11643

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

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| **Case Reference** | : | **LON/00AU/LSC/2014/0370** |
| **Property** | : | **46 Thornhill Houses, Thornhill Road, London N1 1PA** |
| **Applicant** | : | **Mr P Cain** |
| **Representative** | : | **In person** |
| **Respondent** | : | **The Mayor and Burgesses of the London Borough of Islington** |
| **Representative** | : | **Mr R Bhose, Counsel** |
| **Type of Application** | : | **For the determination of the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge P Korn**<br>**Mr C Gowman MCIEH MCMI**<br>**Mrs L Hart** |
| **Date and venue of Hearing** | : | **10th and 11th March 2016 at 10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **14th April 2016** |

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# DECISION

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## Decisions of the Tribunal

(1) The electricity charges for each of the years 2007/08 to 2010/11 inclusive are reduced to £11.00 per year from £12.64 (07/08), £40.61 (08/09), £43.75 (09/10) and £47.92 (10/11). The total reduction is £100.92.

(2) Apart from the reduction of £100.92 referred to (1) above, the service charges for the years 2007/08 to 2014/15 inclusive and the estimated service charges for 2015/16 are all payable in full.

(3) The two administrative charges challenged by the Applicant are not payable. These are the legal costs of £185.00 for the 2012/13 year and the legal costs of £20.00 for the 2013/14 year, totalling £205.00.

## Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged to him.

2. The application originally related to the service charge years 2001/02 to 2014/15 inclusive but the Tribunal decided that the service charge years 2001/02 to 2006/07 inclusive should be struck out from the application. That specific decision was appealed by the Applicant to the Upper Tribunal who dismissed the appeal. On a separate point it has been agreed that the determination will include the estimated charges for 2015/16.

3. There are two items being disputed by the Applicant which are described as legal fees. These are technically administration charges rather than service charges and the payability of these charges therefore falls to be determined pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The building insurance premiums are not being disputed by the Applicant.

4. The relevant statutory provisions are set out in the Appendix to this decision. The Applicant's lease ("**the Lease**") is dated 30th September 1985 and was originally made between the Respondent (1) and J.J.S. Lazenbatt (2). The Applicant is the current leaseholder and the Respondent remains the landlord.

## Preliminary issue – application to exclude certain documentation

5. The Respondent, having raised the point in writing prior to the hearing, applied at the start of the hearing to have some of the Applicant's

written submissions excluded, namely pages 1-51 and 70-74 of Section 3 of Bundle 1 and Sections 16 onwards of Bundle 2.

6. Mr Bhose for the Respondent objected that the Applicant's whole approach had not been proportionate. This was the second set of proceedings between the same parties and the Applicant was an experienced litigant and therefore understood the process very well. The Tribunal's directions had made it very clear how the parties should make submissions and the Applicant had simply not complied. The Applicant had appealed against the directions but his appeal had been dismissed by the Upper Tribunal.

7. In addition, Mr Bhose noted that as a result of the Respondent's conduct the Tribunal had come close to barring him from taking part in these proceedings. Judge Barran stated as follows in a decision dated 21st December 2015: "aware that Mr Cain is not represented I stop just short of finding his behaviour to be an abuse of process or vexatious". Judge Barran went on to direct (also on 21st December 2015) that the Applicant now be taken to have made his case.

8. In Mr Bhose's submission large parts of the Applicant's further bundles (including, but not limited to, the material specifically being objected to) contained new material. They were received by the Respondent on 24th February 2016.

9. In response, the Applicant accepted that he had not complied with directions but said that he had not been given an opportunity to air the issues properly. He also said that he did not have the relevant paperwork until late and that some of it consisted of photographs as evidence of poor workmanship.

10. As stated at the hearing, the Tribunal's decision was to exclude the aforementioned written submissions as per the Respondent's request. The Applicant's conduct in the run-up to the hearing is a matter of detailed record. By his own admission the Applicant has not complied with directions. The Tribunal considers that his approach to this case has been wholly disproportionate and that he has acted in a manner which fully justified Judge Barran's stopping "just short" of finding his behaviour to be an abuse of process or vexatious. The directions dated 21st December 2015 clearly stated that the Applicant was at that point to be taken to have made his case, and this was clearly in the context of his previous failings to comply with directions and his being given some leeway as a litigant in person. It would be clearly prejudicial to the Respondent to have to deal with the Applicant's very detailed new submissions at such a late stage and inequitable to expect the Respondent to do so in the circumstances. If the Applicant wished to include as part of his evidence the photographs to which he has referred it is unclear why he could not have done so much earlier in a manner which would have complied with the Tribunal's clear directions.

