 12th August.

85. Mr Stannard also referred to a letter dated 18 March 2013 from Scott Causer of a leasehold officer THH to Mr Bloxam⁵⁸, which provided the following additional information: *“The contractor responsible for the the relevant year was Fountains. Fountains went into administration in January 2012. An interim 6 week contract followed and a comprehensive horticultural service was provided by Glendale Grounds Management from February 2012 until 31 March 2012. For the 6 week period that Glendale managed the horticulture on behalf of THH, the following tasks are carried out on the Chicksands estate part 1H:*

- *Week beginning 26 February 2012 – shrub borders league, Rose bed pruned, hard surfaces and beds sprayed.*
- *Week beginning 20 March 2012 – estate road spot herbicide treatment.*
- *5 March 2012 – dog waste removal from bins.*
- *17th February 2012 – Mow, trim and edge borders and collect clippings.*

Following the 6 week interim period, Glendale and have continued to provide a horticultural services on the half of THH since April 2012.”

The tribunal’s decision

86. The tribunal determines that the amount payable in respect of Horticulture to be:

⁵⁷ [503]

⁵⁸ [505]–[508]

- (i) 2008/9- is £55.12 being 50% of the amount claimed⁵⁹, and similarly in relation to 1 Lister House £63.55 being 50% of the amount claimed.
- (ii) 2009/10 – is £23.15 being the amount the applicants agree to pay and similarly in relation to 1 Lister House the sum of £26.69⁶⁰ being the amount the applicants agree to pay.
- (iii) 2010/11 – is £37.15 being 50% of the amount claimed⁶¹, and similarly in relation to 1 Lister House £42.83 being 50% of the amount claimed⁶².
- (iv) 2011/12 is £ 65.60 being the amount claimed⁶³, and in relation to 1 Lister House the sum of £75.62 being the amount claimed.
- (v) 2012/13 is £42.08 being the amount claimed⁶⁴ and in relation to 1 Lister House the sum of £48.51 being the amount claimed.

Reasons for the tribunal's decision

87. **2008/9:** In this year Mr Stannard accepted that only half the costs of the buddleia removal works applied to Lister House. The total charge for the Horticultural service in this service charge year was £5959.26, of this at least £1075.00 (i.e half the cost of the buddleia removal) did not apply to Lister House, this reduces the actual costs for this service to Lister House to £4884.26. Considering the charges for the Horticultural service over the years in question it seems that even the reduced charge of £4884.26 is unusually high. Considering the average charges over the years in question (but excluding those for 2008/9 and 2010/11 as these were years when the charge is unusually high), the average charge for the service is round £2300 per annum.

88. It was difficult for the tribunal to accurately assess what amounted to a reasonable charge for this service as the tribunal was not provided with details as to the actual work undertaken. However, in view of the comments in the B&S report regarding the unsatisfactory service and the unexplained increase in the contract sum of £100K, the tribunal is of the view that the respondent should have held the contractor to account and either obtained an improvement in the service or a

⁵⁹ [343]

⁶⁰ [343]

⁶¹ [343]

⁶² [343]

⁶³ [343]

⁶⁴ [343]

reduction in the contract costs. The applicants agree to pay the sum of £25.94 in relation to the service, which is around 23% of the actual costs, the tribunal is of the view that such a reduction is unreasonable. In the circumstances the tribunal considers a reduction of 50% to be more appropriate.

