11978

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AL/LAC/2016/0020**
Property	:	**155 Halton Court, 5 Cranfield Walk, London SE9EX**
Applicant	:	**Keith von Local**
Representative	:	**In person**
Respondent	:	**Viridian Housing**
Representative	:	**Carl Berwin of counsel** **Seye Olaniya, solicitor**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr P A Roberts FRICS**
Date and venue of Hearing	:	**3 November 2016** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19 December 2016**

DECISION

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge year 1 April 2014 to 31 March 2015.

2. The Tribunal also had before it an application by the Respondent dated 23 September 2016 to dispense with the requirement to consult under section 20 of the 1985 Act in exercise of the Tribunal's jurisdiction under section 20ZA(1) of the same Act in respect of four contracts (LON/00AL/LDC/2016/0100). The contracts in question were in issue in the Applicant's application. Following a determination by a procedural judge, that application was stayed pending this hearing on the basis that, should the question of dispensation remain a live issue at the conclusion of the hearing, the Tribunal would issue directions.

3. The principal relevant statutory provisions are set out in the Appendix to this decision.

The property

4. The property is a two bedroom flat in a purpose build block. The block includes 170 flats. Twelve flats are held on long leases, and the remainder rented on short tenancies. The Respondent holds the head lease. The freeholder also holds the freeholder of a broader development within which the block is located.

5. The block is limited to people over 55 years of age, and provides the residents with a variety of services appropriate for people of that age group.

6. The Applicant acquired his interest on 8 August 2014. The service charge year runs from 1 April to 31 March.

The lease

7. The lease is a shared ownership lease. No issue arose as to the shared ownership provisions in the lease. The lease is dated August 2014, for a term of 125 years commencing on 1 January 2013.

8. The leaseholder covenants to pay a variable service charge (clauses 3.3.4. and 7.1). The service charge is to be calculated in advance of the service charge year by reference to the amount expected to be expended

by the landlord on its relevant obligations (clauses 7.2 and 7.3). There is provision for the leaseholder to be credited or make further payment when calculation of actual expenditure is completed after the end of the service charge year (clause 7.5); and for the accumulation of a reserve, and for the sum to be reduced by any unexpended reserve. The service charge is payable at the same time as the "Specified Rent" (clause 7.1), which is payable monthly in advance. Each leaseholder pays one one-hundred-and-seventieth of the total sum.

9. The costs included in the calculation are (amongst others) those relating to the performance of the landlord's covenants to insure, repair the structure etc and light and clean the common parts, and "all reasonable fees, charges and expenses payable to the Authorised Person any solicitor, accountant, surveyor, valuer, architect or other person the Landlord may from time to time reasonably employ in connection with the management or maintenance of the building ... including the cost of preparation of the accounts of the Service Charge and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work." The lease also makes provision for the service charge to include "any Outgoings assessed, charged, imposed or payable on or in respect of the whole of the Building or in the whole or any part of the Common Parts" (Clause 7.4).

10. "Building" means the block and parking, loading areas etc appurtenant to it; and "Estate" means a wider development (the Kidbrooke development) carried out by the superior landlord (schedule 7).

11. A covenant in the lease limits the use of the premises to occupation as a private residence for those over 55 (clause 3.17).

The hearing and the issues

Preliminary

12. Mr von Local represented himself. The Respondent was represented by Mr Berwin of counsel. His instructing solicitor, Mr Olaniya, attended. Evidence was given by Mr Daniel French, the Respondent's Area Services Manager, Ms Sarah Sharp, Finance Manager and Mr Andrew Green, Assistant Director of Housing.

Application for adjournment

13. Directions were originally given at a case management conference held on 29 June 2016. They provided for a hearing date of 30 August. On 20 July, the Respondent requested variations of the timetable. The Applicant opposed the application. The application was allowed, providing for later exchanges between the parties and for a hearing date of 3 November 2016

14. At the hearing, the Respondent applied for a further adjournment. There were two bases for the application.

15. The first was that the Respondent contended that it needed to serve another bundle of documents. The hearing bundles provided to the Tribunal consisted of two volumes comprising 725 pages. The additional bundle amounted to a further approximately 400 pages. The Respondent argued that the new documents were necessary as a consequence of the service of the Applicant's reply, on 5 October, and could not have been foreseen before then. The Respondent had sought to serve the documents on the Applicant about two weeks before the hearing, but the Applicant had declined to take them. In addition, there were a small number of documents still outstanding from the freeholder.