11. Accordingly, pages 1-51 and 70-74 of Section 3 of Bundle 1 and Sections 16 onwards of Bundle 2 of the Applicant's further written submissions are excluded.

## General point

12. The written submissions in this case have been extensive, and some submissions have been significantly more pertinent than others. It is not considered either practical or useful to summarise every submission made, and therefore only those submissions considered to be the most relevant are referred to below.

## Concession by Respondent

13. Mr Bhose for the Respondent said that the Respondent was prepared to limit the Applicant's electricity charges for the years 2007/08 to 2010/11 inclusive to £11.00 per year, this being the lowest annual cost for any of the years of dispute. It was accepted that for those years the amount charged did not necessarily reflect the true actual cost.

## Applicant's case

### Methodology of apportionment

14. In the Applicant's submission his charges were based on the figure for borough-wide costs and not on the actual costs incurred in relation to his building. He accepted that he had no specific evidence for this statement. He had sought a breakdown from the Respondent but had been told that this was confidential information.

15. In any event, the Applicant said that even the method of apportionment that the Respondent itself claimed to be using was incorrect, and in that regard he referred the Tribunal to the relevant provisions of the Lease. Clause 5(f)(i) of the Lease provided for the service charges other than the management element to be apportioned according to the relationship between the rateable value of the Property and either (i) the rateable value of the whole building (in the case of the building element of expenditure) or (ii) the rateable value of the whole estate (in the case of the estate element of expenditure).

16. Proviso (A) to clause 5(f)(i) allowed the Council *"at any time to fairly and reasonably substitute a more detailed method of calculating the Service Charge attributable to the dwellings in the Building"*. Proviso (B) then goes on to state that *"in the event of the abolition or disuse of rateable values for property the reference herein to the rateable value shall be substituted by a reference to the floor areas of all the dwellings in the Building and on the Estate (excluding any areas and lifts (if any) used in common) and calculated accordingly"*. It was

common ground that the Respondent had been using a bedroom weighting method of apportionment since 2007/08. However, this was not a floor area apportionment as permitted by proviso (B) and nor did it comply with proviso (A) as it was a different method of apportionment, not a "more detailed" method as envisaged by proviso (A). He considered that the difference in method of apportionment would make a significant difference if the service charges were calculated on a building by building basis but he accepted that there was virtually no difference between the two methods based on the current way in which each building's share of total costs was calculated.

17. The Applicant also referred the Tribunal to the decision of the First-tier Tribunal in the case of *Kelsall v London Borough of Islington re 68 Wynford Road (Reference: LON/00AU/LSC/2006/0399).*

Caretaking/cleaning

18. The Applicant said that the Respondent took the total cost of borough-wide cleaning and then allocated a proportion to each building. In his building, though, very little cleaning was in fact needed in his view. In addition, the Respondent calculated its charges according to "blocks" so as to justify costs being shared between a few different buildings, but this sharing of costs was not envisaged by the Lease itself.

19. More specifically, the Applicant felt that the caretaking charges for 2011/12, for example, were excessive as they worked out at about £25.00 per hour.

Management fee

20. The Applicant said that the Respondent had been double and triple charging and that, in any event, it was not managing the building properly. There should not be a separate estate management charge because it was not an estate.

Aerials and electricity

21. In the Applicant's view again these items had been charged out as a proportion of borough-wide costs regardless of the amount spent in relation to his building. Instead, they should have been charged according to the costs incurred in his single building and not across five separate buildings.

22. In addition, the Applicant referred the Tribunal to a copy of a letter dated 14th September 2011 from Mr E McGoldrick of Homes for Islington to the Applicant stating that Homes for Islington had been unable to provide copies of invoices relating to payment for block TV aerial maintenance.

Gardening/grounds maintenance

23. The Applicant made the same point as in relation to aerials and electricity above. In addition, he said that gardening was either not done at all or not done with sufficient frequency or in a sensible manner. The only work done was the infrequent managing of the creeper.

