

11409



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

**Case Reference** : LON/00BG/LSC/2015/0422

**Property** : Flat 9 Ash House, East Ferry Road,  
London, E14 3LF

**Applicant** : One Housing Group

**Representative** : In House Legal Representative

**Appearances for Applicant:** (1) Ms Michelle DiStefano, paralegal  
(2) Mr Orlando Strauss, solicitor  
(3) Mr James Briggs, service charge analyst  
(4) Mr Daniel Oehlman, Head of Service Charge and Rents

**Respondent** : Mrs Fathema Meraj

**Representative** : In Person

**Appearances for Tenant:** : None

**Type of Application** : For the determination of the reasonableness of and the liability to pay service charges

**Tribunal Members** : (1) Judge Amran Vance  
(2) Mr W Richard Shaw FRICS

**Date and venue of Hearing** : 27 January 2016  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 12 February 2016

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**DECISION**

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### **Decision of the Tribunal**

1. The Tribunal determines that the following sums are payable by the Respondent to the Applicant, by way of service charge, for the following service charge years:

<u>Service Charge Year</u>	<u>Amount</u>
2013/4	£1,230.37
2014/5	£1,294.60
2015/6	£1,537.19 estimate

2. The amount specified in County Court claim B9QZ5D73 as outstanding from the Applicant by way of service charge arrears was £2,437.79. As these arrears related to the three service charge years specified above and as the Tribunal has determined the Respondent is liable to pay to the Applicant the full amount of the service charges for each of those three years it follows that the sum of £2,437.79, is payable by the Respondent in full.
3. The tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 preventing the Applicant's costs of these tribunal proceedings from being passed on to the lessees through any service charge.

### **Background**

4. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the Respondent in respect of the actual service charge costs incurred in the 2013/14 and 2014/15 service charge years and the estimated costs to be incurred for the 2015/16 service charge year.
5. The relevant legal provisions are set out in Appendix 1 to this decision.
6. References in bold and in square brackets below refer to pages in the hearing bundles prepared by the Applicant. The Tribunal is grateful for the care with which those bundles were compiled.
7. The Respondent is the long lessee of Flat 9 Ash House, East Ferry Road, London, E14 3LF ("the Flat"). She was registered as the leasehold proprietor at HM Land Registry on 28 March 2008 under title number EGL372734. The Respondent has the benefit of the residue of the remaining term of a lease dated 19 January 1998 entered into between (1) The Mayor and Burgesses of the London Borough of Tower Hamlets and (2) Ignatius Pace and Katherine Pace ("the Lease"). The terms of the Lease require the Applicant to provide services and the Tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease will be referred to below, where appropriate.

8. The Flat is located in a four-story block comprising 12 flats (“the Block”). The Block forms part of the wider St John’s Estate (“the Estate”).
9. The Applicant is the Respondent’s landlord. Its freehold interest in the Estate was registered at HM Land Registry on 12 September 2012 under title number EGL500536.
10. Proceedings were originally issued in the County Court Business Centre on 30 July 2015 under claim no. B9QZ5D73 (“the County Court Claim”) [1052] which were subsequently transferred to this Tribunal by order of Deputy District Judge Oldham sitting at the Romford County Court dated 28 September 2015 [1131].
11. In the County Court Claim the Applicant claimed for service charge arrears of £2,437.79 together with interest and costs. A statement of account accompanying the claim form indicates that no service charge payments had been received from the Respondent since 18 October 2013. At the hearing before us the Applicant confirmed that no payments had been received from the Respondent since the date of issue of the County Court Claim.
12. In her Defence to the County Court Claim the Respondent disputed the full amount claimed and asserted, among other matters, that:
  - (i) the service charge costs claimed had not been reasonably incurred;
  - (ii) some of the service charge demands sent to her failed to comply with the requirements of s.47 and 48 of the Landlord & Tenant Act 1987 as they did not contain the landlord’s name and address for service of notices;
  - (iii) administration and management charges were excessive;
  - (iv) works which should have been carried out had not been carried out
  - (v) those works which had been carried out had not been carried out to a reasonable standard;
  - (vi) administration charges had been included within the costs of buildings insurance which are not recoverable from her under the terms of the Lease; and
  - (vii) an order in her favour should be made under s.20C of the 1985 Act.
13. Directions were issued by the Tribunal on 23 October 2015 (“the Tribunal’s Directions”). These required the Applicant to send the following documents to the Respondent by 13 November 2015:
  - (i) copies of all service charge accounts for the period in dispute;
  - (ii) copies of all invoices and receipts that relate to that expenditure;
  - (iii) copies of the demands and summaries of rights and obligations that accompanied those demands;
  - (iv) copies of any consultation documentation (if relevant);
  - (v) a statement of case responding to the Respondent’s Defence in the County Court Claim;