- 89. 2009/10:** It is difficult for the tribunal to accurately assess what amounts to a reasonable charge for this service as the tribunal was not provided with details as to the actual work undertaken. However, in view of the comments in the B&S report regarding the unsatisfactory service delivered the tribunal considered a reduction in the costs to be appropriate. The actual charges were £36.73 and £ 42.34 to 1 Lister House, the applicants agree to pay £23.15 instead of £36.73 and 1 Lister House agrees to pay £26.69. In the circumstances the tribunal considered the amounts the applicants have agreed to pay to be reasonable.
- 90. 2010/11:** This was a year when the charges for the service were unusually high and the only explanation offered by the respondent was that this was a year when 238 trees were surveyed. The Arboricultural works order show the works cost £1126.84 and were completed on 19 February 2009. The works order includes a map and states that the works relate to the Estate, so presumably the cost would have been split between Lister House and Treves House. The tribunal was not persuaded by the explanation given for the inordinate increase in the charge for the service. It is clear that the charge for this year is excessive when compared to the charges for the other years in question. The tree survey works gives some explanation for the increase in charges but the tribunal was not satisfied that this explanation fully justified the increase in the charges. The actual charges are £74.31, and the applicants agreed to pay £23.82, the actual charge for 1 Lister House is 85.66 and the applicants agreed to pay £27.47. For the reasons stated the tribunal is of the view that a reasonable sum to be £42.83 for 1 Lister House and £37.15 for the remaining flats.
- 91. 2011/12:** Given the detail provided by the respondent in the letters from Ms Suwara and Mr Causer as to the works undertaken in this year, the tribunal finds the sum charged to be reasonable. The applicants queried grass cuttings stating that 4 of the 5 dates were after the end of the grass-cutting season in the autumn. The submission made by the applicants is an over generalisation, the respondent has given specific dates when the grass cutting took place, and the tribunal finds that the works were undertaken and the costs incurred. The applicants have not stated the service was not provided or was inadequate. The applicants have not provided any evidence of such a service being provided for a much lesser charge. In the absence of evidence to show that the work was not undertaken or that the costs are unreasonable, the tribunal finds the sums claimed to be reasonable.
- 92. 2012/13:** The charge for this year was similar to the previous years and within the range that the tribunal considers to be reasonable. The

applicants have not stated the service was not provided or was inadequate. The applicants have not provided any evidence of such a service being provided for a much lesser charge. In the absence of evidence to show that the work was not undertaken or that the costs are unreasonable, the tribunal finds the sums claimed to be reasonable.

Management Fee 2006/7, to 2012/13

93. **The applicants' case:** It is accepted that the management fees are chargeable under the Lease and that they have been correctly demanded. There are two challenges to the management fee:
- (i) The reasonableness of the management fee charged. The issue being in relation to the method by which the management fee is calculated.
 - (ii) Whether the service provided by the managing agent is reasonable in relation to the fee charged. The applicants allege specific failure to manage on the Building.
94. The applicants rely on the determination by the LVT⁶⁵ in relation to the management fee for 2006/2007 in support of a combined estimate of administration fees (£157.30) and housing management fees (£122.78) with an annual reduction of 5% year-on-year. The LVT determined that the 2006/07 estimated administration and housing management charges were reasonable and the charge of £280.08 was found to be reasonable estimate of management fee. In 2006/07 this amount included general overheads. The applicant accepts the LVT's determination of £280.08 for 2006/07 as a reasonable baseline figure for an overall management fee including overheads.
95. The applicants argue that there should be a reduction in the management fee because:
- (i) The B&S and the Audit Commission reports found the management costs were high,
 - (ii) THH stated they had reduced the overall management costs by at least 8% each year between 2009/10 and 2011/12, and
 - (iii) Low levels of inflation
 - (iv) The management service was not of a reasonable standard as illustrated by the following:
 - (a) The respondent's excessive delay of around 7 years in applying the credit adjustment following the 2007 LVT decision (the adjustment in relation to 10 Lister House was applied on 31 March 2010 and 22 May 2013),

⁶⁵ Case Ref: LON/00BG/LSC/2014/0357

- (b) The substitution of neighbourhood inspections in place of a forum for resident engagement,
- (c) The lack of any effective action in relation to the anti-social behaviour (“ASB”), any action taken is reactive to events and pressure from the residents and temporary in nature.
- (d) The poor management of the repairs and cleaning services.