Block repairs

24. The Applicant referred the Tribunal to the block repair breakdown for 2012/13 in the hearing bundle. In relation to the second and sixth items, both described as roof leak repairs, he said that it had been unnecessary to put up scaffolding to fix the problem as these were not roof leaks.

Requirement to certify the service charge

25. The Applicant referred the Tribunal to clauses 5(a) and 5(d) of the Lease, in particular to the requirement that the service charge shall on an annual basis be *"certified by a certificate (hereinafter called "the Certificate") signed by the Council's Director of Finance or some other duly authorised officer"* and the requirement that *"the Council shall supply a copy of the Certificate for each Financial Year to the Tenant within six months from the end of the Financial Year to which the Certificate relates"*. The Applicant said that he had now received copies of the certificate for each year but had received them all very late and not within 6 months after the end of the relevant financial year.

Section 47 Notice

26. The Applicant said that the Respondent was under an obligation to comply with section 47 of the Landlord and Tenant Act 1987 ("**the 1987 Act**") whenever sending him a service charge demand by ensuring that such demand contained its name and address. Whilst he had received notices pursuant to section 48 of the 1987 Act notifying him of its address and containing the landlord's name he had not received any notices expressed to be sent pursuant to section 47.

Services not covered by Lease

27. The Respondent had included within the service charge the cost of dealing with antisocial behaviour, but this was not covered by the Lease and the service was neither needed nor provided. As regards the charge for the estate clearance scheme, this should be covered by the Council Tax. In any event the cost was exaggerated as it included charges for 4 vans and 12 members of staff, whereas he had observed only 1 van and only 2 or 3 members of staff.

Service charge accounts

28. As a general point he did not consider the service charge accounts to be accurate.

Insurance survey

29. In his view the cost of the insurance survey was much higher than it should have been. Also, the survey was carried out to a different building and therefore it should not have been charged to him anyway.

Legal costs

30. There was nothing contained in the Lease to justify recovery of these costs in his view. In addition, some of these costs related to a bona fide dispute.

## Respondent's response

Generally

31. Mr Bhose noted the Applicant's statement that his application was primarily about the overall methodology, legality and correct interpretation of the Lease and of the method of calculation of the service charges. There was almost no challenge to the quality or standard of the services themselves.

32. As regards the sums in issue, the specific charges challenged were very small. In addition, where challenging specific sums the Applicant's position was that nothing at all was payable.

33. The Applicant had claimed that the Respondent had started with a figure for how much service charge it intended to recover in a particular year and had then tried to justify this as the amount of actual expenditure. However, in Mr Bhose's submission the Applicant had simply misunderstood the position; the figure to which he had referred was simply a budget.

Building and Estate

34. The Applicant had taken issue with the way in which the Respondent had interpreted the word "Building" in the Lease, submitted that it had treated a whole line of separate buildings as just being one Building for these purposes. Mr Bhose referred the Tribunal to a site plan in the hearing bundle broken down by floor. He said that the building was a substantial five storey building with one mass, one roof and one set of foundations. Whilst there were five entrances/staircases the

Respondent felt that it was clear that it was all one building. In this regard, Mr Bhose referred the Tribunal to a series of photographs in the hearing bundle, including some provided by the Applicant himself. In conclusion he said that it was clear from the wording of the Lease, combined with the plans and photographs in the hearing bundle, that Thornhill Houses as a whole were intended to be treated as one building.

35. The Applicant had objected that his building did not form part of an estate and that therefore he should not be charged for any estate services. However, the Lease was marked as an "ON ESTATE" lease. In addition, the Lease defined the Applicant's building as "Thornhill Houses" and contained a separate definition of the Council's estate as "the Estate". Furthermore, the service charge provisions contained specific references to there being a building element and a separate estate element of chargeable expenditure.

Apportionment

36. As regards the Applicant's objection to the room weighting method of apportionment as against a simple floor area calculation, the method chosen by the Respondent had actually worked out slightly cheaper for the Applicant, as could be seen from the detailed measurements contained in hearing bundle.

37. In any event, in Mr Bhose's submission, the room weighting method was consistent with the Lease. This method divided costs equally between units but then (except in relation to aerials and caretaking) made an adjustment to reflect the number of rooms in each unit. Under proviso (A) the Respondent had the power to change the apportionment method and the change to room weighting was in his submission consistent with the wording of proviso (A).