- (vi) A Scott Schedule with the various items of expenditure identified and costed.
14. The Respondent was directed to complete and return her portion of the Scott Schedule by 30 November 2015 setting out those items that were agreed and those that were disputed together with the reasons for any dispute. She was also directed to supply copies of any documents on which she wished to rely to support her claim by that same date.
  15. The Tribunal's Directions also provided for any witness statements of fact to be exchanged by 6 January 2016 and indicated that the hearing was to take place on 28 January 2016 commencing at 1.30pm with a time estimate of half a day. However, by letter dated 29 October 2015 the Tribunal notified the parties that the Tribunal Directions contained a typographical error and that the hearing was actually to take place on *27 January 2016*.
  16. On 17 December 2015 a letter was sent by the Tribunal to the Respondent in the following terms:

*The letter of 11 December 2015 from One Housing has been considered by a tribunal judge who **directs** that by **23 December 2015** you shall explain to the Tribunal (with copy to the applicant): -*

- 1. Why the respondent has apparently not complied with the tribunal's directions; and*
- 2. What remedial action the respondent proposes to take to remedy the breach within the direction timetable; and*
- 3. Having regard to the notice in the directions, why the tribunal should not bar the respondent from taking any further part in all or part of the proceedings pursuant to rule 9 (7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.*

*The judge reminds [the] parties in particular (a) of their duty to further the overriding objective and to co-operate with the Tribunal generally (Rule 3 (4)) and (b) of the possibility of an application for costs under Rule 13.*

***If the respondent fails to comply with this direction the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.***

17. The Respondent replied by letter dated 19 December in which she apologised for not complying with the Tribunal's directions. This, she said, was due to her misunderstanding of the date on which she had to return her portion of the Scott Schedule. She thought the deadline was 28 January 2016. She enclosed a version of the Scott Schedule with that letter but her only comments were to insert the word "*unreasonable*" after each head of expenditure.
18. The correct hearing date was again referred to in a letter from the Tribunal to the Applicant dated 14 January 2016 in which the Tribunal declined to make further directions requested by the Applicant and in which it stated that the case would proceed to be heard on 27 January 2016. In that letter, a copy of which was also sent by the Tribunal to the Respondent on the same date, it is stated that "*...the tribunal will decide the case on the basis of the evidence before it*".

### **Inspection**

19. Neither party requested that the Tribunal carry out an inspection of the Flat or Block and the Tribunal did not, in any event, consider that one was necessary or proportionate in order to determine the issues in dispute.

### **The Hearing**

20. The Respondent did not attend the hearing and no explanation for her absence was provided to the Tribunal in advance of the hearing. The Applicant's representatives informed the Tribunal that they were not aware of any reason as to why she was absent. Prior to the start of the hearing the Tribunal reviewed the case file and were satisfied that proper notification of the hearing date had been sent to the Respondent at her residential address and that there was no indication on the file that correspondence sent to that address had been returned undelivered by the Post Office. It was satisfied that the hearing should proceed in the Respondent's absence.
21. The hearing commenced at 1.30pm and concluded at around 4.15pm. After the hearing had concluded the Tribunal case officer presented the Tribunal members with a copy of an email sent by the Respondent at 2.14pm on the same day, in which she apologised for her non-attendance at the hearing. In that email she stated that she thought the hearing was to take place on 28 January, as per the original Tribunal Directions but that she identified, at about noon on 27 January, from reviewing the documents in the hearing bundle supplied by the Applicant, that the hearing might actually be taking place that day. She therefore telephoned the Tribunal and after initially being told, incorrectly, by a member of staff that the hearing was to take place on 28 January subsequently spoke to the case officer who confirmed that the hearing was, in fact, underway.
22. The following additional documents were provided by the Applicant to the Tribunal at the hearing and the Tribunal allowed their late submission in evidence as it considered them important to determine the issues in dispute:

- (i) Copies of the schedules for the estimated service charges for the years ending: 31 March 2014; 31 March 2015; and 31 March 2016.
23. The Tribunal heard oral evidence from Mr Oehlman who also provided a written witness statement [1035].