96. The Director of Neighbourhoods wrote in “Leasehold focus” Spring 2011 issue that they had carried out a restructuring and as a result had cut costs in administration and management costs by over £20 per leaseholder. Taking all of this into account the applicants consider that a reasonable baseline figure for the management fees to be the figure determined by the LVT for 2006/07 with an annual reduction of 5% year –on –year to 2011/12.
97. The estimated service charges claimed for 2013/14 and 2014/15 were respectively £327.24 and £321.59 but the applicants claim was based on amounts due calculated made by Mr Bloxam using a different methodology to that used by the respondent for calculating the service charge and so the applicants were disputing £490.58 and £402.19 for the respective years.
98. **The respondent’s case:** The respondent claims the management fees are reasonable. The respondent contends that the test to be applied is whether the charges are reasonable and not whether there are other ways of charging which might be thought to be more reasonable. The respondent refers to LB Havering v Macdonald [2012] UKUT 154(LC) 3 EGLR 49.
99. The respondent submits that if a private managing agent was to be engaged to manage the Building they will charge the landlord a fee at such a rate as to cover their costs and make a profit, whereas an ALMO such as THH charges only to cover its costs.⁶⁶
100. The respondent accepts the credit adjustments should have been applied much earlier but does not accept this justifies any reduction in the leasehold management costs. The respondent denies it has failed to deal with the ASB, it has sought to tackle the ASB inter alia in the following ways:
- (i) Each time a complaint is made, action is taken.
 - (ii) THH have proposed action plans, which have been implemented including installation of CCTV and lighting and increasing patrols.
 - (iii) ASB officers undertook joint patrols with the police.
 - (iv) ASB officers have worked with the safer neighbourhoods team.
 - (v) ASBO warning notices served on perpetrators.

⁶⁶ South Tyneside Council v Ciarlo[2012]UKUT 247 (LC) at 30–45; London Borough of Southwark v Paul [2013]UKUT 0375

- (vi) Restorative justice agreements reached with perpetrators.
- (vii) ASB warning letters to perpetrators.
- (viii) Increased caretaking services.
- (ix) Weekly building inspections.
- (x) Red and yellow card warnings for rubbish dumping.

101. It is useful at this stage to set out the historical background in relation to the management fees. The two components of the management fee charged to the applicants were the "Administration" and "Housing management" Charges. "Administration" covered the central leasehold service costs, which included the preparation and administration of service charges. However, in addition to accounting and revenue collecting functions it also included the landlord's central management functions.
102. After THH was established in July 2008, distinctions between the two components of the management fee became blurred. "Administration" was known as "Leasehold Management" and "Bethnal Green West Housing Management" became "General Management". In the actual service charges for 2011/12 an item for "Housing Management" returned, this included charges in relation to four central Service Level Agreements ("SLA's")⁶⁷ between THH and the respondent. Just three of which included some element of the work of the local housing officers.
103. The general overheads were charged within these two components throughout this period and until 2011/12. At this point THH made a significant change of transferring the majority of general overhead costs to the other "frontline service" headings and adding them under each heading as fixed percentage uplift. This change continued for all subsequent service charge years.
104. Subsequent to the LVT determination two independent auditors B & S and The Audit Commission found the management fees to be high in comparison to other providers. In recognition of the low standard of services provided in 2007/8 the respondent gave a borough wide rebate of £50.
105. The respondent relies on the witness statement of Andrew Crompton, the Head of Finance at THH. The tribunal heard from Mr Crompton. In essence he explained that in 2011/12 in accordance with the guidelines in the Audit Commission report and the recommendations in B & S report, THH changed the way in which the management fees were charged and sought to recover the true cost of providing the services. After 2011/12 the management charges were calculated on actual salary costs of management for each service. It is the respondent's case that the costs recoverable from the leaseholders have increased from 2011/12 as it was only from then that the respondent sought to recover the actual costs of management from the leaseholders. In the years