Requirement to certify the service charge

38. The Respondent accepted that this was a requirement under the Lease. The Respondent's position was that the certification took place at the appropriate time but that a copy of the certificate for each year was not supplied to the Applicant until September 2015. However, in the Respondent's submission this was not a breach of the Lease as time was not of the essence. Furthermore, the absence of certificates was not mentioned by the Applicant until he lodged the present application and therefore there was also an estoppel argument.

39. Mr Bhose argued that a later certification could cure the original failure to supply a copy of the certificate but noted that it might be argued that this could then lead to a possible challenge pursuant to section 20B of the 1985 Act, namely that the Respondent had not served a

contractually valid demand within 18 months after the relevant costs had been incurred. In relation to that possible argument, Mr Bhose relied on the view of Morgan J in *Brent London Borough Council v Shulem B Association Ltd (2011) EWHC 1663 (Ch)* that a contractually invalid demand could, if served within that 18 month period, constitute notification to the tenant that the costs had been incurred for the purposes of section 20B(2).

Section 47

40. In Mr Bhose's submission there was no requirement to refer to section 47 expressly on demands as long as section 47 was complied with in practice.

Mr Powell's evidence

41. Mr Powell is a Projects Officer with the Respondent and has given two written witness statements. In response to a question from Mr Bhose, Mr Powell said that the need for block repairs was often reported by residents or by the caretaker. After work had been carried out there was a process for checking a percentage of the works and testing whether they had been done properly. If a repair is not done, or not done properly, residents tended to mention this.

42. As regards the issue with the ivy, the ivy was very substantial and in Mr Powell's view the best way to deal with it was generally to erect scaffolding because of concerns about obstruction and health and safety if using another method.

43. As regards the Applicant's statement that there had been no roof leak, Mr Powell referred the Tribunal to the relevant invoice and said that there was simply no evidence to support the Applicant's statement and that his comments were mere supposition.

44. In relation to caretaking, Mr Powell said that the time spent by the caretaker was detailed and broken down on a schedule and that a proper measured exercise took place. He referred the Tribunal to the relevant paperwork in the hearing bundle. He also took the Tribunal through the estate inspection records and the sheets grading the quality of the caretaker's work. As regards caretaker accommodation, he referred the Tribunal to a note indicating that a specific assessment was made as to whether it is reasonable in any given case to charge caretaker accommodation costs to a particular building.

45. As regards the alternative quotations that the Applicant had sourced for cleaning, Mr Powell did not regard these as plausible. The first one did not describe what sort of service was needed and the second one contained very little detail.

46. In relation to the general maintenance contribution, the amount payable by the Applicant was tiny, for example £3.83 in 2013/14. In relation to estate clearance, this was not covered by the Council Tax, and it was a necessary expense because items were dumped within the building or estate and needed to be removed. Mr Powell referred the Tribunal to a detailed summary as to how these charges are apportioned.

47. As regards the management fee, Mr Powell referred the Tribunal to a detailed breakdown of this charge in the hearing bundle. He said that there was no double-counting and that the Respondent's methodology was not out of step with other boroughs.

48. As regards aerial costs, Mr Powell referred the Tribunal to the page in the hearing bundle which summarised how these were calculated.

49. In relation to the legal fees being challenged, the £185.00 charge related to a fee for issuing proceedings in the County Court and the £20.00 related to the sending out of 3 letters chasing arrears.

50. As regards the Applicant's complaints about alleged failure by the Respondent to comply with his requests for information, the Respondent had a good compliance record. The Applicant had made over 70 Freedom of Information requests. In response the Respondent had provided numerous explanations but none of them had been accepted by the Applicant. Mr Powell had never before received this volume of complaints or requests for information.

Applicant's cross-examination of Mr Powell

51. In cross-examination Mr Powell accepted that it was possible that Thornhill Houses did not just have one continuous roof. In relation to the cleaning charges, Mr Powell accepted that it was possible to obtain a cheaper service but felt that the charges were reasonable for the service which was needed. Regarding the work to the creeper, he agreed that if it was trimmed more frequently it was possible that there would be no need for high scaffolding, but he said that cutting more frequently had its own implications for the overall cost.