#### *The Applicant's Case*

24. The Applicant's position was that the costs in dispute were properly incurred by it in seeking to comply with its obligations under the terms of the Lease and that the sums in question were reasonable in amount.
25. These costs, it said, had been properly demanded from the Respondent. She would, initially, have been sent a demand for the interim charge accompanied by a summary of her rights and obligations together with a service charge schedule providing a full breakdown and an explanation of how the service charges had been calculated. This would be followed, at the end of each service charge year, by an actualised service charge schedule, an Actual Service Charge Booklet including the required summary of rights and obligations together with an examination certificate by independent chartered accountants, Beaver and Struthers and a service charge demand or credit note. Copies of these documents are at pages [820 – 936] of the hearing bundle.
26. In the Applicant's submission the Respondent, in her County Court Defence, made numerous allegations which were factually incorrect and unreasonably vague. She then failed to clarify the nature of her dispute following transfer of the County Court Claim to this Tribunal. This, it contends, was a waste of its own resources as well as those of the Tribunal. At the hearing the Applicant made an oral application for an order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") that the Respondent pay costs it has incurred in dealing with the application before the Tribunal. This was made on the basis that the Respondent has acted unreasonably in her defence and/or conduct of these proceedings. The Tribunal could not deal with such an application in the Respondent's absence and separate directions in respect of this costs application will accompany this decision.

#### *The Respondent's Case*

27. It is very regrettable that the Respondent has not expanded on the bare assertions made in the Defence in the County Court Claim. The Tribunal Directions made on 23 October required her to complete and return her portion of the Scott Schedule by 30 November 2015. That deadline was not met. It was not until she received the Tribunal's letter of 17 December 2015 requiring her to explain the reasons for her non-compliance and why she should not be debarred from taking any further part in the proceedings that she returned her part of the Scott Schedule.

28. Unfortunately, her completed version of the Scott Schedule is of no assistance to either the Applicant or this Tribunal in understanding why the Respondent disputes that the costs in question are payable. Her sole comment for each item of expenditure on the Scott Schedule is that the costs are “unreasonable”. This does not comply with the direction at paragraph 11 of the Tribunal Directions to explain *why* the costs are in dispute. Nor does it comply with the direction that the Respondent indicates how much she considered it would be reasonable for her to pay.
29. The Respondent has not provided any other documents nor a witness statement in support of her case. As she did not attend the hearing there was no evidence before the Tribunal to support the assertions made in her Defence and which (insofar as they fall within Tribunal’s jurisdiction) are summarised at paragraph 10 above.

*Decision and Reasons*

30. In our determination all of the costs demanded from the Respondent for the years in dispute are payable by her in full. We are satisfied that the costs have been reasonably incurred and that for each item there is a complete lack of evidence to support the assertions made in the Respondent’s Defence. The Applicant confirmed that the sums in dispute do not include any sums demanded from the Respondent by way of administration charges. We are satisfied that there is no evidence whatsoever to support the allegations made in her Defence that:
- (i) administration and management charges were excessive in amount;
  - (ii) works which should have been carried out had not been carried out
  - (iii) those works which had been carried out had not been carried out to a reasonable standard;
  - (iv) administration charges had been included within the costs of buildings insurance which are not recoverable from her under the terms of the Lease;
31. As to service charge, the Respondent disputes *all* of the costs demanded from her for the three service charge years in dispute. As such, at the hearing, the Tribunal required the Applicant to satisfy the Tribunal that each of those heads of expenditure were payable by the Respondent and that they had been reasonably incurred. In doing so the Tribunal spent a considerable amount of time considering the relevant invoices for the disputed costs as included in the hearing bundle.
32. We set out our determinations regarding the service charge costs below. Before doing so it is appropriate to state that we do not consider the Respondent has established that service charge demands served by the Applicant failed to comply with the requirements of sections 47 and 48 Landlord & Tenant Act 1987. The information required under sections 47 and 48 is stated in the credit note



accompanying notification of the actual service charge costs for the 2013/14 service charge year [622]. It is also stated in the invoice for the balancing payment accompanying notification of the actual service charge costs for the 2014/15 service charge year [669].