16. The second basis for the application was that a potential witness was ill and unable to attend. Ms Marian Boylan is the Head of Retirement Housing for the Respondent. She could give evidence as to a number of matters, including relating to some of the contracts referred to by the Applicant. While her witness statement was available, she could answer the Applicant's questions, and it would be unfair to the Applicant to proceed without her. We were shown a copy of a medical certificate indicating that she would be off work for about two weeks.

17. By way of a subsidiary application, the Respondent asked us to accept the additional volume of papers if we declined to allow an adjournment.

18. The Applicant resisted the application. He argued that there had already been significant delay in the case. As to Ms Boylan, he said we could rely on her witness statement. For the most part, his issues required to be addressed by an accountant, and Ms Boylan was not an accountant.

19. Following a short adjournment, the Tribunal refused the application to adjourn. In the first place, we considered that an adjournment at this stage would be disproportionate to the value of the issues at stake. Secondly, the Respondent had had ample time to prepare its papers and otherwise prepare its case, given the extension of time already allowed. The Tribunal was unsympathetic to the application in so far as it related to the additional materials sought to be put before the Tribunal. Finally, although the absence of Ms Boylan fell into a different category, her witness statement was available, her evidence dealt with general matters rather than matters of which a close personal knowledge was necessary, and there were three other employees of the Respondent available to give oral evidence.

20. We further declined to accept the further documents in the additional bundle. We also ruled that we would accept no other documentary evidence from either party.

21. Although it played no part in our decision to refuse the adjournment, it subsequently transpired that many of the documents we were told were in the additional bundle clearly could and should have been provided at an earlier stage.

22. At the start of the hearing the substantive hearing, we sought to identify the issues between the parties. We determined that we would consider the issues in this form and order:

General issues:

(i) Whether the demand for service charge included the summary of rights and obligations; and

(ii) Whether a consultation procedure under section 20 of the 1985 Act was required in respect of four contracts:

a. communal cleaning;

b. fire equipment;

c. communal electricity; and

d. security services.

Specific issues: whether the service charge demanded was payable and/or reasonable in respect of:

(iii) Certain staff costs,

(iv) Fire equipment,

(v) Communal electricity, and

(vi) The "administration charges".

23. We considered each of these issues in turn, taking evidence from both parties and considering their submissions.

24. As a result of these proceedings, the Respondent had accepted in advance of the hearing that it had made errors and reconsidered a number of items of expenditure which featured in its service charge statement of account. As a result the total expenditure upon which the service charge was based reduced from £37,269 to £33,269. In addition, at the hearing it became apparent that the Applicant no longer

contested the category described as "estate costs", charges relating to the reserve fund and to communal cleaning.

The demand and the summary of rights and obligations

25. The Applicant argued that he had not received a demand accompanied by the summary of tenant's rights and obligations required by section 21B of the 1985 Act and the Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007.

26. The Respondent referred us to the letter sent to the Applicant on 19 September 2015, covering the service charge statement of account. Attached to this document was a summary of tenant's rights and obligations.

27. The Respondent had not produced a service charge demand addressed to the Applicant. In oral evidence from Ms Sharp, we heard that the service charge demand was made in February each year at the same time that notices in relation to rent were served, and was accompanied by the summary of rights and obligations. Ms Sharp could not comment on what arrangements were made in respect of the demand to new leaseholders.

28. The Applicant acquired his interest in August 2014. His oral evidence was that he had never received a formal demand, but that the service charge and rent were set out in his "offer letter", provided by the Respondent on his acquisition of his interest. He said that this letter was not accompanied by the summary of rights and obligations.

29. In accordance with our earlier ruling, we declined to accept further documentary evidence in relation to the offer letter.

30. We accept the evidence of the Applicant, which the Respondent was not in a position to contest.

31. In his written materials (although not orally), the Applicant submitted that some or all of the service charge was not payable, because any demand made now would be outside the period of 18 months prescribed for a service charge demand by section 20B of the 1985 Act.

32. We reject this submission. The demand was in respect of an estimated service charge, the actual expenditure did not exceed the payments on account and the Respondent has not requested further payments. Accordingly, section 20B has no application (*Gilje v Charlesgrove Securities Limited* [2003] EWHC 1284). In the light of this finding, it is not necessary to consider whether the "offer letter" would have constituted a notice under section 20B(2).