52. The Applicant asked Mr Powell why electricity charges were not calculated according to meter readings. Mr Powell said that they were.

Mr Lloyd's evidence

53. Mr Lloyd is a Project Manager with the Respondent and has given a written witness statement. He said that he has carried out hundreds of measured surveys. On this occasion he carried out the measured surveys in two different ways so as to be able to compare his

calculations with those of the Applicant. His calculations were based on actual measurements of the 33 units (out of a total of 77 units) into which he had been able to gain access. The figures for those units where he had not been able to gain access had been extrapolations.

54. On a specific question regarding the size of the external areas, he thought that the rear courtyard was probably about 500 square metres and that the front courtyard was probably about 150 square metres.

Mr Heath's evidence

55. Mr Heath is an Estate Services Co-ordinator with the Respondent and has given a written witness statement. He said that he manages 20 caretakers and that the caretakers are supervised monthly. There was a performance grading system, as was apparent from documentation in the hearing bundle, and if caretakers scored C or D this would be taken up with them. There were also other performance indicators used. He said that there had been very few complaints regarding caretaking. There had been a resident caretaker until 2011.

Respondent's closing summary

56. Mr Bhose said that for service charges to be reasonably incurred the cost did not have to be the cheapest; it just had to be reasonable. As regards repairs to the building Keir carried out the work under a tendered contract under EU rules.

57. As regards the ivy cost the Applicant accepted that the work needed doing. It was reasonable to use scaffolding to carry out this work and there was no evidence of any damage to the building due to the ivy being allowed to grow.

58. As regards caretaking, the costs were carefully calculated and the standard of service was good. As regards grounds maintenance, the cost was low and was specific to the estate in which the Property was situated. As regards estate clearance, it was not the case that this service was covered by the Council Tax. As regards the management charge, as was apparent from the relevant documents in the hearing bundle there was a sophisticated methodology for calculating this.

59. In relation to electricity charges, it was accepted that in the earlier years it should have been calculated on a building by building basis, hence the reduction offered by the Respondent for these years.

Applicant's closing summary

60. The Applicant reiterated that he felt that the caretaking charges were too high. In relation to repairs, some of the charges were too high and some related to jobs which had simply not been carried out. The cleaning could have been done much more cheaply. Generally, the Respondent had used a one-size-fits-all approach when deciding what was needed for each building.

61. In relation to the Section 47 issue the Applicant referred the Tribunal to the Upper Tribunal decision in *Triplerose Limited v Grantglen Limited and Cane Developments Limited (2012) UKUT 0204 (LC).* In relation to the apportionment issue he referred the Tribunal to the Upper Tribunal decision in *Peter Cain v London Borough of Islington (2015) UKUT 0117 (LC)* involving the same parties and the same property as the present case. In relation to certification he referred the Tribunal to the decision of the First-tier Tribunal in the case of *Kelsall v London Borough of Islington re 68 Wynford Road (Reference: LON/00AU/LSC/2006/0399)* and to the decision of the First-tier Tribunal in the case of *Zenabell Limited v Mr M Dedeoglu re Flat 2, 1 Highbury Place (Reference: LON/00AU/LIS/2005/0115).*

62. The Applicant also reiterated that he felt that the Respondent had failed to supply him with information.

## Tribunal's comments and determination

Applicant's submissions generally

63. The Applicant's written submissions contain an unusually large amount of detail but, in our view, they are not very succinct and in many places are unfortunately not very clear. At the hearing, a significant amount of time was taken up with trying to clarify what the Applicant's key arguments and supporting evidence and/or legal arguments were, and it is assumed that he is relying primarily on the points and arguments referred to by him in oral submissions over the two days of the oral hearing as clarified by the Tribunal.

64. Although he is an experienced litigator, the Applicant was not legally represented and therefore the Tribunal was happy to give him some leeway at the hearing, for example by inviting him to consider over the lunch adjournment on the first day whether he wanted to cover any evidence or arguments not mentioned by him during the morning session and then to go back over the relevant issues in the afternoon.