33. The Tribunal was initially concerned that the required information was missing from the *estimated* service charge schedules included in the hearing bundle [614, 647 and 701]. However, it is satisfied with the explanation provided by Mr Oehlman which was that the copies in the bundle had been taken from an Excel spreadsheet and were not true copies of the documents sent to the Respondent. He arranged for copies of the relevant schedules, as sent to the Respondent, to be emailed to the Tribunal during the course of the hearing and we note that these include the name and address of the Respondent's landlord as required under 47 and 48 Landlord & Tenant Act 1987. We accept his evidence that the copies sent to the Respondent were in this format.
34. We address each item of service charge expenditure below. For the avoidance of doubt, we consider that all of the costs were properly incurred by the Applicant in fulfilling its obligations under clause 5 (5) of the Lease and that they are payable by the Respondent in accordance with the lessee's covenant at clause 4(4) and the Fifth Schedule to the Lease.
35. We heard oral evidence from Mr Oehlman in respect of each head of service charge expenditure. In our assessment his evidence throughout the hearing was credible and reliable. We accept it in full.

#### Cleaning – Block Cost

36. We determine that the actual costs for the 2013/14 service charge year (£504.96) and 2014/15 service charge year (£521.19) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £669.75 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
37. Mr Oehlman's evidence was that these costs relate to cleaning of the Block by an Estate-wide in-house caretaking service. They are Estate wide costs which are then apportioned to the individual blocks. The service is provided for six days of the week with a deep clean every six months. Mr Oehlman confirmed that he visits the Estate regularly, with his last inspection two weeks previously, and that he is satisfied that the cleaning is carried out to a high standard. Mr Oehlman explained that the reason why the estimated costs for the 2015/16 service charge year are significantly higher than for the previous two years is because it has been decided that from 2015/16

onwards the costs of Block Cleaning and Estate Cleaning are to come within one head of expenditure, for cleaning.

- 38.** In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider the costs to have been reasonably incurred. We also consider that the amount of the costs to be reasonable for the service provided.

#### Gardening and Grounds Maintenance – Block Cost

- 39.** We determine that the actual costs for the 2013/14 service charge year (£185.54) and 2014/15 service charge year (£155.52) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £226.75 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
- 40.** Mr Oehlman's evidence was that these costs relate to maintenance of several grassed and shrubbed areas surrounding the Block. This included weeding and mowing as well as pruning of the shrubbed areas. It is a weekly service provided for eight months of a year (between about February and November) by an Estate-wide in-house gardening service. Mr Oehlman explained that the actual cost for 2014/15 was lower than expected as one of the three horticultural members of staff left halfway through the year.
- 41.** In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the service provided.

#### Rubbish Bin Hire – Block Cost

- 42.** We determine that the actual costs for the 2013/14 service charge year (£32.86) and 2014/15 service charge year (£33.70) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £43.92 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
- 43.** Mr Oehlman's evidence was that these costs concern the hire of lifting equipment and rubbish bins supplied by the local authority. These are Estate wide costs which are then apportioned to the individual blocks.

44. The Tribunal inspected the invoices included in the hearing bundle [81-96; 230-231] and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the service provided.

#### Fire Safety Checks and Maintenance- Block Cost

45. We determine that the actual costs for the 2013/14 service charge year (£10.20) and 2014/15 service charge year (£17.56) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £10.60 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
46. Mr Oehlman's evidence was that these estimated costs relate to the maintenance of the emergency lighting installation to the Block.
47. The Tribunal inspected the invoices included in the hearing bundle [32-34] and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider the estimated sum to be reasonable and payable by the Respondent in full. We also consider the amount of the costs to be reasonable for the service provided.

#### Water Safety Checks – Block Cost

48. We determine the estimated sum of £17.44 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
49. Mr Oehlman's evidence was that these estimated costs relate to the intended costs for testing for legionnaires disease in the water supply for the Block.
50. In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider the estimated sum to be reasonable and payable by the Respondent in full. We also consider the amount of the costs to be reasonable for the service provided.