⁶⁷ The 4 SLA's in 2011-1 were Pest Control, Resident Engagement, ASB and Customer Access Services

prior to 2011/12 there was an under recovery of the costs of management. The respondent has applied a credit of £100 in 2011/12, £75 in 2012/13, £50 in 2013/14 and finally £25 in 2014/15 to the service charges to dampen the increase in the charges due to the change in methodology. Mr Crompton explained that there are three different types of management charges:

- (i) Leasehold service charge: this relates to leaseholder account management services provided for leaseholders and freeholders, and includes the calculation billing and recovery of service charges, information and query handling and consultation systems as well as invoicing and collection of income.
- (ii) Housing management service charge: this relates to customer access, ASB, resident engagement neighbourhood and estate management and covers the cost of front line staff, the cost of providing a pest control service, complaints handling and one stop shops.
- (iii) Management charges: these are the salary costs of the staff that are involved in overseeing the direct service provided to leaseholders.

The tribunal's decision

106. The tribunal determines that the amount payable in respect of the management fee to be:

- (i) 2006/7 - is £230.08. The amount claimed was £280.08⁶⁸.
- (ii) 2007/8 - is £230.08. The amount claimed was £280.08⁶⁹.
- (iii) 2008/9 - is £248.00. The amount claimed was £321.97 in relation to 1 Lister House and £271.50 in relation to the remainder of the flats.
- (iv) 2009/10 - is £248.00. The amount claimed was £288.70 in relation to 1 Lister House and £276.50 in relation to the remainder of the flats.
- (v) 2010/11 - is £248.00. The amount claimed was £281.91 in relation to 1 Lister House and £294.11 in relation to the remainder of the flats.

⁶⁸ [343]

⁶⁹ [343]

- (vi) 2011/12 is £283.18 being the amount claimed ⁷⁰, and in relation to 1 Lister House the sum of £296.46 being the amount claimed.
- (vii) 2012/13 is £299.71 being the amount claimed ⁷¹ and in relation to 1 Lister House the sum of £314.83 being the amount claimed.
- (viii) 2013/14 is £295.30 being the estimated amount claimed ⁷² and in relation to 1 Lister House the sum of £ 309.10⁷³
- (ix) 2014/15 £321.59 being the estimated amount claimed ⁷⁴ and in relation to 1 Lister House the sum of £336.02⁷⁵

Reasons for the tribunal's decision

107. It was clear to the tribunal that Lister House is a very difficult block to manage, complicated by the serious problems with ASB. It is located in Bethnal Green a borough in Inner City London. The block requires a high level of management input compared to similar blocks. The respondent is entitled by virtue of clauses 4(4) and 5(j) of the Lease to employ its servants or at a firm of managing agents to manage the Building. The respondent is entitled to discharge all proper fees, salaries, charges and expenses payable to the persons managing the Building.

108. For the years from 2006/7 to 2010/11 (inclusive) it is clear that there were significant failures in the management of Lister House. The determination by the tribunal in relation to the issues raised and detailed above show that in these years there were deficiencies in the services rendered and the management of these services. Some but by no means all of the examples of failure to adequately manage Lister House are as follows. The failure to apply the credits to the applicants accounts for a period of over 7 years. The failure to properly capture and allocate costs. The failure to fix a damaged fire exit door for a period of over 6 weeks in early 2010 is another example of mismanagement. The procrastination and delay in the installation of the secondary security gate is an example of poor management.

109. The B&S report in relation to the 2008/9 actuals stated:

⁷⁰ [343]

⁷¹ [343]

⁷² [343]

⁷³ [1273]

⁷⁴ [343]

⁷⁵ [1274]

“the average management fee charged (inclusive of management and administration) is £278. This is more expensive than any other provider benchmarked £210.

In addition to the providers benchmarked we have been provided details of management and administration charges for too other ALMOs: Hackney Homes management and administration fee: £227; Homes for Islington leasehold estate properties: £248. THH charges are still more expensive when compared with these providers.”