Whether one building

65. The Applicant maintains that Thornhill Houses is not one building but instead is a series of separate buildings and that he is only liable to contribute to the services in his one building. However, on the basis of the submissions made by the parties our view is that it can reasonably be treated as a single building. The photographic evidence and the site plan support the proposition that it is one structure, and we do not consider that the existence of more than one entrance prevents it from being treated as one building. In any event, the Lease is clear on this point, as it specifically defines "the Building" as being the whole of the property known as Thornhill Houses. The fact that the Respondent often uses the word "block" when referring to a structure that it is treating as one building, as noted by the Applicant, is not relevant to this issue.

66. Therefore, it is perfectly proper that the Applicant's building service charge should consist of a proportion of the cost of providing services to Thornhill Houses as a whole.

Apportionment

67. The Applicant states that there is no relationship between the figure for borough-wide costs and the actual costs incurred in relation to his building but accepts that he had no specific evidence for this statement. Part of the basis for his assessment is the Respondent's budget for service charge expenditure throughout the borough. However, a budget is simply that; a budget estimating anticipated expenditure over the coming year. It is not a statement of an amount that will be charged regardless of actual expenditure. If there were evidence that the Respondent was not basing actual charges on actual expenditure then this would indeed be a problem, but the Applicant has not provided any such evidence.

68. In relation to the actual charges, whilst the reasonableness or otherwise of each charge will be commented on later, we are satisfied that the Respondent has provided sufficient evidence to demonstrate that the actual charges are in principle based on actual expenditure, save in relation to the electricity charges for earlier years in respect of which the Respondent has made a concession. In particular, the Respondent has provided credible information to show that the management fee, the caretaking charge, the estate clearance charge and the grounds maintenance charge are based on actual costs incurred in relation to the Applicant's building or estate.

69. As regards the method of apportionment used to calculate the Applicant's share of the building or estate service charge, as noted by the Applicant there is a question as to whether it is consistent with the terms of the Lease. Clause 5(f)(i) of the Lease provided for the service

charges other than the management element to be apportioned according to rateable value, whereas the Respondent now uses a room weighting method instead, which divides costs equally between units but then (except in relation to aerials and caretaking) makes an adjustment to reflect the number of rooms in each unit.

70. There are two provisos to clause 5(f) which allow for the possibility of a change to the method of apportionment. Proviso (A) allows the Council *"at any time to fairly and reasonably substitute a more detailed method of calculating the Service Charge attributable to the dwellings in the Building"*. Proviso (B) states that *"in the event of the abolition or disuse of rateable values for property the reference herein to the rateable value shall be substituted by a reference to the floor areas of all the dwellings in the Building and on the Estate (excluding any areas and lifts (if any) used in common) and calculated accordingly"*. Proviso (B) does not allow a change to a room weighting method as it specifies an apportionment simply based on floor area. In relation to proviso (A), the Respondent argues that the wording is wide enough to allow for a change to a room weighting method.

71. We do not agree with the Respondent on this point. Proviso (A) allows the Council to substitute "a more detailed method of calculating the Service Charge", not a completely different method, and it is hard to see how the use of room weighting could be regarded as anything other than a different method compared to the use of rateable values. Furthermore, the existence of proviso (B) makes it clear that if rateable values are abolished or disused then the reference to rateable value "shall" be substituted by a method based on floor areas. Therefore, in our view the correct method of apportionment is one based on floor areas.

72. However, on the basis that Thornhill Houses is one building and that the Respondent is entitled to charge the Applicant a correctly apportioned part of the service charges for that building, it is common ground between the parties that use of the room weighting method leads to the Applicant's contribution being very slightly cheaper than under a method based on floor areas. Therefore, the use of what in our view is an incorrect method of apportionment has not caused the Applicant to pay more and is therefore not a basis for reducing his contribution towards the service charge.

73. The Applicant has referred us, in support of his position, to the First-tier Tribunal decision in *Kelsall v London Borough of Islington re 68 Wynford Road*. As a First-tier Tribunal decision it is not binding on us, but in any event the decision in that case was that there was no provision in the lease for charging an apportioned charge spread across the borough. The Respondent has accepted that its electricity charges for 2007/08 to 2010/11 were charged on that basis, hence the concession in respect of electricity charges for those years. However,

on the basis of the evidence provided we are satisfied in relation to the other charges either that they were correctly apportioned or – if they were not – that the charges would have been the same or higher if the correct method had been used.

74. The Applicant has also referred us to the Upper Tribunal decision in *Peter Cain v London Borough of Islington (2015) UKUT 0117 (LC)* but the Upper Tribunal in that case expressly declined to express a view on the issue of the apportionment itself.