33. *Decision*: Insofar as the Applicant received a demand for his service charge contribution, it was in his offer letter, and was not accompanied by the summary of rights and obligations. Accordingly, no service charge is payable unless and until it is properly demanded in a form accompanied by the summary of rights and obligations. Section 20B has no application to the demand.

Consultation requirements

34. The Applicant argues that each of the contracts require a consultation exercise to take place, as provided for by section 20 of the 1985 Act and the Service Charges (Consultation etc)(England) Regulations 2003 ("the 2003 Regulations").

35. In each case, the Applicant argues that the contracts are qualifying long term agreements, that is, an agreement entered into by the landlord for a term of more than twelve months, to an annual value of more than £100 per tenant (section 20ZA(2): regulation 4 of the 2002 Regulations).

Consultation requirements: communal cleaning

36. The Respondent's case was that the communal cleaning contract was entered into on 20 March 2013, and was stated to continue in effect until termination by either party on 28 days' notice.

37. There was some dispute in relation to this contract, as the document supplied was expressed as a contract between two companies apparently within the same group; and the document had not been signed by either. However, it was Ms Sharp's oral evidence that the contract between the Respondent and one of the companies mentioned in the contract letter was on the terms therein described. While drawing attention to the inadequacies of the documentation, the Appellant did not provide evidence, nor submit to us, that the contract, in fact, had other terms, or a different commencement date. We accept the Respondent's evidence as to terms and start date.

38. The first tenants moved into the block on 27 May 2013. The Respondent argues that the contract is therefore not a qualifying long term agreement by virtue of regulation 3(1)(d) of the 2003 Regulations. That provides that "an agreement is not a qualifying long term agreement ... if (i) when the agreement is entered into, there are no tenants of the building or other premises to which the agreement relates; and (ii) the agreement is for a term not exceeding five years."

39. We agree with the Respondent's submission. Even if (which we do not have to decide) the duration of the contract was longer than 12 months, it was entered into before there were tenants in the block, and five years had not elapsed at the relevant time.

40. *Decision:* The communal cleaning contract was not a qualifying long term agreement.

Consultation requirements: fire equipment

41. We turn to the contracts relating to fire equipment. The Tribunal found some lack of clarity in the evidence in respect of this contract. The following account relies on the documents in the bundles and our understanding of the oral evidence, seen in the light of the documents.

42. It appears that the Respondent had initially agreed a five year contract covering numerous sites, but not of course Halton Court, in 2000 with a company called Cirrus (which in 2014 became known as, or was taken over by a company called, Appello). That contract had been carried on after the five year period elapsed. We were provided with a copy of a document said to be this contract. It is in fact the Respondent's tender document, which was intended to provide the contractual terms when a contract was agreed, and it relates to a period from 1 April 2004. The document provides for termination on three months' notice without reason by either party.

43. According to the Respondent's case statement, Cirrus were asked (at a date not specified) to carry out a review of existing systems at Halton Court. The Respondent requested a short term contract for three months from 1 July 2014, which was then rolled over until 31 March 2015, at which point a new contract was awarded to a new contractor for all of the Respondent's London stock.

44. In evidence, it appears that Ms Sharp said that the new contract had been deliberately specified in such a way as to ensure that the per-unit charge was set at £100 a year in order to avoid the need for a consultation under section 20. If that were the case, then the question might arise as to whether reactive repairs carried out to the same equipment by the same company were part of the same contract or not. If they were, the value of the contract might be held to exceed £100 per-unit. There is some indication that it was said that the new contract applied at some time during the service charge year to which this application applies, and that therefore this question arose for our decision. It is evident from the account we give above that we do not think, on the documents, that this can be the case. But if either party considers that our understanding of the evidence is erroneous, and is such as to potentially affect the correctness of our decision, it is open to that party to apply for us to review our decision on an application for permission to appeal (see the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rules 53 and 55).

45. The case statement appends a document that is stated to be the 1 July 2014 contract (that it, with Cirrus/Appello. In fact, that document comprises largely a set of technical requirements appropriate to a

contract. It is covered by a letter from Cirrus. The letter describes the document as "the following report and proposal for the ... site". It has two headings, one reading, enigmatically, "10th June 2014 (revised 30th June 2014 rev2) with basic contract and all calls outs are charged at the nominated rate". The second heading is "Cirrus Ref; Proposal for the maintenance of the existing systems in situ on the complex". It may be that this document comprises the results of the review requested by the Respondent mentioned above. At the end of the document is a note to the effect that the Respondent has requested a short term contract for three months from 1 July 2014.