110. The Audit Commission stated:

“the estate management costs are high. In 2008/09, estate management at THH was the most expensive of 14 ALMO’s in London at £564 per property including overheads. This compared with the £300 average. No reliable comparison of quality is available. The nearest is satisfaction with the neighbourhood where THH scored 58% the lowest score of 11 London ALMO’s, which had an average of 75% and the second lowest score of 70%..... Residents are not getting value for money for this service.”

111. For the reasons stated the tribunal considered a reduction in the management fee to be reasonable for the years 2006/7 to 2010/11 to bring the fee in line with that of Homes for Islington leasehold estate properties.
112. The change in methodology undertaken in 2011/12 for calculating the service charge was to ensure that costs were accurately charged in line with generally accepted accountancy standards and to implement the recommendations made by an external audit by B&S. The witness statement of Andrew Crompton the Head of Finance for THH as well as his oral evidence clearly set out the changes and the reasons for the changes. The tribunal was persuaded by his evidence and finds that as of 2011/12 the charges more accurately reflect the actual cost of providing the service.
113. The Housemark benchmarking report in relation to 2012/13 found that the respondent’s housing management costs to be in the Middle Upper quartile in terms of value for money compared to a peer group comprising various social housing organisations including housing associations.
114. The applicants did not produce any evidence of the level of management fees charged in relation to a similar block. The criticisms of THH’s management service related mainly to the years prior to 2011/12. Therefore for the years 2011/12 onwards the tribunal finds the management fee claimed to be reasonable.
115. In relation to the applicants’ allegation as to the failure by the respondent to tackle the ASB, it was clear on the evidence that the

respondent had not ignored the matter, the respondent had not been proactive in dealing with the ASB but as a landlord it had attempted to deal with the issue.

116. Under Clause 5(5)(j) of the Lease the respondent covenanted to employ its servants or at the landlord discretion a firm of managing agent to manage the Building and employ persons as may be necessary or desirable for the proper maintenance safety and administration of the Building. There is no contractual obligation under the Lease on the respondent to prevent or eliminate ASB. The respondent has a policy and procedure for dealing with ASB, the 2014 -2017 policy is included in the evidence.⁷⁶ The tribunal was informed that prior to 2014 there was a similar policy in place, although a copy was not provided. The Audit Commission report noted that the respondent's strengths outweighed any weaknesses in dealing with ASB, and that THH worked well with partners [674] and resident satisfaction was above average in comparison to the 12 participating ALMOs [675]. The respondent's skeleton details the actions taken.
117. The respondent is in a unique position in that it is also the local authority, as well as the freeholder owner and landlord of Lister House. The respondent has been able to call upon the assistance of other teams such as the safer neighbourhood teams, the ASB team and the local Police in trying to combat the ASB. The efforts made by the respondent to tackle the ASB far exceed the efforts that a private landlord would or could make to deal with the issue. In November 2010 CCTV was installed in Lister House and due to the measures taken there has been a significant decrease in the level of ASB related complaints received by the THH with only two such complaints recorded in 2014.
118. The tribunal did not consider the applicants criticism of the respondent's handling of the ASB problem to be justified.
119. In relation to the estimated service charge for 2013/14 and 2014/15, the tribunal has jurisdiction under s. 27A the Act over the service charge payable by a tenant as defined under s18 of the Act. The sums disputed by the applicants (£490.58 and £402.19 respectively and £531.10 and £428.93 for 1 Lister House respectively) were not the sums demanded and therefore these sums were not the amounts payable by the applicants the tribunal's determination relates to the sums demanded by the respondent.

Application under s.20C

120. The Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section

⁷⁶ [402]- [420]

20C of the 1985 Act, so that the respondent may not pass 50% of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: N Haria

Date: 2 June 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

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

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Appendix 1

List of Applicants

- (1) Flats 1 & 5: Mr Halid Kutlay
- (2) Flat 6- Mr S Roy
- (3) Flat 7 Mr M Rahman and Mrs K Begum
- (4) Flat 10 Mr John Bloxam and Ms Jean Lane
- (5) Flat 14 Mr Y Ali and Mrs A Khanom
- (6) Flat 22 Mr K M Khan