Certification

75. It is common ground between the parties that there is a requirement under the Lease to certify the service charge. The Respondent states that certification did take place but accepts that it was very late providing copies of the certificates to the Applicant.

76. The Applicant has referred us to *Kelsall v London Borough of Islington re 68 Wynford Road* in the context of certification (in addition to referring to it in the context of apportionment) but it is unclear what point he is seeking to make in this regard. He has also referred us to the First-tier Tribunal decision in *Zenabell Limited v Mr M Dedeoglu re Flat 2, 1 Highbury Place.* In that case no certificate was ever provided to the leaseholder or supplied at the hearing. That tribunal expressed the view that it was not satisfied in the absence of a certificate the relevant service charges would have been recoverable, although this was obiter dictum as there were other reasons for that tribunal to declare the service charges in question not to be payable in any event.

77. The decision in Zenabell is a First-tier Tribunal decision and is therefore not binding on us, and – as noted above – in any event the case was decided on other points. Furthermore, our case is not one in which no certification has taken place and therefore the Applicant has, belatedly, had an opportunity to study the certificates and ask plenty of questions.

78. As the Respondent states, time is not expressed to be of the essence on this point. In addition, the certification point is one which has been raised by the Applicant very recently. Whilst we do not accept that it is a general principle that one is necessarily estopped from raising a point if one does not do so promptly, the Applicant is an experienced litigator and does not generally seem to show no reticence in raising points which are of concern to him.

79. Taking all of the above points in the round, we do not consider that the late production of certificates is a sufficient basis for declaring service charges not to be payable in circumstances where they seem to represent a reasonable charge for services enjoyed by the Applicant and

where time is not expressed to be of the essence. This is consistent with the decisions by the Upper Tribunal in *Warrier Quay Management Co v Joachim*, *Redrow Homes (Midlands) Limited v Hothi* and *Wrigley v Landchance Property Management Limited* referred to in written submissions by the Respondent.

80. To the extent that there could be a section 20B issue, this point was covered by Morgan J in *Brent London Borough Council v Shulem B Association Ltd*, albeit as an obiter dictum. In his view, which we accept, a contractually invalid demand for a balancing service charge, to the extent that the absence of a certificate makes it invalid at the time of service, can constitute a section 20B(2) notification for the purposes of the 18 month rule in section 20B.

Section 47

81. As noted by the Applicant, service charge demands need to be accompanied by the information required by section 47 of the Landlord and Tenant Act 1987. However, he has provided no authority for the proposition that the phrase "section 47" needs to be stated on the demand; the issue is whether the demand contains the actual information envisaged by section 47. He did refer the Tribunal to the Upper Tribunal decision in *Triplerose Limited v Grantglen Limited and Cane Developments Limited* but that decision is not authority for the proposition that the words "section 47" must be used.

82. The purpose of section 47, in our view, is that a tenant receiving a payment demand is given details of his landlord's name and address, this being the information required by virtue of sub-section 47(1). Sub-section 47(2) states that a service charge or administration charge demanded shall be treated as not being due at any time before the information required by sub-section 47(1) is furnished, and there is no indication that the phrase "section 47" must be used by the landlord when furnishing that information. The evidence indicates that the information required by section 47 was indeed provided to the Applicant when he was issued with service charge demands and therefore section 47 was complied with.

Individual items

*Electricity*

83. In relation to the electricity charges, these are variously referred to in the service charge accounts as Block Lighting, Communal Lighting and Communal Electricity. The Respondent has conceded that the charges were not, or may not have been, based specifically on actual expenditure on electricity within the building for the years 2007/08 to

2010/11 inclusive and has proposed a charge to the Applicant of £11.00 per year for those years.

84. In the absence of proof as to actual expenditure for those years, and the accounts indicate that actual expenditure was over £11.00 per year in subsequent years, this is in our view a fair concession leading to a reasonable charge for each of these years. In the absence of a persuasive challenge to the electricity charges for the other years in dispute we consider that the electricity charges (reduced as proposed by the Respondent for 2007/08 to 2010/11 inclusive) were reasonably incurred or (in the case of 2015/16) represent a reasonable estimate.