46. There is one invoice in the bundle from Cirrus dated 26 March 2014, which indicates that some work was undertaken by the company at the block before the short term contract. This was, presumably, covered in some way by the original, rolled over 2000 contract.

47. It is evident that there can have been no requirement for consultation to have taken place with Halton Court residents in 2000. Rather, the contract appears to have been in the nature of a framework contract under which specified services could be provided at sites within the Respondent's estate. In such circumstances, it is the length of the agreement relating to the specific site that it relevant to whether "the contract" is a qualifying long term agreement (see *Leaseholders of Foundling Court and O'Donnell Court v London Borough of Camden and Others* [2016 UKUT 366 (LC)).

48. Appended to invoices from Cirrus is a schedule of sites covered by the contract, which shows a starting date for Halton Court of 1 July 2014. As we have set out, the Cirrus contract as a whole was terminated on 31 March 2015. Accordingly, the site-specific contract between these two dates is not for a period of over 12 months, and not a qualifying long term agreement.

49. The status of whatever agreement governed the period immediately previous to the formal extension of the framework contract to Halton Court from 1 July 2014 is somewhat obscure. We were told in evidence that the contract had been "rolled over", which suggests that it continued after the initial fixed period on an indeterminate basis – that is, the parties considered themselves to continue to be bound by it until it was terminated.

50. In *Paddington Walk Management Ltd v The Governors of Peabody Trust* [2010] L&TR 6, the judge held that a management contract expressed to be "for an initial period of one year from 1 June" and then continuing "thereafter on a year-by-year basis with the right to termination by either party on three months' written notice" did not constitute a qualifying long term agreement.

51. In *Poynders Court Ltd v GLS Property Management Ltd* [2012] UKUT 339 (LC), the Upper Tribunal distinguished *Paddington Walk*, on the basis that that agreement included a specific term relating to its duration, whereas in *Poynders Court* the contract was silent as to duration. In *Poynders Court*, the terms of the contract (services relating to annual service charges, a two year period for consideration of fee increases) made it clear that the parties contemplated a contract of a longer duration than 12 months.

52. While *Paddington Walk* is a decision of the county court, and so persuasive but not binding on us, the distinction between contracts with a specified duration that might roll over to more than 12 months and those that had no specified length but were nonetheless intended to last longer than 12 months is established in *Poynders Court*, a decision binding on this Tribunal.

53. The contract (we must assume) continued to provide for termination on three months' notice; and that it was not generally in the contemplation of the parties that it must last for more than 12 months is clearly demonstrated by the fact that the 1 July 2014 formal extension of the contract to Halton Court was of 10 months' duration.

54. Accordingly, it appears that the contract covering Halton Court before 1 July 2014 fell into the *Paddington Walk* category and so was not a qualifying long term agreement.

55. In any event, it is highly unlikely that its value would have been such as to bring it within the definition of a qualifying long term agreement. We have only one invoice for the period, and that is for a total of £180. While we cannot be sure that we have all of the relevant invoices, it seems close to inconceivable that expenditure could have been more than £17,000.

56. *Decision:* The contract or contracts for fire equipment were not qualifying long term agreements.

Consultation requirements: communal electricity

57. The third contract in respect of which the Applicant raises section 20 consultation is that relating to communal electricity.

58. The Respondent entered into a contract with a company called Inenco Group Limited in June 2012. There is, accordingly, no dispute that this contract is not a qualifying long term agreement by virtue of regulation 3(1)(d) of the 2003 Regulations.

59. However, the parties dispute what expenditure is covered by this contract. The parties agree that the contract covers the management of electricity supply on behalf of the Respondent. The Respondent asserts

that the contract also covers the supply of the electricity. The Applicant contends that the supply of electricity is governed by separate contracts with electricity supply companies; and one of those contracts should have been subject to a section 20 consultation.

60. We have been supplied with part of the Inenco contractual material. It was not contested that the passage headed "Appendix 1 – Service Level Agreement" described the services provided under the contract. The Applicant relied on paragraph 1.3: "Service shall be understood to mean an Energy Management Service, with the objective of providing an efficient service".