#### Pest Control -Block Cost

51. We determine the estimated sum of £18.00 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
52. Mr Oehlman's evidence was that these estimated costs relate to the intended costs for a reactive pest control service which is necessary because there have been pest issues affecting the wider Estate.
53. In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider the estimated sum to be reasonable and payable by the Respondent in full. We also consider the amount of the costs to be reasonable for the service provided.

#### Electricity – Block Cost

54. We determine that the actual costs for the 2013/14 service charge year (£55.87 ) [806] and 2014/15 service charge year (£44.72) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £59.79 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
55. Mr Oehlman's evidence was that these costs concern lighting to the communal areas of the Block.
56. The Tribunal inspected the invoices included in the hearing bundle [23-30; 211-221] and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the service provided.

#### Day to Day Maintenance – Block Cost

57. We determine that the actual costs for the 2013/14 service charge year (£66.80) and 2014/15 service charge year (£161.43) are payable by the Respondent in full and that the costs have been reasonably incurred. At the hearing Mr Oehlman confirmed that the amount of £73.19 shown on the actualised service charge schedule for 2013/14 had been corrected in the Scott Schedule to £66.80. We determine the estimated sum of £91.25 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.

58. Mr Oehlman's evidence was that day to day maintenance of the Block is contracted out to external contractors but that small items are dealt with in-house by a handyman.
59. The Tribunal inspected the invoices included in the hearing bundle [12-22; 193-209] and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the service provided.

#### Estate Day to Day Maintenance

60. We determine that the actual costs for the 2013/14 service charge year (£70.56) and 2014/15 service charge year (£3.69) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £3.36 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
61. Mr Oehlman's evidence was that these costs relate to the day to day maintenance of the communal areas of the Estate as opposed to any of the blocks. Again, small items are dealt with in-house by a handyman with larger works contracted out.
62. The Tribunal inspected the invoices included in the hearing bundle [154-192; 576-608] and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the service provided. We paid particular attention to the invoice dated 31 March 2013 from Axis for urgent road repairs in the sum of £37,750 [190] but see no reason to doubt Mr Oehlman's evidence that these works were properly incurred for urgent works required to the Roffey Street Estate road.

#### Estate Cleaning

63. We determine that the actual costs for the 2013/14 service charge year (£21.94) and 2014/15 service charge year (£22.65) are payable by the Respondent in full and that the costs have been reasonably incurred.
64. Mr Oehlman's evidence was that these costs relate to cleaning of the communal areas on the Estate by the same in-house caretaking service that carry out the cleaning to the Block. The service is provided for six days of the week with a deep

clean, including jet washing, once every six months. Hard areas, including pathways are cleaned and litter is picked up. These are Estate wide costs which are then apportioned to the individual blocks. As stated above, from 2015/16 these costs have been amalgamated with the Block cleaning costs.

65. In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred for the service provided. We also consider the amount of the costs to be reasonable for the service provided.

#### Estate Grounds Maintenance

66. We determine that the actual costs for the 2013/14 service charge year (£0.47) and 2014/15 service charge year (£0.40) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £28.76 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
67. Mr Oehlman's evidence was that these costs are dealt with in a similar manner to the Block maintenance costs and that they include the mowing and weeding of areas on the Estate and care of the trees present.
68. In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the service provided.

#### Bulk Rubbish Removal

69. We determine that the actual costs for the 2013/14 service charge year (£32.33) and 2014/15 service charge year (£41.51) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £24.00 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
70. Mr Oehlman's evidence was that these costs concern the removal of bulky items from the Estate.
71. The Tribunal inspected the invoices included in the hearing bundle [97-147; 232-556] and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably

incurred. We also consider the amount of the costs to be reasonable for the service provided.

#### Lighting Consumables

72. We determine that the estimated sum of £8.00 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
73. Mr Oehlman's evidence was that these estimated costs relate to the cost of replacing light bulbs on the Estate.
74. In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider the estimated sum to be reasonable and payable by the Respondent in full. We also consider the amount of the costs to be reasonable for the service provided.