*Caretaking/cleaning*

85. In relation to the caretaking/cleaning charges, these are arguably a little on the high side. However, the Applicant has not provided any realistic comparable evidence and nor has any evidence been provided to indicate that the cleaning has been sub-standard. In our view, based on the evidence provided as to the extent of the cleaning and the amount of time spent on cleaning, the cleaning charges for each year are within the range of charges which could be considered to have been reasonably incurred.

*Management*

86. In relation to the management fee, the Respondent has provided evidence as to how it breaks down. There is no complaint about the standard of management and the overall figure in our view is reasonable and in line with the market. The Applicant has not provided any comparable evidence to indicate otherwise.

*Repairs*

87. In relation to repairs, the Applicant has complained of high charges and of certain works not being needed or being 'phantom' jobs but he has not provided tangible, credible evidence to support these complaints. He has not provided an expert opinion, alternative quotations, copy correspondence containing admissions or demonstrating inconsistencies or other relevant documentation or hard evidence, whereas the Respondent has provided copy invoices which appear to be genuine and do not reveal expenditure which on its face is unreasonable in the absence of a more effective challenge.

*Grounds maintenance*

88. In relation to grounds maintenance, the amounts charged by the Respondent are extremely small and the Applicant has effectively accepted that some grounds maintenance has taken place.

89. Specifically as regards the ivy, we accept that there is more than one possible approach to dealing with this, but the Applicant has failed to demonstrate – or even given the Tribunal good reason to believe – that his suggested method would have been cheaper and that the Respondent's approach was not a reasonable one.

*Estate clearance*

90. In relation to estate clearance, we accept the Respondent's position, namely that the cost of clearance in these circumstances is not covered by the Council Tax and that therefore the Respondent was entitled to charge the cost to leaseholders through the service charge. On the basis of the information available the amount charged is reasonable in our view.

*Antisocial behaviour*

91. As regards the Applicant's submission that the service charge provisions are not wide enough to cover dealing with antisocial behaviour, we disagree. There are two sweeper provisions relating to any other services or facilities from time to time provided by the Council for the Building/Estate which the Tenant enjoys in common with other occupiers and we consider this to be wide enough to cover dealing with antisocial behaviour.

*Insurance survey*

92. In relation to the insurance survey, the total amount charged to the Applicant was £25.64. Whilst it is not absolutely clear that this falls within any specific service charge category, in our view it is clearly a prudent thing to do in order to protect the building and on the balance of probabilities it falls within "supervision and management of the Building and the Estate" within General Management costs in Part 3(c) of the Third Schedule to the Lease and/or falls within the sweeper provisions referred to above.

*Legal costs*

93. According to the Respondent the two legal costs challenged (totalling £205.00) related respectively to a fee for issuing proceedings in the County Court and a charge for sending out of letters chasing arrears. They were administration charges, the whole of which had been charged to the Applicant, and not service charges. Clause 3(20) of the Lease allows the landlord to recover all expenses (including legal costs) incurred incidental to the preparation and service of a notice under section 146 (forfeiture) or 147 (disrepair) of the Law of Property Act 1925 and all notices and schedules relating to disrepair. These costs do not relate to disrepair. It is possible in the right circumstances that

they could be a prelude to forfeiture action, but there is no evidence that this is the case here and therefore in our view these sums are not recoverable under the Lease.

*Other*

94. There were no real challenges to any other items, and on the basis of the information provided we consider these to be payable.

Complaints about lack of information

95. The Applicant has argued that he has not been provided with proper information by the Respondent. We accept that he has not been provided with everything that he has requested and that information has not always been supplied in the way that he has wanted it to be supplied. However, it is clear that a large amount of information has been supplied and that dealing with (or trying to deal with) the Applicant's complaints has taken up an extraordinary amount of the Respondent's time. In addition, in the context of these proceedings alone, the Applicant's whole approach has been such as to cause a Procedural Judge to come very close to barring him from taking further part in these proceedings on the ground that his behaviour was an abuse of process or vexatious.

## Cost Applications

96. No specific cost applications were made at the hearing itself, with both parties reserving their positions. As stated at the end of the hearing, if either party wishes to make any cost applications it must do so in writing, together with reasons of a reasonable length, within 14 days after the date of issue of this decision.

**Name:** Judge P Korn **Date:** 14th April 2016

## RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## 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.

## 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).