61. Under the heading "Scope of the Services Required", the document states that the "comprehensive Energy Management Service" covered the following activities: "[to] Maintain an up to date database ... Communicate directly, in a timely manner, with the relevant suppliers regarding their requests for information ...Be responsible ... for verifying the information contained in invoices submitted by our current and future utility suppliers." Finally "In the forming of new utility supply contracts ensure: their procurement is complaint with ... procurement legislation; are produced following competition from all the available/interested suppliers."

62. The Respondent argued that the conduct of Inenco in dealing with electricity supply bills – they collated them, and they were invoiced to an Inenco address – indicated that the contract between Inenco and the Respondent encompassed the supply of electricity.

63. We disagree. The Inenco contract is clearly, as it states, for the management of supply contracts. The contracts for electricity supply themselves are contemplated by the contract as distinct and separate contracts. That those contracts are between the electricity supply company and the Respondent, and not Inenco, is evident from the way they are dealt with in the Inenco contract. Inenco's dealings with the electricity suppliers is entirely consistent with the provision of management services in relation to those separate contracts.

64. The Applicant goes on to argue that one of the electricity supply contracts is a qualifying long term agreement. The basis for this is two invoices from one such contractor, Haven.

65. The first invoice is dated 10 April 2014 and is for the period 1 to 31 March 2014. That invoice states that the contract end date is 30 April 2014. The second invoice relied on by the Applicant is dated 18 August 2014 and relates to the period from 1 to 31 June 2016, and specifies a contract end date of 30 September 2015. The Applicant invites us to conclude that the second contract, that ending on 30 September 2015, must at the very latest have started on 1 June 2014, and is therefore for a period of longer than twelve months.

66. The Respondent accepted that it could produce no evidence to negative this implication.

67. Having found that the relevant contract was between Haven and the Respondent, given the value of the contract (£50,343), it should have been the subject of a section 20 consultation.

68. The Respondent orally applied for dispensation under section 20ZA(1), and as we stated in paragraph 2 above, a written application for dispensation was referred to the Tribunal in the terms therein set out.

69. The written application for dispensation in its terms only named the Applicant in these proceedings as the respondent, and his flat as the subject property. However, it also included a list of the names and addresses of all 170 service charge payers at Halton Court, and the letter setting out the procedural judge's consideration of the papers indicated that on a substantive application for dispensation, all 170 would be made respondents.

70. The obligation to consult under section 20 is a duty owed by a landlord to all relevant tenants. When an application to dispense with a consultation is made, it is clearly normally desirable that all tenants potentially affected should receive notice of the application and be given the opportunity to be joined as parties. When a free-standing application for dispensation is made, it is normal for the Tribunal to secure this outcome by means of directions requiring the applicant to inform all of the relevant tenants and invite them to contact the Tribunal and the applicant if they wish to make representations.

71. It is, however, possible in an appropriate case for the Tribunal to exercise its jurisdiction under section 20ZA(1) when only one tenant party is before it. In such a case, applying the general principle known as issue estoppel or *res judicata*, a determination by the Tribunal to dispense with consultation is only strictly binding on the parties before the Tribunal.

72. On the one hand, such a determination may dispose of the case before the Tribunal, thus serving the end of finality in legal proceedings. On the other hand, the result may be inconvenient for the landlord. If a dispensation is granted in such a case, it removes the consultation obligation only within the confines of the proceedings involving the single tenant party. It does not bind other tenants in other proceedings.

73. We have therefore carefully considered whether we should determine the dispensation application in this case in respect of this contract, and have concluded that we should.

74. In making that decision, we must balance the advantage of finality in these proceedings against the broader implications set out above. In this case, it is the strength of the argument in favour of dispensation that is decisive in making that decision.

75. The Respondent established the contract with Inenco in order to ensure that it contracted with electricity suppliers in the most efficient way possible. In effect, therefore, the Respondent was acting on the recommendation of a professional manager of such contracts, equipped as it was with the wherewithal in technological terms to propose the most advantageous contract. Further, the contract was for a wholly undifferentiated product. There is no value judgment to be made about the quality of electricity to be obtained. In those circumstances, it appears to the Tribunal to be unlikely in the extreme that the proposal put to tenants for consultation could have any possible result except that the recommended contract should be entered into.

76. In such circumstances, we can see no possibility of prejudice to the tenants of dispensing with the consultation requirement (see *Daejan Investments Ltd v Benson* [2013] UKSC 13, [2013] 1 WLR 854).