#### Buildings Insurance

75. We determine that the actual costs for the 2013/14 service charge year (£68.13) and 2014/15 service charge year (£100.71) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £148.10 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
76. Mr Oehlman's evidence was that Zurich insure all of the approximately 15,000 of the Applicant's housing units on a portfolio basis. He believed that re-tendering exercises were carried out in both the 2013/14 and 2015/16 service charge years and that a larger multi-year tender commenced on 1 December 2015 for the award of a three-year contract. He explained that the estimated costs for 2015/16 have increased because there has been a reassessment of the reinstatement value of the Block and also because the insurance policy now includes terrorism cover. He was not aware of any commission being paid by the Applicant to an insurance broker.
77. The Tribunal inspected the schedules giving a breakdown of the insurance premium for the Block included in the hearing bundle [31; 222-3] and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the insurance of the Block. There is no evidence whatsoever to the contrary.

### Examination Fee

- 78.** We determine that the actual costs for the 2013/14 service charge year (£13.80) and 2014/15 service charge year (£14.00) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £14.00 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
- 79.** Mr Oehlman's evidence was that these sums concern the costs incurred by the chartered accountants, Beever and Struthers, in examining the Applicants' accounts and producing the examination certificate at the end of each service charge year. He suggested that this was an appropriate expense to ensure that the accounts had been properly collated and so that a clear audit trail was available.
- 80.** The Tribunal inspected the certified reports included in the hearing bundle **[623; 670]** and in the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We accept that it is reasonable for the Applicant to engage independent accountants to certify the end of year service charge accounts and consider the amount of the costs incurred to be reasonable for the service provided.

### Management Fee

- 81.** We determine that the actual costs for the 2013/14 service charge year (£166.91) and 2014/15 service charge year (£177.53) are payable by the Respondent in full and that the costs have been reasonably incurred. We determine the estimated sum of £173.47 for the 2015/16 service charge year to be reasonable and payable by the Respondent in full.
- 82.** Mr Oehlman's evidence was that these costs are based on actual costs incurred by the Applicant in managing the Block including the staff costs of Home Ownership advisors as well as the collection and recovery of service charges and contact management. A time and motion study is carried out to work out a unit rate for these costs and to ensure that lessees are not charged any more than the actual costs incurred.
- 83.** In the absence of any evidence to the contrary from the Respondent we accept Mr Oehlman's evidence and consider these costs to have been reasonably incurred. We also consider the amount of the costs to be reasonable for the service provided.



### *Additional Comments*

- 84.** We determine above that all of the estimated costs for the 2015/16 service charge year are reasonable payable by the Respondent in full. We noted that the estimated costs of the salaried expenditure of cleaning, gardening and grounds maintenance had all increased from the previous two service charge years and asked why this was the case.
- 85.** We were satisfied with Mr Oehlman's explanation. This was that many of the staff were previous employees of London Borough of Tower Hamlets whose employment is subject to the provisions of The Transfer of Undertakings (Protection of Employment) Regulations 2006. Mr Oehlman stated that the local authority has notified the Applicant of an increase in the contributions that it has to make towards these pension costs. As such they had budgeted for this anticipated additional expenditure in the interim charge for 2015/16. In our view and in the absence of any evidence to the contrary it was prudent and appropriate for the Applicant to do so.

### **Application under Section 20C**

- 86.** In her Defence the Respondent seeks an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Applicant incurred in connection with the proceedings before this Tribunal should be regarded as relevant costs in determining the amount of service charge payable by her. Given that the Applicant has failed in respect of all aspects of her challenge the Tribunal does not consider it just and equitable to make the order sought.

### **The next steps**

- 87.** As the Tribunal has no jurisdiction over ground rent, interest or county court costs this matter should be returned to the Romford County Court once the application for costs under Rule 13(1)(b) of the 2013 Rules has been disposed of. Separate directions in respect of that application accompany this decision.

**Name:** Amran Vance

**Date** 12 February 2016

**Annex 1**  
**Appendix of relevant legislation**

**Landlord and Tenant Act 1985**

**Section 18 - Meaning of “service charge” and “relevant costs”**

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent –
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (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 – Limitation of service charges: reasonableness**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the 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 – Liability to pay service charges: jurisdiction**

- (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.

[.....]