77. *Decision*: (1) The contract for the management of electricity supply between the Respondent and Inenco Group Limited was not a qualifying long term agreement. (2) The contract with Inenco Group Limited was not a contract for the supply of electricity. The contract for the supply of electricity with Haven was a qualifying long term agreement. (3) The Tribunal dispenses with all the requirements of section 20 of the 1985 Act in respect of the contract with Haven under section 20ZA(1) of the 1985 Act.

Consultation requirements: security services

78. Security, or concierge, services were provided by a company called Grosvenor. The contract document provided stated that the commencement date was 17 May 2013, shortly before the first tenants moved in. The contract document was, however, signed on 1 July 2013. The duration of the contract is specified as 12 weeks. Oral evidence was given to the effect that the contract had been rolled over since then.

79. The Applicant argued that, first, the contract started on the date it was signed; and secondly that it had, in fact, lasted longer than 12 months and was accordingly a qualifying long term agreement.

80. The Respondent maintained that the contract started, as a matter of fact, on 17 May, and therefore fell within regulation 3(1)(d) of the 2003 Regulations. Further, it was a contract for 12 weeks, not more than 12 months, even if it had been rolled over for a longer period.

81. The cases discussed above (*Paddington Walk Management Ltd v The Governors of Peabody Trust* [2010] L&TR 6 and In *Poynders Court Ltd v GLS Property Management Ltd* [2012] UKUT 339 (LC)) are therefore relevant to this contract.

82. For the reasons set out above at paragraphs 50 to 52, the contract between Grosvenor and the Respondent falls into the *Paddington Walk* category. Accordingly, even if the start date of the contract was, as the Applicant contended, after the arrival of tenants, it is nonetheless still not a qualifying long term agreement.

83. *Decision:* The contract with Grosvenor is not a qualifying long term agreement.

Reasonableness of staff costs

84. As a preliminary, one of the members of staff to whose salary costs the Applicant objected was a Mr Balogun. On the papers, it appeared that the Respondent claimed that the Applicant was confusing the roles of two people with that name. At the hearing, it became apparent that there was a third person, whose first name had led to further confusion with one of the Mr Baloguns. At any event, we were satisfied at the hearing that one of the Mr Baloguns was a community development officer based at Halton Court, and that the costs of his salary had not been charged to the service charge. To the extent that either of the others is involved, it is as a temporary housing assistant, and the challenge to those salary costs falls to be considered in relation to the Applicant's general case against the charging of some or all of the housing assistants' salary costs to the service charge.

85. During the relevant year, in the case of each of the area services manager (Mr French), the scheme manager and two housing assistants, 75% of salary costs were attributed to the service charge. In subsequent years, those proportions were varied. In the case of the area housing manager, the costs were reduced to 50% in 2015/16 and to 25% in 2016/17. The proportion of the costs of the scheme manager was reduced in those years to 50% and the cost of the assistants was removed altogether.

86. The Applicant argued that the subsequent reductions in proportion of salary costs charged indicated that the amount charged in 2014/15 was excessive. He also considered that the charges were on their merits excessive. He questioned the amount of time that the housing services manager spent at Halton Court, for instance, and considered that the housing assistants spent little time on what he argued were properly property management services, and gave evidence to that effect. A proportion of their time was spent on what he termed "charitable work" rather than housing management proper.

87. Mr French gave evidence about his involvement in management at Halton Court, and on the duties of the other members of staff. The burden of management of the scheme was considerably higher in the earlier years, and this was expressed in the higher proportion of the cost of both the area services manager and the scheme manager attributed to the service charge. The block was occupied in phases, so although the first occupiers arrived in May 2013, subsequent phases filled the property. Further, the project, being specifically for the over 55s, required more, and a broader range of, services than otherwise (an approach described as intensive housing management). The evidence in relation to the housing assistants was that the Respondent concluded that their cost could be removed from the service charge as a concession to affordability. Our understanding was that the Respondent did not concede by so doing that their cost could in principle have been charged to the service charge.

88. We prefer the evidence of the Respondent to that of the Applicant in relation to the demands of management of the building, and on the appropriate level of services. In particular, we regard it as reasonable that the block required greater management input as it was progressively occupied. As a matter of law, we accept the Respondent's submission that the phrase "provision of services" in clause 7 of the lease must be construed in the context of a scheme limited to people of over 55 years of age.

89. *Decision*: Insofar as it relates to the contested staff costs, the service charge is reasonably payable.

Reasonableness of expenditure on fire equipment

90. The Applicant made a generalised complaint about the amount of the charges in relation to fire equipment. His charge was that it was hard to see what services were being paid for, and so it was difficult to say whether or not the charges were reasonable.

91. Mr French's evidence was that the charges were appropriate for a building of the size, nature and age of the block.

92. In the absence of any specificity in the Applicant's complaint, we prefer the evidence of the Respondent.

93. *Decision*: Insofar as it relates to the cost of the fire equipment, the service charge is reasonably payable.

Reasonableness of expenditure on communal electricity

94. The Applicant sought to challenge the cost of the communal electricity. The Respondent referred to their use of a reputable broker to secure the best electricity supply contract available.

95. We have dealt with the arrangements for securing electricity contracts at paragraphs 58 to 76 above. It necessarily follows from our conclusions there that in respect of this challenge, we find for the Respondent.

96. *Decision*: Insofar as it relates to the cost of the communal electricity, the service charge is reasonably payable.

Reasonableness of expenditure on "administration charges"

97. Initially, the Applicant put his challenge under this heading as an application under schedule 11 to the 2002 Act. It was, however, clear that the term "administration charge" was used by the Respondent as a description for its management fees, rather than falling within the definition of that term in the 2002 Act. We considered the merits of these charges as part of the application in respect of the service charge under section 27A. The Applicant accepted this approach.

98. The Respondent imposed a management fee of 15% of the service charge, in accordance with its general practice in respect of the large majority of its properties.

99. The Applicant's general case was simply that the charge was too high. He acknowledged that the percentage was, or might be, in line with the guidance provided by the National Housing Federation, but suggested that a figure provided by what he described as a housing associations' lobbyist had no particular virtue.

100. He further suggested that the calculation erred in the way in which it accounted for periods during which the flats were unoccupied, so as to effectively impose the cost of such voids on those who were in occupation.

101. The Respondent argued that its standard fee, which reflected the advice of the National Housing Federation, was within the reasonable range. The practice of charging a simple, single fee was a general one, and appropriate, for the reasons given in *Mahase v London Borough of Camden* [1996] NPC 187, a passage from which is quoted in the Respondent's statement of case (a report of the case was not available to the Tribunal).

102. The Respondent contended that the Applicant's point about voids was misconceived, because it was based on considering the document setting out the accounts as a whole for the block. It was only after that point that the service charge was apportioned to each property, and in doing that, the Respondent did not vary the amount attributable to each property on the basis of the number of flats actually occupied. The effect, therefore, was that it was the Respondent, not the leaseholders,

which bore the burden of voids. The Respondent did, however, distribute surpluses to occupied flats only.

103. We accept the evidence and submissions of the Respondent. The Tribunal is aware that the Respondent's practice is a widespread one amongst housing associations, and we do not accept the fact that it is endorsed by the Respondent's trade association renders it suspect.

104. *Decision*: Insofar as it relates to the Respondent's management fees, the service charge is reasonably payable.

Other points raised by the Applicant

105. The Applicant raised a number of points relating to the Respondent's accountancy practices and its presentation of the service charge calculation to the leaseholders.

106. We do not consider that any of these points could possibly be relevant to whether the service charge was reasonably payable, and accordingly do not consider it appropriate to set them out in detail. However we consider that there is force in the Applicant's broad point about the presentation of the figures. Although, as we have stated, these are not questions relevant to the Tribunal's jurisdiction, we urge the Respondent to consider whether its practice in this regard could be improved.

Application for reimbursement of Tribunal fees

107. The Applicant applied for the fees paid by him to the Tribunal to be repaid by the Respondent.

108. The Respondent accepted that, as a result of the proceedings, the service charge had been reduced and therefore, regardless of the outcome of the hearing, the Respondent did not contest this application.

109. The Tribunal orders under First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicant the whole of the amount paid by him to the Tribunal.

Application under section 20 of the 1985 Act

110. The Applicant applied for an order under section 20C of the 1985 Act that the costs incurred by the Respondent in connection with these proceedings are not to be taken into account in the calculation of a service charge.

111. The Respondent undertook that it would not charge its costs to the Applicant either by way of service charge or administration charge, and on the basis of this undertaking the Tribunal dismisses the application.

Application for dispensation under section 20ZA(1) of the 1985 Act

112. Directions in respect of the Respondent's application for dispensation under section 20ZA(1) are issued separately on today's date.

Name: Tribunal Judge Richard Percival **Date:** 19 December 2016

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).